PUBLIC RECORD

Dates: 18/09/2023 - 02/10/2023
22/09/2023 (non-sitting day)
22/04/2024 – 25/04/2024

Medical Practitioner's name: Dr Mehdi FOROGHI FARD

GMC reference number: 6070368

Primary medical qualification: MD 1996 Kerman University of Medical Sciences and Health Services

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Impaired

Summary of outcome

No action

Tribunal:

Legally Qualified Chair	Mr Duncan James Ritchie
Lay Tribunal Member:	Mr Martyn Green
Medical Tribunal Member:	Mr Thomas George

Tribunal Clerk:	Mr Larry Millea (18/09/2023 – 02/10/2023) Mr Matt O'Reilly (22/04/2024 – 25/04/2024)

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Ms Lydia Barnfather, Counsel/QC, instructed by Clyde and Co
GMC Representative:	Ms Rosalind Emsley-Smith, Counsel

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held partly in public and partly in private.

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Facts - 02/10/2023

Background

1. Dr Foroghi Fard qualified in 1996 (MD) from the Kerman University of Medical Sciences in Iran and prior to the events which are the subject of the hearing, Dr Foroghi Fard worked as a GP in Iran until 2007, when he obtained full registration with the GMC. Dr Foroghi Fard commenced his UK GP training in 2009 and has been on the GP register since 2012. He has undertaken various roles as a locum GP both working in Telemedicine (online/telephone consultations) and in the traditional GP practice setting. Dr Foroghi Fard currently works as part of the Willow Group as a full-time locum GP, a role he has had since 2021.

2. At the time of the events Dr Foroghi Fard was practising as a self-employed GP working for Livi, where he worked from December 2020 until June 2021. Livi is an online service provider that works with insurance companies and at the time Dr Foroghi Fard worked with Livi they provided services for Vitality Health. Livi had 2 separate lines, one for booking video consultations with GPs and the other a GP advice line ('GPAL'). Between April

and August 2021 Dr Foroghi Fard also worked for Teladoc Health, a private telemedicine provider.

3. The allegation that has led to Dr Foroghi Fard's hearing can be summarised as that, between 12 January 2021 and 30 June 2021, Dr Foroghi Fard had consultations with 13 patients (at LIVI and Teladoc) during which he did not provide good clinical care. It is also alleged that he made notes in the patients' records which were not true and that his actions were dishonest in this regard. It is further alleged that whilst Dr Foroghi Fard was working for Doctor Care Anywhere (DCA) he was suspended by Livi pending a formal review of his performance and that he failed to inform DCA of his suspension by Livi.

4. The initial concerns were raised with the GMC on 7 July 2021 by Dr N, Associate Medical Director for Livi, following an audit of Dr Foroghi Fard's work at Livi from the previous month, which brought to light numerous clinical concerns. On 20 August 2021 Dr N wrote to the GMC and provided them with further relevant information. The GMC also received an online referral from Patient A on 25 October 2021 in relation to the care provided to them by Dr Foroghi Fard.

The Outcome of Applications Made during the Facts Stage

5. The Tribunal granted the GMC's application, made pursuant to Rule 34(13) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to allow the GMC expert witness, Dr O, to give evidence via video link. This application was not opposed by Ms Barnfather, counsel, on behalf of Dr Foroghi Fard.

6. The Tribunal granted an application made on behalf of the GMC, pursuant to Rule 17(6), to amend the Allegation. This application was not opposed on behalf of Dr Foroghi Fard.

7. The Tribunal partially granted a further application made by the GMC, pursuant to Rule 17(6) to amend the Allegation. The Tribunal's written decision can be found at Annex A.

8. The Tribunal refused an application made on behalf of Dr Foroghi Fard, pursuant to Rule 17(2)(g), of no case to answer in respect of multiple paragraphs of the Allegation. The Tribunal's written decision can be found at Annex B.

The Allegation and the Doctor's Response

9. The Allegation made against Dr Foroghi Fard is as follows:

That being registered under the Medical Act 1983 (as amended):

Patient A

1. On 12 January 2021, you consulted with Patient A and you did not provide good clinical care in that you:

    a. failed to:

        i. ~~obtain an adequate history~~; Deleted under Rule 17(6)

        ii. carry out a differential diagnosis to identify bowel obstruction as a possible cause of Patient A's pain; To be determined

        iii. refer Patient A for an emergency assessment; To be determined

    b. inappropriately prescribed ~~Buscopan and Simeticone.~~:

        i. Buscopan; To be determined

        ii. Simeticone. To be determined

        Amended under Rule 17(6)

2. In the alternative, you failed to record taking the action described in paragraph:

    a. ~~1ai;~~ Deleted under Rule 17(6)

    b. 1aii. To be determined

Patient B

3. On 6 May 2021, you consulted with Patient B via telephone and you did not provide good clinical care in that you failed to:

    a. obtain an adequate history; To be determined

    b. ~~carry out an adequate assessment~~; Deleted under Rule 17(6)

    c. provide:

        i. appropriate advice; To be determined

ii. safety netting advice. To be determined

4. In the alternative, you failed to record taking the action described in paragraph:

   a. 3a; To be determined

   b. ~~3b;~~ Deleted under Rule 17(6)

   c. 3ci; To be determined

   d. 3cii. To be determined

Patient C

5. On 12 May 2021 you consulted with Patient C via webcam and you did not provide good clinical care in that you failed to:

   a. obtain an adequate history; To be determined

   b. carry out an adequate mental state examination; To be determined

   c. implement an adequate treatment plan, in that you failed to:

      i. assess Patient C's:

         1. anxiety symptoms; To be determined

         2. palpitations; To be determined

      ii. consider:

         1. changing the medication dose; To be determined

         2. making a referral to counselling or mental health services; To be determined

   d. provide:

      i. appropriate advice, including prescribing advice; To be determined

      ii. safety netting advice. To be determined

6. In the alternative, you failed to record taking the action described in paragraph:

a. 5a; To be determined

b. 5b; To be determined

c. 5ci1; To be determined

d. 5ci2; To be determined

e. 5cii1; To be determined

f. 5cii2; To be determined

g. 5di; To be determined

h. 5dii. To be determined

Patient D

7. On 16 June 2021, you consulted with Patient D by telephone and you did not provide good clinical care in that you failed to:

    a. obtain an adequate medical history; To be determined

    b. ~~carry out an adequate assessment~~. Deleted under Rule 17(6)

8. In the alternative, you failed to record taking the action described in paragraph:

    a. 7a; To be determined

    b. ~~7b~~. Deleted under Rule 17(6)

Patient E

9. On 17 June 2021 you consulted with Patient E by telephone and you did not provide good clinical care in that you failed to:

    a. obtain an adequate history; To be determined

    b. ~~carry out an adequate assessment;~~ Deleted under Rule 17(6)

    c. provide:

        i. adequate advice/ signposting information in that you did not:

1. establish whether an urgent specialist referral was needed;
   To be determined

2. explain your advice that Patient F should see a specialist earlier than October 2021; Admitted and found proved

ii. safety netting advice. Admitted and found proved

10. You documented in the record of your consultation on 17 June 2021 with Patient E that:

    a. you told Patient E to seek help if:

        i. her symptoms worsened; Admitted and found proved

        ii. she developed new symptoms; Admitted and found proved

        iii. she had any other concerns; Admitted and found proved

    b. Patient E confirmed that she was happy with your advice.
       Admitted and found proved

11. You knew when taking the actions described at:

    a. paragraph 10a, that you had not given any safety netting advice;
       To be determined

    b. paragraph 10b, that Patient E had not confirmed that she was happy with your advice. To be determined

12. Your actions at paragraph 10 were dishonest by reason of paragraph 11.
    To be determined

<u>Patient F</u>

13. On 18 June 2021 you consulted with Patient F by telephone and you did not provide good clinical care in that you failed to:

    a. obtain an adequate history; To be determined

    b. ~~carry out a FAST assessment;~~ Deleted under Rule 17(6)

    c. ~~advise Patient F that she needed to call an ambulance;~~
       Deleted under Rule 17(6)

d. ~~provide safety netting advice~~. Deleted under Rule 17(6)

14. You documented in the record of your consultation on 18 June 2021 with Patient F that:

    a. you told Patient F to seek help if:

        i. her symptoms worsened; Admitted and found proved

        ii. she developed new symptoms; Admitted and found proved

        iii. she had any other concerns; Admitted and found proved

    b. Patient F confirmed that she was happy with your advice.
    Admitted and found proved

15. ~~You knew when taking the actions described at~~:

    a. ~~paragraph 14a, that you had not given any safety netting advice~~;
    Deleted under Rule 17(6)

    b. ~~paragraph 14b, that Patient F had not confirmed that she was happy with your advice~~. Deleted under Rule 17(6)

16. ~~Your actions at paragraph 14 were dishonest by reason of paragraph 15~~.
Deleted under Rule 17(6)

<u>Patient G</u>

17. On 18 June 2021 you consulted with Patient G by telephone and you did not provide good clinical care in that you failed to:

    a. obtain an adequate history; To be determined

    b. ~~carry out an adequate assessment;~~ Deleted under Rule 17(6)

    c. ~~provide safety netting advice~~. Deleted under Rule 17(6)

18. You documented in the record of your consultation on 18 June 2021 with Patient G that:

    a. you told Patient G to seek help if:

        i. his symptoms worsened; Admitted and found proved

ii. he developed new symptoms; Admitted and found proved

iii. he had any other concerns; Admitted and found proved

b. Patient G confirmed that he was happy with your advice.
Admitted and found proved

19. ~~You knew when taking the actions described at~~:

a. ~~paragraph 18a, that you had not given any safety netting advice~~;
Deleted under Rule 17(6)

b. ~~paragraph 18b, that Patient G had not confirmed that he was happy with your advice~~. Deleted under Rule 17(6)

20. ~~Your actions at paragraph 18 were dishonest by reason of paragraph 19~~.
Deleted under Rule 17(6)

Patient H

21. On 21 June 2021 you consulted with Patient H via webcam and you did not provide good clinical care in that you failed to:

a. obtain an adequate history; To be determined

b. carry out an adequate assessment; To be determined

c. implement an appropriate treatment plan in that you:

i. failed to advise attendance for immediate face to face review;
Admitted and found proved

ii. increased the dose of antiviral medication. Admitted and found proved

22. In the alternative, you failed to record taking the actions described in paragraph:

a. 21a; Admitted and found proved

b. 21b; To be determined

c. 21ci. To be determined

Patient I

23. On 25 June 2021 you consulted with Patient I via webcam and you did not provide good clinical care in that you failed to:

    a. obtain an adequate history; Admitted and found proved

    b. carry out an adequate mental state examination; Admitted and found proved

    c. implement an appropriate treatment plan in that you failed to:

        i. address the underlying symptoms of depression and anxiety, in that you failed to consider:

            1. changing the dose of antidepressant; To be determined

            2. making a referral for counselling or to specialist mental health services; To be determined

        ii. provide appropriate prescribing advice; To be determined

    d. provide safety netting advice. Admitted and found proved

24. In the alternative, you failed to record taking the actions described in paragraph:

    a. 23a; To be determined

    b. 23b; To be determined

    c. 23ci1; To be determined

    d. 23ci2; To be determined

    e. 23cii; To be determined

    f. 23d. To be determined

Patient J

25. On 28 June 2021 you consulted with Patient J by telephone and you did not provide good clinical care in that you failed to:

    a. obtain an adequate history; To be determined

    b. ~~carry out an adequate assessment~~; Deleted under Rule 17(6)

c. ~~provide safety netting advice~~. Deleted under Rule 17(6)

26. You documented in the record of your consultation on 28 June 2021 with Patient J that:

    a. you told Patient J to seek help if:

        i. her symptoms worsened; Admitted and found proved

        ii. she developed new symptoms; Admitted and found proved

        iii. she had any other concerns; Admitted and found proved

    b. Patient J confirmed she was happy with your advice.
    Admitted and found proved

27. ~~You knew when taking the actions described at~~:

    a. ~~paragraph 26a, that you had not given any safety netting advice~~;
    Deleted under Rule 17(6)

    b. ~~paragraph 26b, that Patient J had not confirmed that she was happy with your advice.~~ Deleted under Rule 17(6)

28. ~~Your actions at paragraph 26 were dishonest by reason of paragraph 27~~.
Deleted under Rule 17(6)

<u>Patient K</u>

29. On 28 June 2021 you consulted with Patient K by telephone and you did not provide good clinical care in that you failed to:

    a. obtain an adequate history; Admitted and found proved

    b. ~~carry out an adequate assessment;~~ Deleted under Rule 17(6)

    c. provide:

        i. adequate advice/signposting information in that you did not:

            1. explain the reason for advising that Patient K needed to be seen and examined; Admitted and found proved

2. make clear whether Patient K needed to be seen urgently;
Admitted and found proved

ii. appropriate safety netting advice. Admitted and found proved

30. You documented in the record of your consultation on 28 June 2021 with Patient K that:

a. you told Patient K to seek help if:

i. her symptoms worsened; Admitted and found proved

ii. she developed new symptoms; Admitted and found proved

iii. she had any other concerns; Admitted and found proved

b. Patient K confirmed that she was happy with your advice.
Admitted and found proved

31. You knew when taking the actions described at:

a. paragraph 30a, that you had not given any safety netting advice;
To be determined

b. paragraph 30b, that Patient K had not confirmed that she was happy with your advice. To be determined

32. Your actions at paragraph 30 were dishonest by reason of paragraph 31.
To be determined

Patient L

33. On 29 June 2021 you consulted with Patient L by telephone and you did not provide good clinical care in that you failed to:

~~a.~~ obtain an adequate history; Admitted and found proved

b. ~~carry out an adequate assessment;~~ Deleted under Rule 17(6)

c. provide safety netting advice. Admitted and found proved

~~34. You documented in the record of your consultation on 29 June 2021 with Patient L that:~~

~~a. you told Patient L to seek help if:~~

~~i. her symptoms worsened;~~

~~ii. she developed new symptoms;~~

~~iii. she had any other concerns;~~

~~b. Patient L confirmed that she was happy with your advice.~~

Deleted under Rule 17(6)

~~35. You knew when taking the actions described at:~~

~~a. paragraph 34a, that you had not given any safety netting advice;~~

~~b. paragraph 34b, that Patient L had not confirmed that she was happy with your advice.~~

~~36. Your actions at paragraph 34 were dishonest by reason of paragraph 35.~~

Deleted under Rule 17(6)

Patient M

37. ~~On 30 June 2021 you consulted with Patient M by telephone and you did not provide good clinical care in that you failed to~~:

a. ~~obtain an adequate history~~; Deleted under Rule 17(6)

b. ~~carry out an adequate assessment~~; Deleted under Rule 17(6)

c. ~~provide safety netting advice~~. Deleted under Rule 17(6)

38. You documented in the record of your consultation on 30 June 2021 with Patient M that:

a. you told Patient M to seek help if:

i. his symptoms worsened; Admitted and found proved

ii. he developed new symptoms; Admitted and found proved

iii. he had any other concerns; Admitted and found proved

b. Patient M confirmed that he was happy with your advice.
Admitted and found proved

39. ~~You knew when taking the actions described at~~:

a. ~~paragraph 38a, that you had not given any safety netting advice~~;
Deleted under Rule 17(6)

b. ~~paragraph 38b, that Patient M had not confirmed that he was happy with your advice~~. Deleted under Rule 17(6)

40. ~~Your actions at paragraph 38 were dishonest by reason of paragraph 39~~.
Deleted under Rule 17(6)

Failure to inform

41. On 2 July 2021, whilst also working for Doctor Care Anywhere ('DCA'), you were suspended by Livi pending a formal review of your performance. Admitted and found proved

42. You failed to inform DCA of your suspension by Livi. To be determined

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. To be determined

The Admitted Facts

10. At the outset of these proceedings, through his counsel, Dr Foroghi Fard made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

Witness Evidence

11. The Tribunal received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Dr N, Associate Medical Director for Livi, dated 7 March 2023 with a supplemental statement dated 3 April 2023;

- Dr P, Lead General Practitioner ('Lead GP') at Doctor Care Anywhere ('DCA'), dated 8 March 2023.

12. Dr Foroghi Fard provided his own witness statement, dated 18 September 2023 and also gave oral evidence at the hearing.

13. The Tribunal also received evidence on behalf of Dr Foroghi Fard in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Dr Q, General Practitioner and former Medical Director of VideoDoc, dated 14 September 2023;
- Ms R, solicitor employed by Clyde & Co., dated 15 September 2023;
- Dr T, GP Partner at the Willow Group, dated 12 September 2023.

Expert Witness Evidence

14. The Tribunal also received evidence from two expert witnesses.

15. Dr O, GP and member of the Expert Witness Institute (MEWI) was called on behalf of the GMC. Dr O gave oral evidence to the Tribunal and provided expert reports dated 3 August 2021 and 30 October 2021, along with a further email dated 12 July 2022.

16. Dr S, part-time GP for local out-of-hours service dealing with issues relating to primary care, was called on behalf of Dr Foroghi Fard. Dr S gave oral evidence to the Tribunal and provided an expert report dated 15 September 2023.

17. The expert witnesses evidence was provided to assist the Tribunal in determining the level and standard of care to be reasonably expected of a GP, specifically within a telemedicine setting. A joint expert report/statement prepared by Dr O and Dr S, dated 18 September 2023, was also provided to the Tribunal.

Documentary Evidence

18. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:

- Patient A complaint and correspondence with the GMC, dated 25 October 2021;
- Patient A medical records, various dates;
- Livi referral to the GMC attaching audit report, dated 7 July 2021;

- Livi training materials, various dates/undated;
- Patient B Livi consultation note, dated 6 May 2021;
- Telephone transcript and recordings of Livi telephone consultations with Patients D, E, F, G, J, K, L, M, various dates June 2021;
- Teladoc patient records for Patients C, H and I;
- A number of testimonials provided on Dr Foroghi Fard's behalf, various dates.

The Tribunal's Approach

19. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Foroghi Fard does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e., whether it is more likely than not that the events occurred.

20. When exercising its functions, the Tribunal must have particular regard to the statutory overarching objective.

Particulars of Allegations

21. The allegations against Dr Foroghi Fard are grouped under 14 headings – 13 in relation to patients A to M respectively and a fourteenth heading relating to Dr Foroghi Fard's alleged failure to inform DCA of his suspension by Livi.

22. In respect of each of the 13 patients, the general allegation, as to misconduct, is broken down into a number of factual particulars. At this stage (Facts) the Tribunal is only deciding whether it is satisfied that the alleged facts occurred, i.e. not misconduct/impairment – which is for a later stage.

23. The Tribunal should consider each of the factual heads of charge separately. Several of the heads contain a subset of a number of facts. The Tribunal must decide which of those facts in each part of the particulars is made out, on the balance of probabilities.

24. The alleged act/omission or circumstance is put in the specific context of a number of underlying facts. It is the Tribunal's task to determine whether the act alleged in the stem occurred in the specific manner set out in each sub-stem.

25. However, the Tribunal must in the end be satisfied that some or all of the parts of the limb are made out and resulted in the failure alleged, for that aspect of the particular to have been proved.

Dishonesty

26. It is alleged that Dr Foroghi Fard acted dishonestly. The test for dishonesty is as follows:

a) The Tribunal must first ascertain (subjectively) the actual state of the doctor's knowledge or belief as to the facts. The reasonableness or otherwise of his belief may evidence whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it was genuinely held.

b) Once that had been established the Tribunal must determine whether his conduct was dishonest by applying the objective standards of ordinary decent people. It is not necessary for the individual to appreciate that what he has done is, by those standards, dishonest.

27. In the context of this Tribunal hearing, for the doctor to be found dishonest it must be proved on the balance of probabilities that, firstly, when he created his consultation notes about giving patients E and K safety netting advice, he knew or believed that he had not given those patients any safety netting advice. (that is the first, *"subjective"* limb of the test for dishonesty). If the Tribunal is not satisfied of that matter, then it cannot find that part of Dr Foroghi Fard's actions dishonest. If, however, the Tribunal is satisfied that the subjective test is satisfied, the Tribunal must apply the second *"objective"* limb of the test, namely whether the Doctor's conduct was dishonest by the standards of ordinary decent people. In applying that test the Tribunal should have regard to the matters raised by Ms Barnfather on behalf of Dr Foroghi Fard in Paragraph 41 of her written submissions on the facts.

28. The Tribunal must consider the test of dishonesty in relation to Patient E and Patient K separately. The Tribunal must also consider the test for dishonesty in relation to both sub paragraphs in paragraph 11 and 31 of the allegations separately: the Tribunal may conclude that dishonesty is proved in relation to none, some or each of the sub paragraphs in paragraphs 11 and 31.

Credibility of Witnesses

29. The Tribunal is advised to:

- Avoid fallacy of the confident witness – a confident witness may still be mistaken or misremember important details. An honest but mistaken witness can construct an entirely false memory.

- Remember that demeanour is not a reliable pointer to the honesty of a witness's account and the Tribunal should not rely exclusively on a witness's demeanour when giving evidence.

30. The Tribunal must consider all of the evidence before it before making findings as to the credibility of any witness. Any assessment of credibility must be based on inferences drawn from the documentary evidence and any known or probable facts.

Inferences, Weight and the Impermissibility of Speculation

31. The Tribunal may draw reasonable inferences from the facts, using common sense and from experience. The Tribunal may also attach what weight it considers appropriate to the evidence it has received. However, it would be wrong for the Tribunal to enter into speculation about matters or, for example, to consider what evidence might or might not have been available in the case. The Tribunal must decide the case purely on the evidence that has been put before it and must not speculate about what other evidence there may have been.

Expert Witness Evidence

32. In this case, the Tribunal has received expert opinion evidence from Dr O and Dr S. Although Dr O was called by the GMC and Dr S by Dr Foroghi Fard, the duty of both experts is to assist the Tribunal. Both experts have acknowledged this duty.

33. The evidence of Dr O and Dr S assists the Tribunal in assessing the actions of Dr Foroghi Fard against appropriate professional standards. However, the decision is for the Tribunal to determine the facts, assisted by the evidence of both Dr O and Dr S. The Tribunal is not bound by the conclusions of the expert witnesses, although if the Tribunal's findings differ from the evidence of either expert, the Tribunal's reasons should set out clearly why.

34. In this hearing, the expert witnesses disagree about certain matters. Where the expert witnesses disagree about matters which are the subject of the allegations, the Tribunal should consider both opinions carefully before reaching its conclusions.

35. Where the Tribunal rejects the opinion of either expert witness it should explain the reasons for that determination clearly. A coherent reasoned opinion expressed by a suitably qualified expert should be the subject of a coherent reasoned rebuttal.

Good Character

36. The Tribunal has heard that Dr Foroghi Fard is of good character and has received a number of testimonials to that effect. His good character must be taken into account by the Tribunal when assessing his credibility and the likelihood of his having done what has been alleged. Dr Foroghi Fard's good character is particularly relevant to the issue of dishonesty because it may lead the Tribunal to conclude that it is less likely that he acted dishonestly. His good character is not a defence to the allegations, however it is simply one factor to take into account when considering all of the evidence in the round. The weight to assign to his good character is a matter for the Tribunal to determine.

Submissions

37. The Tribunal should also take into account the submissions of the parties. But the submissions are not evidence, and the Tribunal may accept them or reject them as it sees fit. It is the evidence and the Tribunal's decision on the evidence that is important.

The Tribunal's Analysis of the Evidence and Findings

38. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

39. The Tribunal considered that the central issue in several of the allegations was whether (and, if so, to what degree) there was a duty on Dr Foroghi Fard to obtain a history from patients and/or carry out the other actions described in the Allegation. The Tribunal noted that the expert witnesses did not agree on the nature and extent of this duty in a telemedicine/webcam appointment context. Dr O stated that the same standard was expected of a GP whatever the type of consultation, whereas Dr Foroghi Fard and Dr S distinguished the GPAL consultations from normal GP consultations on the basis that GPAL was primarily a *"signposting"* service. The Tribunal noted the evidence contained in the GPAL SOP about the nature of the GPAL service, whilst noting that the version of the SOP provided to the Tribunal was not the version in force at the time of the events under consideration and that Dr Foroghi Fard gave evidence that he had not seen the SOP. The Tribunal, nevertheless, concluded that the SOP was evidence of the intended scope and clinical outcomes of the GPAL service.

40. The Tribunal considered that there was no hard and fast rule about this matter, but rather, the nature and extent of the duty to obtain a history depended on (amongst other matters) the individual circumstances of the patient, the circumstances of the consultation, the purpose of the consultation (from the patient's point of view) and the nature of the medical issues under consideration. The Tribunal considered that in some consultations the duty to obtain a history was limited, but that in other consultations the circumstances dictated that there was a duty to obtain a fuller history. The Tribunal noted that, whilst Dr O and Dr S did not always agree about when, and to what degree the duty to take a history arose, their shared approach appeared to be that the circumstances of the consultation etc., dictated the nature and extent of the duty of the doctor to take a history from the patient. The Tribunal noted that Dr Foroghi Fard, by his admissions to some of the history taking allegations also appeared to accept this.

41. In respect of each allegation the Tribunal adopted the approach of firstly considering the nature and extent of the duties on Dr Foroghi Fard in that particular consultation, before then considering whether Dr Foroghi Fard had discharged those duties adequately.

Patient A

Paragraphs 1(a)(ii) & 1(a)(iii)

42. Dr Foroghi Fard's account of his treatment of Patient A was that he was aware of the history of Patient A, who had previously experienced a small bowel obstruction but that following an examination there were no red flag symptoms which would cause him to be concerned. He stated that Patient A was in less pain than previously, had stopped vomiting and had passed wind. He stated that he had considered that these features pointed away from a small bowel obstruction as a likely diagnosis. These features did not exclude the possibility of a small bowel obstruction but he considered that this was less likely than other less sinister causes for Patient A's symptoms.

43. The Tribunal considered the expert witness in respect of this paragraph of the Allegation. The opinion of Dr O was that based on the clinical history, relevant past history and clinical assessment, a small bowel obstruction could not be excluded from the list of differential diagnoses. He stated in his report that Patient A needed to be referred that day to be assessed by the on-call surgical team to confirm or exclude the diagnosis. Dr Foroghi Fard prescribed Buscopan and Simeticone which is used for abdominal cramps/spasms related to irritable bowel syndrome and the opinion of Dr O was that this was not appropriate in this clinical situation as they can slow bowel movements. Dr O accepted that there was some

degree of uncertainty but stated that sufficient signs were present that Patient A needed to be referred for an emergency assessment.

44. The opinion of Dr S was that it was not necessary for Dr Foroghi Fard to document his thought processes as to possible/differential diagnoses. He said that it was reasonable in this case to consider that the symptoms and signs amounted to possible spasm as the cause and to try Buscopan treatment.

45. This was a face-to-face GP consultation. The Tribunal considered that the circumstances of this consultation required Dr Foroghi Fard to obtain an adequate history in order to safely treat Patient A's symptoms or direct her for further investigations and/or treatment elsewhere.

46. Whilst there was no documentary evidence to support Dr Foroghi Fard's account that he had considered various possibilities, including a small bowel obstruction, the Tribunal considered it unlikely that he failed to consider the possibility of a small bowel obstruction because the patient history which was available to him mentioned a previous small bowel obstruction. The Tribunal also noted that Dr Foroghi Fard had carried out an abdominal examination.

47. In light of both Dr Foroghi Fard's account and the evidence of Dr S that abdominal spasm was a reasonable diagnosis in the circumstances, the Tribunal accepted Dr Foroghi Fard's account that he had considered in his differential diagnosis a small bowel obstruction, but that he had ruled it out. Accordingly, it found paragraph 1(a)(ii) of the Allegation not proved. Dr S's opinion in respect of this patient was preferred to that of Dr O because the Tribunal accepted that Dr Foroghi Fard's evidence that he had considered the possibility of a small bowel obstruction and had, effectively, excluded it as a likely cause of Patient A's symptoms.

48. In respect of paragraph 1(a)(iii), the Tribunal considered that whilst the opinion of Dr O was that Patient A should have been referred for an emergency assessment, this was predicated on his opinion that a diagnosis of a small bowel obstruction was still a possibility. The opinion of Dr S was that a diagnosis of spasm was reasonable and that this would not have required an emergency referral.

49. The Tribunal determined that Dr Foroghi Fard's diagnosis of spasm (and exclusion of a small bowel obstruction) was reasonable, and that it was therefore also reasonable for Dr Foroghi Fard to not refer Patient A for emergency assessment. Accordingly, the Tribunal found this paragraph of the Allegation not proved.

Paragraphs 1(b)(i) & 1(b)(ii)

50. The Tribunal considered the opinion of Dr O that it was inappropriate to prescribe Buscopan and Simeticone to Patient A, which are used for abdominal cramps/spasms related to irritable bowel syndrome. In his oral evidence he stated that he would not use Simeticone.

51. Dr S's opinion was that if Dr Foroghi Fard did not consider that the evidence indicated the likelihood of a small bowel obstruction then his actions were the actions that would be expected from a responsible body of GPs. Further, it was reasonable for Dr Foroghi Fard to initially prescribe an anti-spasmodic and to provide safety netting advice, as recorded, that patient A should be reviewed if not improving and to seek further help if there was any worsening of the pain.

52. Given its finding that Dr Foroghi Fard had considered and ruled out a small bowel obstruction as the likely cause, his actions in prescribing Buscopan and Simeticone were not inappropriate. As was the case for paragraphs 1(a)(ii) & 1(a)(iii), Dr O's opinion was given on the basis that a small bowel obstruction remained as a possible diagnosis.

53. Accordingly, the Tribunal found paragraphs 1(b)(i) & 1(b)(ii) of the Allegation not proved.

Paragraph 2(b)

54. Whilst the Tribunal accepted that Dr Foroghi Fard had considered the possibility of a small bowel obstruction and deemed it unlikely on the basis of the information before him, these considerations were not reflected within Patient A's medical records. The Tribunal accepted the evidence of Dr Foroghi Fard, supported by the opinion of Dr S, that it is not necessary or feasible to make a record of all considerations and alternative diagnoses. However, the Tribunal was of the opinion that in light of patient A's history, presenting symptoms and the possibility of a small bowel obstruction, Dr Foroghi Fard did have a duty to make a record of this differential diagnosis before referring Patient A for an ultrasound scan, which he did not do.

55. Accordingly, the Tribunal found this paragraph of the Allegation proved.

Patient B

56. Dr Foroghi Fard's account in relation to patient B was that within the restrictions of the GPAL, he did what he could to signpost the patient appropriately, and that this was not a full consultation as would be usual in the GP practice setting. Dr Foroghi Fard stated that it was difficult to obtain a clear history from Patient B as she wanted to be seen or have something done immediately, which he interpreted to be a private ambulance to a private hospital. Instead he directed her go to her GP or log into the Vitality App to obtain a consultation. Dr Foroghi Fard stated that he did attempt to obtain an adequate history but was unable to do so.

Paragraph 3(a)

57. The Tribunal noted that both expert witnesses stated that a failure to obtain an adequate history was below the standard expected of a GP. The Tribunal concluded that during this consultation Dr Foroghi Fard had a duty to take an adequate history for him to safely signpost Patient B to other services. The Tribunal considered whether Dr Foroghi Fard was able to obtain this history, or was effectively prevented from doing so owing to a lack of cooperation from Patient B. There was no audio recording or transcript of this consultation, which Dr Foroghi Fard stated would have shown that he did attempt to obtain an adequate history and ask appropriate questions. This account that history taking was difficult was reflected in the notes made by Dr Foroghi Fard at the time, providing contemporaneous corroboration of his account.

58. The Tribunal accepted the account of Dr Foroghi Fard that he thought that Patient B wanted to be seen at private hospital, but that such a referral was not part of Dr Foroghi Fard's remit while working on the Livi advice line. He stated that Patient B ended the call by saying *"What can you do for me? Nothing"*. The Tribunal ultimately accepted Dr Foroghi Fard's evidence that he was unable to follow standard questioning and process and was therefore unable to obtain adequate history without cooperation from the patient. The Tribunal preferred Dr S's evidence to that of Dr O because it concluded that Dr O's opinion did not sufficiently make allowances for the difficulties in history taking which were evident during this consultation.

59. Accordingly, it found paragraph 3(a) of the Allegation not proved.

Paragraph 3(c)(i)

60. The advice provided to Patient B was to arrange a face-to-face consultation with a GP either directly or through the Vitality App. It was clear from the notes that Dr Foroghi Fard wanted Patient B to be assessed in person. On the basis of the evidence before it, the

Tribunal considered that this was reasonable in the circumstances and that given he was unable to obtain an adequate medical history for the patient, Dr Foroghi Fard was unable to provide further advice or signposting.

61. The Tribunal determined that whilst Dr Foroghi Fard provided limited advice to Patient B, this was owing to the circumstances of the consultation and could not be considered a failure on his part. It concluded that Dr O had attributed insufficient weight to the difficulties Dr Foroghi Fard faced during the consultation. Therefore, it found this paragraph of the Allegation not proved.

Paragraph 3(c)(ii)

62. Dr Foroghi Fard stated that he advised Patient B that she needed to be seen and examined by a GP in person, which Dr S deemed as adequate safety netting if he explained to Patient B that she needed to be examined. Dr O stated that Dr Foroghi Fard should also have advised her to dial 999 if her symptoms got worse.

63. The Tribunal considered the wording of the Allegation that Dr Foroghi Fard *"failed to provide safety netting advice"*. Notwithstanding that Dr Foroghi Fard was unable to conduct a full consultation, obtaining and providing the necessary level of detail, the wording does not allege that he failed to provide full or appropriate safety netting advice. Given that some, albeit rudimentary safety netting advice was given and that Dr Foroghi Fard was unable to provide full safety netting advice, it found this paragraph of the Allegation not proved.

Paragraphs 4(a), (c) & (d)

64. The Tribunal considered whether Dr Foroghi Fard was under an obligation to record the questions he attempted to ask but did not obtain answers for. He stated that not all details of the conversation and his attempts to elicit a history and provide signposting/advice are reflected in the notes. Dr Foroghi Fard did make a record of reduced eating and abdominal cramps. The Tribunal noted that the audio recording of this consultation was not available.

65. The Tribunal considered that, since this was a GPAL advice line consultation, Dr Foroghi Fard was under a duty to take an adequate history and to provide signposting advice to Patient A and to record these matters in the consultation notes. Given its finding that Dr Foroghi Fard was unable to obtain an adequate history and, partially as a result, unable to provide full advice, the Tribunal determined that it was not reasonable, in the context of this particular consultation, to expect Dr Foroghi Fard to make a fuller note than he did of his

attempts to obtain a history and provide advice to Patient A. Accordingly, it found these paragraphs of the Allegation not proved.

Patient C

66. Dr Foroghi Fard consulted with Patient C via a webcam and describes that this patient, who he saw whilst working for Teladoc, was new to the country and had already been taking Sertraline for anxiety for the previous six months, but was unable to obtain a further prescription of Sertraline until he signed up with a GP in the UK and that was the purpose of his call. Dr Foroghi Fard stated that during the consultation he saw that a 'prescription box' with Patient C's own name and GP name on it, which he considered was evidence that the patient was being prescribed Sertraline. Dr Foroghi Fard stated he was aware that it is dangerous for a patient if they run out of this medication as there can be severe withdrawal and discontinuation effects, and so he issued a prescription for Sertraline for 2 -3 weeks.

67. Dr O's assessment of Dr Foroghi Fard's treatment of this patient was that whilst he agreed as to the purpose of the consultation described, Dr Foroghi Fard should have sought more medical information from Patient B prior to him prescribing. He noted that there was no record of any discussion of Patient C's mental health or around the effectiveness of the treatment or other additional factors/symptoms. He accepted that withdrawal and discontinuation effects are a risk and that, ultimately, it would have been necessary to offer a prescription, but said that Dr Foroghi Fard should not have provided a 'tide over' prescription without first checking that the treatment and dosage were effective and without carrying out an adequate mental state examination.

68. Dr S's opinion was that as this consultation seems to have been primarily so that patient C could receive medication, rather than a consultation because of mental health symptoms, then it would be unreasonable to expect Dr Foroghi Fard to spend time carrying out a full mental state examination. He stated that Dr Foroghi Fard did record advising Patient C that a GP consultation for examination and blood tests was required and that *"if this had been a normal consultation in primary care then a further mental health assessment examination would have been required but, taken in the context of this being a telephone consultation that appeared to have been initiated because Patient C was requiring medication and had run out, then in this case in my opinion Dr Foroghi Fard's actions were reasonable"*.

Paragraph 5(a)

69. The Tribunal noted the submission made on behalf of Dr Foroghi Fard that no recording of this consultation was sought by the GMC from Teladoc and that where

recordings have been provided in relation to other patient consultations they have resulted in Dr O changing his expert opinion as the recordings have revealed details and discussions that were not reflected in the medical records. However, the account of Dr Foroghi Fard was that he had not conducted more detailed discussions or made more thorough assessments than were recorded in the consultation notes owing to the context of the consultation and Patient C's presentation.

70. Considering the level of duty on Dr Foroghi Fard in this consultation the Tribunal noted that Dr Foroghi Fard saw this patient while working for Teladoc in the capacity of a GP, albeit conducting virtual examinations via webcam. The Teladoc consultations were qualitatively different to the GPAL consultations in two key respects: Dr Foroghi Fard could observe the patient via webcam and he could also prescribe medication. The Tribunal considered that these matters placed a history taking duty on Dr Foroghi Fard which was broadly similar to a GP conducting a normal consultation in primary care. The Tribunal preferred Dr O's opinion evidence on this point over Dr S's because the clinical outcome of prescribing medication was available and was under consideration during this consultation. That possibility imposed a duty on Dr Foroghi Fard to take an adequate history to inform the decision as to whether to prescribe medication. The Tribunal concluded that Dr S's evidence that he would only expect a doctor to take a more thorough history if this was a normal consultation in primary care relied on an artificial distinction between this consultation and an NHS GP appointment. In both consultations the patient was consulting a general practitioner with the possibility of medication being prescribed to treat their condition.

71. Accordingly, the Tribunal found this paragraph of the Allegation proved.

Paragraph 5(b)

72. Having determined that Dr Foroghi Fard was, during this consultation, subject to broadly the same obligations and duties as in any other primary care/GP setting, the Tribunal was satisfied that the opinion of both expert witnesses was that Dr Foroghi Fard should have carried out an adequate mental state examination. The Tribunal was provided no evidence that this took place even in a rudimentary fashion and accordingly it found this paragraph of the Allegation proved.

Paragraph 5(c)(i)

73. In respect of 5(c)(i)(1), the Tribunal was provided no evidence that Dr Foroghi Fard assessed Patient C's anxiety symptoms. For the same rationale as set out at 5(a) it

determined that he had a duty to do so and failed to do so. Accordingly it found this paragraph of the Allegation proved.

74. In respect of 5(c)(i)(2), the Tribunal considered that there is reference to palpitations within the medical records made by Dr Foroghi Fard and that he states that he did assess this. Dr O's report references these palpitations and states that: *"No information was obtained about other related symptoms…"*. Accordingly, the Tribunal determined that the palpitations had been assessed and found this paragraph not proved.

Paragraph 5(c)(ii)

75. In respect of 5(c)(ii)(1), Dr Foroghi Fard's account was that he did consider changing the dose 'as you always review the dose when prescribing', but that there was no reason to alter the dose of medication given that the patient had been on the prescribed dose for six months, and that without full knowledge of the patient it would have been inappropriate to alter the dose. The Tribunal considered that there was no evidence to contradict Dr Foroghi Fard's account that he had considered the dose, and accepted that this was probable given the circumstances. The Tribunal further noted that, in the absence of a mental state examination, it would not have been appropriate for him to change the medication dose. Accordingly, the Tribunal found this paragraph not proved.

76. In respect of 5(c)(ii)(2), Dr Foroghi Fard has never claimed that he considered referring Patient C to counselling or mental health services. The Tribunal concluded that in his role as a GP, albeit in a remote setting, Dr Foroghi Fard had a duty to consider this but that he did not do so. It accepted that he could have only made a decision to refer if he had taken an adequate history and conducted a mental state assessment, which he did not. The Tribunal accepted the argument of the GMC in respect of this aspect of the consultation that the failures to take an adequate history and conduct a mental state examination could not excuse a failure to consider counselling or mental health services. The Tribunal noted that the allegation was that Dr Foroghi Fard failed to "consider" these referrals. On the basis of Dr Foroghi Fard's own evidence, he had not considered such referrals. The Tribunal therefore found this paragraph proved.

Paragraph 5(d)

77. In respect of 5(d)(i), the Tribunal considered that Dr Foroghi Fard gave Patient C the advice to get registered with a GP to have an examination and a blood test. Both experts witnesses agreed that ultimately the prescription given was appropriate and that owing to the risk of withdrawal, continuation of the treatment was necessary. The Tribunal was

provided with no evidence to demonstrate that this advice was inappropriate, even in light of the failure to obtain an adequate history and conduct a mental state examination. Accordingly, the Tribunal found this paragraph not proved.

78. In respect of 5(d)(ii), the Tribunal considered that the wording of the Allegation was that Dr Foroghi Fard *"failed to provide safety netting advice"* and not that he failed to provide full or appropriate safety netting advice. The Tribunal was satisfied that the advice to see a GP provided by Dr Foroghi Fard did constitute rudimentary safety netting advice, and accordingly found this paragraph not proved.

Paragraph 6

79. In respect of paragraphs 6(a), (b), (c) & (f), as the alternatives, as set out above, were found proved, these alternative paragraphs were found not proved.

80. In respect of paragraph 6(d) the Tribunal considered that Dr Foroghi Fard did make records of the palpitations and accordingly found this paragraph not proved.

81. In respect of paragraph 6(e) the Tribunal considered that Dr Foroghi Fard did not record that he had considered changing the medication dose and that he was under a duty to do so. Accordingly, it found this paragraph proved.

82. In respect of paragraphs 6(g) and 6(h), the Tribunal considered that the advice given, including prescribing advice and safety netting advice, was recorded by Dr Foroghi Fard. Accordingly, it found these paragraphs of the Allegation not proved.

Patient D

83. The opinion of Dr O in respect of this patient was that the advice given by Dr Foroghi Fard was accurate but that he needed to ask more questions and check for red flag symptoms. He stated that this consultation, which was over the telephone, should be measured by the same standards as an in-person GP consultation, but that more questions need to be asked as the patient cannot be visually observed and assessed.

84. The opinion of Dr S was that the standard of care provided by Dr Foroghi Fard was adequate and that the level of questioning and assessment indicated by Dr O would not even be asked in a primary care consultation by a reasonable body of GPs.

85. Dr Foroghi Fard stated that this was a GP Advice Line (GPAL) consultation which is to deal with queries and signpost, and so was of a different nature to a standard primary care GP appointment. His account was that the consultation took place because the patient was concerned that there was some inflammation on the big toe nail on the right side, that he enquired as to the cause, asked whether the area was swollen or red and was told that it was a bit swollen and a bit red. He stated that the patient sounded well over the phone with no coughing, laboured/noisy breathing or confusion. He stated that he considered that he had asked sufficient questions and was able to obtain sufficient information to allow him to formulate a management plan and rule out the likelihood of a systemic infection.

Paragraph 7(a)

86. The Tribunal considered the two opposing expert opinions on the matter and bore in mind the transcript and recording, which were available for this consultation. The Tribunal took the view that given the relatively minor nature of the condition described by Patient E, the duty was not as high to investigate as for more serious conditions and that the history obtained was sufficient to identify any indicators of systemic infection which may have been present. Accordingly, the tribunal found this paragraph not proved.

Paragraph 8(a)

87. The Tribunal determined that the records reflect an adequate account of the consultation and history-taking at paragraph 7(a) and accordingly found this paragraph not proved.

Patient E

88. The Tribunal considered the submissions made by both counsel on this matter.

89. Ms Barnfather, on behalf of Dr Foroghi Fard, submitted that this was a patient with low calcium levels who had an NHS referral and appointment in October 2021, and wanted to know what her options were with Vitality and whether she should be using her private insurance to be seen sooner (and be seen by a specialist using her insurance). She submitted that this was a call essentially about procedure and options and that Dr O failed to consider the purpose and context of the call, and the service provided by Livi GPAL. She submitted that the purpose of the call was to obtain advice and not to review her diagnosis or review the management plan in place.

90. Ms Emsley-Smith, on behalf of the GMC submitted that the transcript of the call makes it clear that Patient E was seeking advice from the GP Advice Line (GPAL) relating to whether she needed to see someone about her low calcium levels before her appointment in October and that she made it clear that the calcium tablets she had been prescribed were not working and that she was still experiencing symptoms. Ms Emsley-Smith submitted that this information was offered by Patient E (rather than elicited by Dr Foroghi Fard through questioning) and that her enquiry was plainly not limited to how to utilise her private medical insurance but that she was seeking a medical opinion from a doctor regarding the timing of her appointment. Ms Emsley-Smith submitted that asking Patient E questions relating to possible causes, her calcium levels and the nature of the symptoms she was experiencing was required to properly answer the question Patient E was seeking a medical opinion on, and that Dr S's opinion in this matter is unclear and unreliable.

91. The opinion of Dr O was that Dr Foroghi Fard obtained a limited history about low calcium levels (hypocalcaemia) and noted Patient E had a past history of hypocalcaemia and was taking calcium supplements. In his opinion, Dr Foroghi Fard did not specifically ask about the possible cause of the condition such as hypoparathyroidism, the current level of serum calcium or if Patient E had symptoms such as tingling (fingers, toes and lips), facial twitching, muscle cramps, tiredness, dry hair or coarse skin. He therefore considered that Dr Foroghi Fard's failure to obtain an adequate history fell seriously below the standard expected of a reasonably competent General Practitioner. Dr O stated that Dr Foroghi Fard gave safety netting advice, informing Patient E to seek help if she was to develop worsening symptoms, new symptoms or had any other concerns, but that the safety netting advice was dependent on the history obtained and assessment carried out, which could change the nature of the advice given.

92. Dr S's opinion was that the standard of care given was as expected overall and that this was not a telephone call made because Patient E was having any symptoms or was concerned about the symptoms; it was simply an issue in relation to procedure. Therefore, the record prepared by Dr Foroghi Fard and the advice he provided was reasonable as the question related to whether Patient E should be seen by Vitality privately or should continue to wait for the appointment.

93. The Tribunal considered that Dr O said that Dr Foroghi Fard should have been more curious when Patient E mentioned symptoms. Dr S, in his written report did not find that Dr Foroghi Fard ought to have enquired further about the symptoms of this patient. During cross-examination he said that he had changed his mind about this and agreed that it was incumbent on Dr Foroghi Fard to enquire further. During Tribunal questioning, however, Dr S said that asking these questions would not have made a difference to the advice given and he

reverted to his position that the level of treatment was adequate. The Tribunal also considered that Patient E made reference to the symptoms towards the end of the call, after the consultation and the correct advice being given, and made no reference to her symptoms being either new or worsening.

Paragraph 9(a)

94. The Tribunal considered that, in the context of this consultation, Dr Foroghi Fard had a duty to take an adequate history to safely signpost Patient E to other services. In respect of obtaining an adequate history, the Tribunal noted the opinion of Dr S that Patient E may not have known her calcium levels had she been asked and that she had likely had more than one blood test. Further, that a single calcium reading was unlikely to be of assistance because levels would naturally fluctuate.

95. On the basis of the evidence before it (particularly the opinion evidence of Dr S that because Patient E was being treated with tablets rather than by IV that this suggested that her calcium deficiency was mild), the Tribunal considered that the diagnosis of a mild calcium deficiency was a reasonable conclusion on Dr Foroghi Fard's part and supports the view that it was not necessary to probe further or obtain additional history. The Tribunal concluded that in the context of the GPAL setting and the issues raised by Patient E, Dr Foroghi Fard did what was reasonably expected of him. In doing so it bore in mind the Livi guidance, provided as documentary evidence, which states of the service: "*The intention is for this service to provide brief clinical advice only, e.g. onward signposting to the most appropriate source of care for the member's problem.*"

96. The Tribunal was therefore satisfied that Dr Foroghi Fard had obtained adequate history in the circumstances to enable him to safely signpost this patient. The Tribunal did not adopt Dr O's opinion about the standard of care and history taking required in this consultation for the reasons set out in the preceding paragraphs.

97. Accordingly, the Tribunal found this paragraph of the Allegation not proved.

9(c)(i)(1)

98. The Tribunal considered that as Dr Foroghi Fard's conclusion that the hypocalcaemia was mild was reasonable in the circumstances, the signposting advice given to Patient E by Dr Foroghi Fard was appropriate. It also concluded that Dr Foroghi Fard plainly had in mind a more urgent specialist referral and had referred Patient E back to her GP to facilitate this, making a note of that in the records.

99. Accordingly, the Tribunal found this paragraph not proved.

Paragraph 11(a)

100. The Tribunal determined that Dr Foroghi Fard did not provide safety netting advice to Patient E but had only provided some signposting. The Tribunal noted no evidence of safety netting advice being given to Patient E in the transcript of the consultation. Accordingly, it found this paragraph proved.

Paragraph 11(b)

101. The Tribunal noted that the words *"patient happy"* come at end of the section of the template relating to safety netting. It considered that the most likely interpretation is that Dr Foroghi Fard intended by those words to refer to the safety netting advice in the template rather than the consultation as a whole. Having found that safety netting advice was not provided, the Tribunal determined that Dr Foroghi Fard knew that Patient E had not confirmed that they were happy with the safety netting advice when he completed the template. Accordingly, it found this paragraph of the Allegation proved.

Paragraph 12

102. The Tribunal considered the GMC's case against Dr Foroghi Fard in respect of the use of the template and noted that the evidence was, on the face of it, capable of bearing the inference contended for by the GMC that Dr Foroghi Fard had deliberately and falsely included notes of safety netting advice which he had not given to make his consultations appear "better" than they actually were. The Tribunal noted the importance of consultation notes being accurate and considered that Dr Foroghi Fard, to some degree, also appreciated the importance of this.

103. However, the Tribunal also noted some features of the evidence which undermined the GMC's case that Dr Foroghi Fard had been dishonest when he used the safety netting advice template.

104. The Tribunal considered that the evidence before it showed that Dr Foroghi Fard had discussed his use of a template with Dr N, GP lead for Vitality services during a meeting discussing his performance on 7th June 2021 (10 days before this consultation). Dr Foroghi Fard said that he had told Dr N that he was using the template and Dr N, in her witness statement, agreed that Dr Foroghi Fard had mentioned during this meeting that he had

developed a template to assist him during consultations. The Tribunal noted that the template, in fact, only contained safety netting advice (although there was no evidence that Dr N had been shown the template or would have been aware of its contents). The Tribunal considered that this evidence supported Dr Foroghi Fard's account that he had not intended, by his use of the safety netting template, to mislead anyone.

105. The Tribunal concluded that, as a result of meetings and discussions around his performance, Dr Foroghi Fard was aware at the time of this consultation that his work may be audited and some of his consultations had already been subject to audits. Dr Foroghi Fard was aware that his consultations were recorded and that Dr N would be listening to some of them and comparing the recordings against his consultation notes. Dr Foroghi Fard's evidence was that he had actively sought this kind of oversight and that he had experienced this kind of supervision when he worked at other telemedicine providers. The Tribunal considered that this evidence supported Dr Foroghi Fard's account that he had not acted dishonestly because Dr Foroghi Fard must have appreciated at the time he used the template that it was highly likely that any discrepancy between his consultation notes and the oral advice given would be discovered.

106. The Tribunal also bore in mind Dr Foroghi Fard's assertion that he believed at the time that the Livi consultation notes were sent to patients directly following the consultations and that any advice he had not communicated to the patients in the consultations would be provided to them in these notes if included. Dr Foroghi Fard's evidence was that he had used the template when he had forgotten to give the safety netting advice in the hope and expectation that the patients would receive the safety netting advice when they received the notes of the consultation. The Tribunal received evidence that for two other telemedicine providers that he had worked for patients did receive the consultation notes. This also applied to a telemedicine provider that Dr Foroghi Fard had used himself. Accordingly, the Tribunal accepted Dr Foroghi Fard's evidence that he expected the consultation notes to be sent to patients.

107. Having accepted that Dr Foroghi Fard expected his notes to be sent to patients, the Tribunal considered that this was further evidence that he had not acted dishonestly, because it concluded that it would be immediately obvious to those patients who had not been given oral safety netting advice in accordance with the template that the consultation notes were inaccurate. This supported Dr Foroghi Fard's account that he had not intended to mislead anyone by his use of the template.

108. The Tribunal considered Dr Foroghi Fard's use of medical abbreviations such as *"sx"* and *"sos"* in the safety netting template because, on one view, this evidence undermines his

account that he expected patients to read and understand his safety netting advice. Dr Foroghi Fard told the Tribunal during his evidence that the reason his template included a medical abbreviation was that English was not his first language and that he was still learning which medical abbreviations were in general use by the population and which were not – he had not appreciated that patients would not readily understand the abbreviation *"sx"*. The Tribunal accepted Dr Foroghi Fard's evidence on this point.

109. In reaching its determination, the Tribunal also bore in mind the impressive testimonials and good character reference provided on Dr Foroghi Fard's behalf. Whilst it did not attribute significant weight to these, it considered that they pointed to his credibility as a witness and that he is less likely to have behaved dishonestly.

110. The Tribunal also considered the manner in which Dr Foroghi Fard had given evidence and noted that on several occasions he had been prepared to accept that he had made mistakes and that he had failed in some respects. The Tribunal considered that he had answered all the questions he was asked in a measured and reflective way and in a manner which appeared truthful to the Tribunal.

111. Having considered the state of Dr Foroghi Fard's knowledge or belief as to the facts at the time of recording the safety netting advice the Tribunal went on to consider whether his actions would be considered dishonest by ordinary decent people.

112. The Tribunal bore in mind the seriousness of the allegation of dishonesty and considered that the burden of proving on the balance of probabilities that Dr Foroghi Fard acted dishonestly lay on the GMC. Whilst the Tribunal felt that Dr Foroghi Fard's recording in the consultation notes of safety netting advice which had not been given was a failing, it did not consider that the GMC had discharged the burden of proving that this was done dishonestly by Dr Foroghi Fard.

113. The Tribunal concluded that, on the balance of probabilities, the GMC had failed to prove that Dr Foroghi Fard was attempting to add details to patient records dishonestly and that an ordinary member of the public would not consider that his actions in using the template and including additional detail which he thought the patients would receive was dishonest.

114. Accordingly, the Tribunal found this paragraph of the Allegation not proved.

Patient F

Paragraph 13(a)

115. The initial opinion of Dr O in respect of Patient F, who called the Livi GPAL and thought she had recurrent trigeminal neuralgia, was that Dr Foroghi Fard should have treated the case as a potential cerebrovascular accident and directed the patient to A&E. However, after listening to the audio of this call, he revised this view but maintained that it was necessary even within the context of the Livi GPAL to obtain a fuller history notwithstanding that the advice given was ultimately appropriate.

116. Dr S's opinion was that this was a case of recurrent trigeminal neuralgia and that whilst more questions could have been asked they would not have added anything or changed the advice or signposting given.

117. The Tribunal considered that Patient F had contacted the GPAL to ask what to do in respect of an issue she had 18 months previously which was diagnosed by a dentist. The Tribunal noted that the Patient's husband spoke on her behalf and provided a significant amount of history. The advice provided by Dr Foroghi Fard was to see an NHS GP, or alternatively a Vitality GP.

118. The Tribunal bore in mind the purpose of the GPAL was to provide advice and signpost patients, and that Dr Foroghi Fard was not able to write prescriptions in these circumstances.

119. The Tribunal determined that in light of the nature and format of the call, Dr Foroghi Fard obtained an adequate history, sufficient for him to appropriately signpost Patient F. Whilst it acknowledged that more information may have been taken, in line with Dr O's opinion, it concluded that this was not necessary, would not have changed the outcome and was not a failure on the part of Dr Foroghi Fard. Hence, Dr S's opinion was preferred to that of Dr O in respect of this patient.

120. Accordingly, the Tribunal found this paragraph not proved.

Patient G

Paragraph 17(a)

121. Patient G contacted the Livi GPAL with symptoms of burning when passing urine, a history of easing of pain when passing urine (the patient was not passing blood) and when taking ibuprofen, with flu-like symptoms. Dr Foroghi Fard advised Patient G to call 111 and emphasised the possible need for antibiotics due to a suspected urinary infection, advising that Patient G should be seen for further investigation and could take ibuprofen in the meanwhile to alleviate the pain.

122. The opinion of Dr O was that Dr Foroghi Fard should have asked about temperature, shaking (rigors), vomiting, abdominal or back pain, breathing rate and skin colour in order to differentiate an uncomplicated urine infection from pyelonephritis or sepsis, and that these actions were required in order to obtain a full history.

123. Dr S's opinion was that Dr Foroghi Fard could have asked more questions and obtained a more detailed history but this this would have made no difference to what happened and was the *"gold standard"*.

124. The Tribunal considered that in this consultation Dr Foroghi Fard was under a duty to take an adequate history in order to discharge his duty to safely signpost Patient G. It considered that Dr O's criticism was not that the advice given by Dr Foroghi Fard was inappropriate or inadequate, but that additional questions should have been asked, particularly around red flag symptoms. However, Dr O accepted that the answers were unlikely to alter the advice given and appropriate safety-netting was provided. Dr Foroghi Fard stated in his evidence that he would now ask more systemic questions under the same circumstances, but that this was best practice rather than mandated.

125. The Tribunal accepted that further questions would likely not have altered the signposting or advice provided to Patient G. However, it considered that asking further questions would not have taken a great deal more time and that Dr Foroghi Fard should have followed-up further on the symptoms described by Patient G. Patient G stated that there was no blood in their urine but they complained of backpain and flu-like symptoms and even in the context of the GPAL remit, Dr Foroghi Fard should have investigated these further to see if the symptoms were related and indicated a more generalised infection.

126. The Tribunal concluded that Dr Foroghi Fard should have followed-up on these potentially relevant prompts from Patient G in order to obtain an adequate history, but that he failed to do so.

127. Accordingly, the Tribunal found this paragraph of the Allegation proved.

Patient H

Paragraphs 21(a)&21(b)

128. Patient H, who had a past history of eczema herpeticum, consulted with Dr Foroghi Fard through Teladoc Health by webcam. Patient H had already taken two courses of Aciclovir (200mg five times a day for five days) but the condition returned on finishing the medication. The condition was noted to be around the right eyelid. Dr Foroghi Fard made a diagnosis of eczema herpeticum and advised Patient H to increase the dose of Aciclovir (to 400mg three to four times a day).

129. The opinion of Dr O was that the history and assessment in this case was deficient and that questions relating to pus and blisters are an essential part of an adequate history.

130. In his expert report, Dr S stated that:

> "*the history obtained by Dr Foroghi Fard was brief and missed several issues, such as whether there was any redness around the eye in addition to the eyelid. When any patient is experiencing herpetic infection there is always the possibility of a secondary bacterial infection and any infection around the eye can have serious implications. In this case Dr Fard recorded that the infection had been recurrent over several weeks. In my opinion in this case the only safe option was to advise the patient to seek face to face consultation to further evaluate the condition.*"

131. Dr Foroghi Fard's written statement sates that he thinks he would have asked further questions that have not been recorded. In his oral evidence he accepted that he would now ask further questions about the severity of such a rash, and stated in re-examination that he did not believe that all those questions proposed were mandatory.

132. The Tribunal considered that Dr Foroghi Fard was under a duty to take an adequate history and provide appropriate treatment advice. The Tribunal noted that this was a consultation where medication could be prescribed and concluded that the duties imposed on Dr Foroghi Fard were essentially the same as in a standard GP consultation. The Tribunal considered that both expert witnesses were of the opinion that Dr Foroghi Fard failed to obtain an adequate history or carry out an adequate assessment (albeit they were not completely agreed about the respects in which the history and assessment were deficient). Whilst Dr Foroghi Fard stated that he is sure he would have asked other questions which were not recorded, he does not claim that he specifically remembers doing so.

133. Given the evidence before it, the Tribunal determined that, on the balance of probabilities, Dr Foroghi Fard did not obtain an adequate history or carry out an adequate assessment. Whilst Dr Foroghi Fard said that he had conducted an assessment of Patient H's visual acuity via the webcam, the Tribunal accepted Dr S's evidence that the only safe option was for Patient H to be seen in a face-to-face appointment. It further accepted Dr O's evidence that pus, blisters and distribution of the rash are relevant questions which should have been asked and which Dr Foroghi Fard failed to ask.

134. Accordingly, the tribunal found paragraphs 21(a) and 21(b) of the Allegation proved.

Paragraphs 22(b)&(c)

135. Given its finding in relation to paragraph 21(a) and (b), and the admission at paragraph 21(c)(i), the Tribunal found these paragraphs of the Allegation not proved.

Patient I

136. Patient I spoke to Dr Foroghi Fard (through Teladoc Health) because he has been on Sertraline 100mg for anxiety but was feeling depressed and suicidal because his holiday was possibly cancelled because he was not fully vaccinated. He had had his first dose of the COVID vaccine but was rejected from receiving his second dose. A diagnosis of anxiety was recorded by Dr Foroghi Fard on the consultation notes (although Dr Foroghi Fard did not accept that he had made this diagnosis himself). Dr Foroghi Fard advised Patient I that the interval between doses for COVID vaccines cannot be shortened however Dr Foroghi Fard agreed to write to his NHS GP to consider bringing his appointment for the second dose forward, which would allow him to travel and help with his anxiety.

Paragraph 23(c)(i)(1)

137. The opinion of Dr O, as stated in his expert report was that:

> *"Dr Fard failed to address the possible underlying symptoms of depression and anxiety. Patient may have needed a change in dose of medication (it is unclear if he was taking 100mg or 150mg of sertraline a day) or a referral to counselling services or a referral to a local CRISIS team if Patient was experiencing suicidal ideation and intent. Instead, Dr Fard told Patient that he would write to his GP to ask for the interval between COVID vaccines to be shortened in his case, so that he can go away on holiday with his family. Therefore, Dr Fard's failure to implement an adequate treatment plan and provide adequate advice falls seriously below the standard expected of a reasonably competent GP."*

138. Dr S was also of the opinion Dr Foroghi Fard's actions in this case were seriously below the standard expected of a responsible GP, stating that: *"It was only by delving further into the history that Dr Fard could have made himself aware of the necessity for further action, that might have included a referral to mental health services or changing the dose."*

139. However, Dr S did not conclude that Dr Foroghi Fard's actions in respect of this paragraph were a failure, stating that: "*It is not my opinion that Dr Fard failed to consider changing the dose of the antidepressant or referring Patient I but that he failed to fully explore the symptomatology and was therefore not in a position to make a decision in regard to any management plan."*

140. The Tribunal considered that, in light of the above-described evidence of Dr O and Dr S and the fact that this was an appointment where medication could be prescribed, there was a duty on Dr Foroghi Fard to do that which was the subject of Paragraph 23 of the Allegation.

141. In his written statement, Dr Foroghi Fard denied this paragraph of the Allegation on the basis that as the history was not properly explored it is not known whether the dose ought to have been changed or whether a referral ought to have been made. In his oral evidence he stated that he had considered changing the dose of the antidepressant but that it would have been inappropriate to do so under the circumstances.

142. The Tribunal considered that Dr S's opinion was that it would not have been appropriate to make a decision about changing the dose of medication in light of the failure to obtain an adequate history or carry out an adequate mental state examination.

143. The Tribunal also bore in mind that Dr Foroghi Fard stated that he had considered changing the dose, and that it had not been provided with any evidence to the contrary, other than the absence of a note to this effect in the consultation notes. The Tribunal accepted the GMC submission that Dr Foroghi Fard's failure to adequately assess the patient did not absolve him of his duty to implement an appropriate treatment plan, but determined that Dr Foroghi Fard did consider the dosage of the prescription, albeit with limited information with which to do so.

144. Accordingly, the Tribunal found this paragraph of the Allegation not proved.

<u>Paragraph 23(c)(i)(2)</u>

145. In his oral evidence, Dr Foroghi Fard accepted that he did not consider making a referral for counselling or to specialist mental health services, and that this was a failure. Having determined that he still had a duty to implement an appropriate treatment plan following his failure to obtain an adequate history or conduct adequate examination, the Tribunal considered that Dr Foroghi Fard's actions constituted a failure.

146. Accordingly, the Tribunal found this paragraph of the Allegation proved.

Paragraph 23(c)(ii)

147. The Tribunal concluded that there was insufficient evidence before it to determine that on the balance of probabilities, the prescribing advice given to Patient I was inappropriate. It is not clear what prescribing advice would have been appropriate if Patient I's symptoms had been explored properly.

148. Accordingly, the Tribunal found this paragraph of the Allegation not proved.

Paragraph 24(c)

149. There was no record in the medical notes of Dr Foroghi Fard considering changing the dose of medication, and accordingly the Tribunal found this paragraph of the Allegation proved.

Paragraph 24(e)

150. As determined above, Dr Foroghi Fard did not have sufficient information and was not in a position to give appropriate prescribing advice, because it is not clear that prescribing advice was necessary. Accordingly, he was not in a position to record appropriate prescribing advice and did not fail to do so. The Tribunal therefore found this paragraph of the Allegation not proved.

Patient J

151. Patient J consulted with Dr Foroghi Fard through the LIVI GP advice line as she had experienced light vaginal bleeding after intercourse on two occasions, with no pain and her period was not late. Patient J's query was whether this was connected to the Covid vaccine, which she had about two weeks earlier.

Paragraph 25(a)

152. The opinion of Dr O, stated in his expert report was that:

> *"Dr Fard obtained a limited history about vaginal bleeding after intercourse. He noted that there had been 2 episodes and the bleeding was light but there was no pain. Dr Fard did not specifically ask about systemic symptoms (temperature, dizziness, shaking), the date of Patient 's last menstrual period and the duration of her cycle, about the possibility of pregnancy, any vaginal discharge or the method of contraception being used. Appropriate history taking to exclude important conditions such as pregnancy, pelvic infections or pelvic inflammatory disease were not considered. Therefore, Dr Fard's failure to obtain an adequate history falls seriously below the standard expected of a reasonably competent General Practitioner."*

153. Dr S's opinion was that Dr Foroghi Fard had not failed to obtain an adequate history, stating in his report that:

> *"My opinion in relation to this consultation is that there was no immediate emergency. Patient J clearly had symptoms requiring examination but this examination was one to be performed in the course of time by Patient J's GP. Dr Fard did take on board the issues, having taken a reasonable history, explained what need to be done and, in my opinion, Dr Fard's actions in this case were the actions that would be supported by a responsible body of GPs."*

154. In his written witness statement, Dr Foroghi Fard stated that he obtained a history from Patient J that on a couple of occasions she had experienced light bleeding after intercourse. Patient J advised that there was no pain during intercourse, nor was she late for her period, and that he sought to address her concerns and provide clear signposting without adding to her anxiety.

155. The Tribunal considered the duties on Dr Foroghi Fard in the context of this consultation and acknowledged that Patient J had called the Livi GPAL in regard to her concern that her vaginal bleeding may be a result of the Covid vaccine, and that Dr Foroghi Fard provided advice and signposting in respect of this query. However, it considered that Dr Foroghi Fard had not asked basic questions which were required around the symptoms, such as in relation to contraception and possible pregnancy. Dr O's evidence on this point was preferred to that of Dr S because of the potentially serious health issues which were under consideration and the relative ease with which Dr Foroghi Fard could have obtained, through questioning, sufficient information to safely signpost Patient J.

156. The Tribunal was satisfied that Dr Foroghi Fard had not obtained sufficient information to be able to signpost effectively and that his advice to the patient that they should not worry if the bleeding did not happen again was not based on an adequate understanding of the causes of the symptoms. It also considered that Patient J stating that her period was not late was insufficient to rule out the possibility that she was pregnant, and that the contextual and relevant background was not explored. In the circumstances the Tribunal preferred the opinion of Dr O and concluded that simple, basic questions could have easily been asked, and should have been, given the history of post-coital bleeding described by Patient J.

157. Accordingly, the Tribunal found this paragraph of the Allegation proved.

Patient K

Paragraph 31(a)

158. The opinion of Dr O was that the transcript and recording of the consultation indicates that Dr Foroghi Fard gave no safety netting advice to Patient K. The opinion of Dr S was that Dr Foroghi Fard failed to provide any *"significant"* safety netting advice which, in his opinion was mandatory in this case.

159. The Tribunal considered that in this consultation Dr Foroghi Fard was under a duty to obtain an adequate history in order to safely signpost Patient K. It noted that the medical records show that Dr Foroghi Fard advised Patient K that: *"Someone needs to listen to your chest and check the oxygen saturation and everything then they can help you decide whether you need further antibiotics or inhaler or other things but first of all a physical examination is needed."*

160. The Tribunal noted that the Allegation states that Dr Foroghi Fard *"had not given any safety netting advice"* to Patient K, but does not refer to the adequacy or appropriateness of any safety netting advice. The Tribunal determined that Dr Foroghi Fard did provide some, albeit limited safety netting advice, as set out above.

161. Accordingly, the Tribunal found this paragraph of the Allegation not proved

Paragraph 31(b)

162. The Tribunal considered that during the call, Patient K did not say that she was happy with the advice given, and that Dr Foroghi Fard does not claim that he provided this advice. Given the admitted failures to provide proper advice and signposting information, Patient K could not have been a position to confirm that she was happy with the advice given.

163. Accordingly, the Tribunal found this paragraph of the Allegation proved.

Paragraph 32

164. For the same reasons set out at paragraphs 102-113 of the determination (above), namely that Dr Foroghi Fard was open with his employers about his use of a template, that he knew his performance was under scrutiny and subject to audit, and owing to his previous experience with Telemedicine providers, the Tribunal determined that at the time he had believed that the record of the consultations would be sent directly to patients.

165. The Tribunal therefore concluded that, on the balance of probabilities, Dr Foroghi Fard was not attempting to dishonestly add details to patient records and that an ordinary member of the public would not consider that his actions in using the template and including additional detail which he thought the patients would receive was dishonest.

166. In reaching its determination, the Tribunal also bore in mind the impressive testimonials and good character reference provided on Dr Foroghi Fard's behalf and the manner in which he had given evidence to the Tribunal. Whilst the Tribunal did not attribute significant weight to these, it considered that they pointed to his credibility as a witness and that he is less likely to have behaved dishonestly as alleged.

167. Accordingly, the Tribunal found this paragraph of the Allegation not proved.

Failure to inform

Paragraph 42

168. In his written witness statement, Dr Foroghi Fard stated that:

> *"I assumed that they were already aware and would have been informed by the GMC. I had never been in this situation before and as I had disclosed to the GMC in the employment details form that I worked with DCA, I had assumed that the GMC had informed them, and I had complied with my duty.*

When I instructed my solicitor to write to DCA to obtain a positive testimonial in advance of my Interim Orders Tribunal hearing I did so assuming DCA already knew of my suspension from LIVI. There was never any attempt on my part to conceal the suspension or the GMC investigation. "

169. In his oral evidence, Dr Foroghi Fard accepted that this may have been an error of judgement and that in retrospect he should have personally informed DCA of his suspension by Livi.

170. The Tribunal was not provided any evidence that Dr Foroghi Fard had a positive duty to personally inform DCA of the suspension. It noted that Dr Foroghi Fard had disclosed all the relevant employer information to the GMC, and also that he had requested, through his solicitor, a reference from DCA in relation to the GMC investigation, indicating that he did indeed believe they would have been informed by the GMC.

171. Given that the GMC had failed to demonstrate a duty or obligation on Dr Foroghi Fard's part, the Tribunal found this paragraph of the Allegation not proved.

The Tribunal's Overall Determination on the Facts

172. The Tribunal has determined the facts as follows:

That being registered under the Medical Act 1983 (as amended):

Patient A

1. On 12 January 2021, you consulted with Patient A and you did not provide good clinical care in that you:

    a. failed to:

        i. ~~obtain an adequate history~~; Deleted under Rule 17(6)

        ii. carry out a differential diagnosis to identify bowel obstruction as a possible cause of Patient A's pain; Not proved

        iii. refer Patient A for an emergency assessment; Not proved

    b. inappropriately prescribed ~~Buscopan and Simeticone.~~:

        i. Buscopan; Not proved

ii. Simeticone. Not proved

Amended under Rule 17(6)

2. In the alternative, you failed to record taking the action described in paragraph:

   a. ~~1ai;~~ Deleted under Rule 17(6)

   b. 1aii. Determined and found proved

Patient B

3. On 6 May 2021, you consulted with Patient B via telephone and you did not provide good clinical care in that you failed to:

   a. obtain an adequate history; Not proved

   b. ~~carry out an adequate assessment~~; Deleted under Rule 17(6)

   c. provide:

      i. appropriate advice; Not proved

      ii. safety netting advice. Not proved

4. In the alternative, you failed to record taking the action described in paragraph:

   a. 3a; Not proved

   b. ~~3b;~~ Deleted under Rule 17(6)

   c. 3ci; Not proved

   d. 3cii. Not proved

Patient C

5. On 12 May 2021 you consulted with Patient C via webcam and you did not provide good clinical care in that you failed to:

   a. obtain an adequate history; Determined and found proved

   b. carry out an adequate mental state examination; Determined and found proved

c. implement an adequate treatment plan, in that you failed to:

i. assess Patient C's:

1. anxiety symptoms; **Determined and found proved**

2. palpitations; **Not proved**

ii. consider:

1. changing the medication dose; **Not proved**

2. making a referral to counselling or mental health services; **Determined and found proved**

d. provide:

i. appropriate advice, including prescribing advice; **Not proved**

ii. safety netting advice. **Not proved**

6. In the alternative, you failed to record taking the action described in paragraph:

a. 5a; **Not proved**

b. 5b; **Not proved**

c. 5ci1; **Not proved**

d. 5ci2; **Not proved**

e. 5cii1; **Determined and found proved**

f. 5cii2; **Not proved**

g. 5di; **Not proved**

h. 5dii. **Not proved**

<u>Patient D</u>

7. On 16 June 2021, you consulted with Patient D by telephone and you did not provide good clinical care in that you failed to:

a. obtain an adequate medical history; Not proved

b. ~~carry out an adequate assessment~~. Deleted under Rule 17(6)

8. In the alternative, you failed to record taking the action described in paragraph:

a. 7a; Not proved

b. ~~7b~~. Deleted under Rule 17(6)

Patient E

9. On 17 June 2021 you consulted with Patient E by telephone and you did not provide good clinical care in that you failed to:

a. obtain an adequate history; Not proved

b. ~~carry out an adequate assessment;~~ Deleted under Rule 17(6)

c. provide:

i. adequate advice/ signposting information in that you did not:

1. establish whether an urgent specialist referral was needed; Not proved

2. explain your advice that Patient F should see a specialist earlier than October 2021; Admitted and found proved

ii. safety netting advice. Admitted and found proved

10. You documented in the record of your consultation on 17 June 2021 with Patient E that:

a. you told Patient E to seek help if:

i. her symptoms worsened; Admitted and found proved

ii. she developed new symptoms; Admitted and found proved

iii. she had any other concerns; Admitted and found proved

b. Patient E confirmed that she was happy with your advice.
Admitted and found proved

11. You knew when taking the actions described at:

    a. paragraph 10a, that you had not given any safety netting advice; **Determined and found proved**

    b. paragraph 10b, that Patient E had not confirmed that she was happy with your advice. **Determined and found proved**

12. Your actions at paragraph 10 were dishonest by reason of paragraph 11. **Not proved**

Patient F

13. On 18 June 2021 you consulted with Patient F by telephone and you did not provide good clinical care in that you failed to:

    a. obtain an adequate history; **Not proved**

    b. ~~carry out a FAST assessment;~~ **Deleted under Rule 17(6)**

    c. ~~advise Patient F that she needed to call an ambulance;~~ **Deleted under Rule 17(6)**

    d. ~~provide safety netting advice~~. **Deleted under Rule 17(6)**

14. You documented in the record of your consultation on 18 June 2021 with Patient F that:

    a. you told Patient F to seek help if:

        i. her symptoms worsened; **Admitted and found proved**

        ii. she developed new symptoms; **Admitted and found proved**

        iii. she had any other concerns; **Admitted and found proved**

    b. Patient F confirmed that she was happy with your advice. **Admitted and found proved**

15. ~~You knew when taking the actions described at~~:

    a. ~~paragraph 14a, that you had not given any safety netting advice~~; **Deleted under Rule 17(6)**

b. ~~paragraph 14b, that Patient F had not confirmed that she was happy with your advice~~. Deleted under Rule 17(6)

16. ~~Your actions at paragraph 14 were dishonest by reason of paragraph 15~~.
Deleted under Rule 17(6)

Patient G

17. On 18 June 2021 you consulted with Patient G by telephone and you did not provide good clinical care in that you failed to:

    a. obtain an adequate history; Determined and found proved

    b. ~~carry out an adequate assessment;~~ Deleted under Rule 17(6)

    c. ~~provide safety netting advice~~. Deleted under Rule 17(6)

18. You documented in the record of your consultation on 18 June 2021 with Patient G that:

    a. you told Patient G to seek help if:

        i. his symptoms worsened; Admitted and found proved

        ii. he developed new symptoms; Admitted and found proved

        iii. he had any other concerns; Admitted and found proved

    b. Patient G confirmed that he was happy with your advice.
    Admitted and found proved

19. ~~You knew when taking the actions described at~~:

    a. ~~paragraph 18a, that you had not given any safety netting advice~~;
    Deleted under Rule 17(6)

    b. ~~paragraph 18b, that Patient G had not confirmed that he was happy with your advice~~. Deleted under Rule 17(6)

20. ~~Your actions at paragraph 18 were dishonest by reason of paragraph 19~~.
Deleted under Rule 17(6)

Patient H

21. On 21 June 2021 you consulted with Patient H via webcam and you did not provide good clinical care in that you failed to:

    a. obtain an adequate history; **Determined and found proved**

    b. carry out an adequate assessment; **Determined and found proved**

    c. implement an appropriate treatment plan in that you:

        i. failed to advise attendance for immediate face to face review; **Admitted and found proved**

        ii. increased the dose of antiviral medication. **Admitted and found proved**

22. In the alternative, you failed to record taking the actions described in paragraph:

    a. 21a; **Not proved**

    b. 21b; **Not proved**

    c. 21ci. **Not proved**

<u>Patient I</u>

23. On 25 June 2021 you consulted with Patient I via webcam and you did not provide good clinical care in that you failed to:

    a. obtain an adequate history; **Admitted and found proved**

    b. carry out an adequate mental state examination; **Admitted and found proved**

    c. implement an appropriate treatment plan in that you failed to:

        i. address the underlying symptoms of depression and anxiety, in that you failed to consider:

            1. changing the dose of antidepressant; **Not proved**

            2. making a referral for counselling or to specialist mental health services; **Determined and found proved**

        ii. provide appropriate prescribing advice; **Not proved**

    d. provide safety netting advice. **Admitted and found proved**

24. In the alternative, you failed to record taking the actions described in paragraph:

    a. 23a; **Not proved**

    b. 23b; **Not proved**

    c. 23ci1; **Determined and found proved**

    d. 23ci2; **Not proved**

    e. 23cii; **Not proved**

    f. 23d. **Not proved**

Patient J

25. On 28 June 2021 you consulted with Patient J by telephone and you did not provide good clinical care in that you failed to:

    a. obtain an adequate history; **Determined and found proved**

    b. ~~carry out an adequate assessment~~; **Deleted under Rule 17(6)**

    c. ~~provide safety netting advice~~. **Deleted under Rule 17(6)**

26. You documented in the record of your consultation on 28 June 2021 with Patient J that:

    a. you told Patient J to seek help if:

        i. her symptoms worsened; **Admitted and found proved**

        ii. she developed new symptoms; **Admitted and found proved**

        iii. she had any other concerns; **Admitted and found proved**

    b. Patient J confirmed she was happy with your advice.
    Admitted and found proved

27. ~~You knew when taking the actions described at~~:

    a. ~~paragraph 26a, that you had not given any safety netting advice~~;
    Deleted under Rule 17(6)

b. ~~paragraph 26b, that Patient J had not confirmed that she was happy with your advice.~~ Deleted under Rule 17(6)

28. ~~Your actions at paragraph 26 were dishonest by reason of paragraph 27~~.
Deleted under Rule 17(6)

Patient K

29. On 28 June 2021 you consulted with Patient K by telephone and you did not provide good clinical care in that you failed to:

    a. obtain an adequate history; Admitted and found proved

    b. ~~carry out an adequate assessment;~~ Deleted under Rule 17(6)

    c. provide:

        i. adequate advice/signposting information in that you did not:

            1. explain the reason for advising that Patient K needed to be seen and examined; Admitted and found proved

            2. make clear whether Patient K needed to be seen urgently; Admitted and found proved

        ii. appropriate safety netting advice. Admitted and found proved

30. You documented in the record of your consultation on 28 June 2021 with Patient K that:

    a. you told Patient K to seek help if:

        i. her symptoms worsened; Admitted and found proved

        ii. she developed new symptoms; Admitted and found proved

        iii. she had any other concerns; Admitted and found proved

    b. Patient K confirmed that she was happy with your advice.
    Admitted and found proved

31. You knew when taking the actions described at:

    a. paragraph 30a, that you had not given any safety netting advice; Not proved

b. paragraph 30b, that Patient K had not confirmed that she was happy with your advice. Determined and found proved

32. Your actions at paragraph 30 were dishonest by reason of paragraph 31. Not proved

Patient L

33. On 29 June 2021 you consulted with Patient L by telephone and you did not provide good clinical care in that you failed to:

~~a.~~ obtain an adequate history; Admitted and found proved

b. ~~carry out an adequate assessment;~~ Deleted under Rule 17(6)

c. provide safety netting advice. Admitted and found proved

~~34. You documented in the record of your consultation on 29 June 2021 with Patient L that:~~

~~a. you told Patient L to seek help if:~~

~~i. her symptoms worsened;~~

~~ii. she developed new symptoms;~~

~~iii. she had any other concerns;~~

~~b. Patient L confirmed that she was happy with your advice.~~

Deleted under Rule 17(6)

~~35. You knew when taking the actions described at:~~

~~a. paragraph 34a, that you had not given any safety netting advice;~~

~~b. paragraph 34b, that Patient L had not confirmed that she was happy with your advice.~~

~~36. Your actions at paragraph 34 were dishonest by reason of paragraph 35.~~

Deleted under Rule 17(6)

Patient M

37. ~~On 30 June 2021 you consulted with Patient M by telephone and you did not provide good clinical care in that you failed to~~:

    a. ~~obtain an adequate history~~; Deleted under Rule 17(6)

    b. ~~carry out an adequate assessment~~; Deleted under Rule 17(6)

    c. ~~provide safety netting advice~~. Deleted under Rule 17(6)

38. You documented in the record of your consultation on 30 June 2021 with Patient M that:

    a. you told Patient M to seek help if:

        i. his symptoms worsened; Admitted and found proved

        ii. he developed new symptoms; Admitted and found proved

        iii. he had any other concerns; Admitted and found proved

    b. Patient M confirmed that he was happy with your advice.
    Admitted and found proved

39. ~~You knew when taking the actions described at~~:

    a. ~~paragraph 38a, that you had not given any safety netting advice~~;
    Deleted under Rule 17(6)

    b. ~~paragraph 38b, that Patient M had not confirmed that he was happy with your advice~~. Deleted under Rule 17(6)

40. ~~Your actions at paragraph 38 were dishonest by reason of paragraph 39~~.
    Deleted under Rule 17(6)

<u>Failure to inform</u>

41. On 2 July 2021, whilst also working for Doctor Care Anywhere ('DCA'), you were suspended by Livi pending a formal review of your performance.
    Admitted and found proved

42. You failed to inform DCA of your suspension by Livi. Not proved

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. To be determined

Determination on Impairment - 23/04/2024

173. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr Foroghi Fard's fitness to practise is impaired by reason of misconduct.

The Outcome of Applications Made during the Impairment Stage

174. At the outset of Stage 2, the Legally Qualified Chair identified a number of typographical errors in the numbering of paragraphs in the 'Tribunal's Overall Determination on the Facts', at the end of the Facts decision. The LQC put it to parties that these be corrected under the slip rule. There was no objection from either Ms Barnfather or Ms Emsley-Smith. The numbering was therefore corrected under the slip Rule.

175. Ms Barnfather then made an application for an amendment to the Facts determination. She submitted that head of charge 22(a) was admitted and found proved when it was an alternative charge, and the Tribunal found proved head of charge 21(a). She submitted therefore that head of charge 22(a) should be recorded as not proved. She invited her proposed amendment be inserted at paragraph 135 of the Facts determination. Ms Emsley-Smith made no objection to the proposed amendment. The Tribunal granted the application.

The Evidence

176. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, Dr Foroghi Fard provided oral evidence and the Tribunal received further documentary evidence in the form of a testimonial from Dr T, Clinical Supervisor, dated 20 April 2024, and a Stage 2 defence bundle on behalf of Dr Foroghi Fard which included, but was not limited to:

- Reflective Statement, dated 15 April 2024;
- Clinical Supervisor reports of Dr T, dated 7 February 2022; 22 July 2022; 23 November 2022; 9 January 2023; 2 May 2023 and 4 April 2024;
- 23 Case Based Discussions, dated between February 2023 to March 2024;
- Colleague and Patient Feedback, undated and between January – April 2024;
- Testimonials;
- Continual Professional Development ('CPD') evidence and certificates, various.

Submissions on behalf of the GMC

177. Ms Emsley-Smith submitted that Dr Foroghi Fard's fitness to practise is impaired by reason of misconduct. She reminded the Tribunal of the relevant legal principles when considering misconduct and that the question of impairment was a matter for its own judgment. She said that the word *misconduct* in the Medical Act denotes a serious breach of the acceptable standards, indicating that a doctor's fitness to practise is impaired.

178. Ms Emsley-Smith submitted that there were two primary themes which emerged from those matters which have been found proved. Firstly, the accuracy of Dr Foroghi Fard's record keeping, and secondly, the adequacy of history taking and assessments. She said that those inadequacies in history taking and assessments impacted Dr Foroghi Fard's decisions in respect of signposting and treatment of certain patients.

179. Ms Emsley-Smith submitted that the record keeping failures existed in respect of Patients A, C, E and K. In respect of Patients C and K, Ms Emsley-Smith submitted that there were wider failures than just the record keeping, in terms of the treatment of those two patients. She submitted that whilst record keeping should be observed as fundamental to the provision of safe care, the GMC takes the view that with the limited number of cases within this category, it was not sufficient, in isolation, to amount to misconduct.

180. Ms Emsley-Smith submitted however, that in terms of the second theme there were seven examples of problematic history taking and assessment in respect of Patients C, G, H, I, J, K and L. She said that in respect of Patient G there was expert consensus that a better history was unlikely to alter the outcome of that case. She said that the concern was the overall context in which this failure exists, so whilst no harm eventuated it does not mean that the risk presented by not taking an adequate history was not of concern and did not amount to serious misconduct. Ms Emsley-Smith reminded the Tribunal of its specific findings in respect of Patients C, G, H, I, J, K and L.

181. Ms Emsley-Smith submitted that in respect of each of these seven patients where failures had been identified in history taking and assessment, individually on a patient-by-patient basis, serious misconduct is found. She said that appropriate history taking is a straightforward patient safety issue and there were repeated failures to elicit the relevant information, assessment and referral.

182. Ms Emsley-Smith submitted that there was no statutory definition of impairment, but that Dr Foroghi Fard had put patients at risk of harm and had breached fundamental tenets of the profession. She said that whilst there was an obvious risk to patient safety, no harm

occurred. Ms Emsley-Smith submitted that Dr Foroghi Fard has plainly been reflecting and working hard to improve his practice for which he is to be commended, but that the Tribunal could not at this stage be assured that Dr Foroghi Fard had remediated sufficiently to justify a finding of no impairment.

183. Ms Emsley-Smith referred the Tribunal to Dr T's report of February 2022; Dr Foroghi Fard's reflective statement; his journey of developing insight; and that when these proceedings began at Stage 1, he had not made full admissions to some allegations the Tribunal found proved. She submitted that the position was unchanged from the start of this hearing in 2023 to now. At that stage of the hearing, Dr Foroghi Fard was not able to identify what he had done wrong and where, for instance, basic information had not been elicited from patients. She said that Dr Foroghi Fard was still on a journey of remediation.

184. Ms Emsley-Smith said that Dr Foroghi Fard's reflections had not taken him to a point where he recognised some of his failures for himself before this Tribunal at Stage 1, and that it is submitted that that at this point, complete remediation has not been evidenced, and the journey is ongoing. Ms Emsley-Smith submitted that consequently a finding of impairment should follow.

Submissions on behalf of Dr Foroghi Fard

185. Ms Barnfather submitted that this was now a very much reduced case of what was alleged against Dr Foroghi Fard. She submitted that Dr Foroghi Fard had failed to truly appreciate the obligations that were on him when he was acting in the capacity he was at Livi and Teladoc. She reminded the Tribunal that the two experts themselves did not agree on precisely what the duty was in the context of these consultations; or on the nature and the extent of this duty in a telemedicine webcam appointment context.

186. Ms Barnfather submitted that all practitioners are constantly on a journey of learning, as that is part of being a practitioner, and in respect of the failings identified in these matters before the Tribunal in terms of Dr Foroghi Fard's remediation, she asked what more could really be expected. She said that at no point has the Tribunal rejected the credibility of Dr Foroghi Fard's evidence.

187. Ms Barnfather submitted that there was some agreement with the GMC in that those findings in respect of record keeping, albeit culpable findings, are not of themselves sufficiently serious to amount to misconduct. Ms Barnfather then reminded the Tribunal of its findings at Stage 1 and took it though each of the patients and the culpable failures. She submitted that notwithstanding the limits of the guidance and training provided to Dr

Foroghi Fard, particularly by LIVI, the doctor accepted, as he did from the outset, that his understanding of his obligations was incomplete and misguided and his failings, particularly in respect of Patients H, I, K and L, fell seriously below the standard to be expected and amounted to misconduct. She said that Dr Foroghi Fard was grateful that no actual harm came to any patient as a result of his omissions.

188. Ms Barnfather submitted that the Tribunal have heard Dr Foroghi Fard give evidence at length and there was no doubt that before the Tribunal was a practitioner who is genuinely concerned about his patients and sincere in his apology.

189. Ms Barnfather submitted that when considering the facts of this case, and the public interest in the issue of impairment, a finding of impairment does not automatically follow a finding of misconduct. She reminded the Tribunal that it was making a decision as to today's date and she referred the Tribunal to the legal principles in respect of impairment.

190. Ms Barnfather submitted that in respect of Dame Janet Smith's framework when considering whether the conduct is remediable, the failings admitted and found proved here were clearly capable of remediation. She said that they were in no part a result of any attitudinal issues. She said that Dr Foroghi Fard commenced his remediation immediately and did not wait for the outcome of this Tribunal's findings. She referred the Tribunal to Dr T's Supervisor Reports and Dr Foroghi Fard's positive development and journey towards insight and remediation. She also submitted that Dr Foroghi Fard has undergone a copious amount of CPD targeted to the very issues that arose in this case and he has reflected and reviewed this with Dr T. Ms Barnfather submitted that there had been no repetition in the intervening period. She also referred the Tribunal to Dr Foroghi Fard's reflective statement.

191. Ms Barnfather submitted that when the Tribunal was determining whether the misconduct found proved amounts to impairment, protecting the public was not engaged in this case. She submitted that there were no aggravating features, but that there were many mitigating features. She said that Dr Foroghi Fard's demonstration of insight was unquestionable and that his failings relate to events coming up to three years ago. She said that the doctor has fully remediated and that his remediation went beyond just undertaking courses and doing CPD, that he has genuine reflection. Ms Barnfather submitted that there can no longer be any proper basis upon which it could be said that Dr Foroghi Fard posed any current risk or ongoing risk to the public.

192. Ms Barnfather submitted that the Tribunal has already acknowledged that Dr Foroghi Fard is of good character, and she referred the Tribunal to the fact he has a number of impressive testimonials. She submitted that there could be no doubt that this as a

competent, genuinely dedicated and caring practitioner and that it could not be concluded that he presents any ongoing risk to public protection. Ms Barnfather submitted that Dr Foroghi Fard's fitness to practise is no longer impaired as of April 2024.

The Relevant Legal Principles

193. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.

194. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: firstly, whether the facts as found proved were sufficiently serious to amount to misconduct and secondly, whether the finding of that misconduct results in a finding of impaired fitness to practise.

195. The Tribunal was mindful that it must determine whether Dr Foroghi Fard's fitness to practise is impaired today, taking into account his conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

196. The Tribunal reminded itself of the statutory overarching objective which is to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

197. The Tribunal had regard to paragraph 76 of the judgment in the case of *CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin)*, in which Mrs Justice Cox set out the helpful and comprehensive approach of Dame Janet Smith in her fifth Shipman Report to determining issues of impairment:

"Do our findings of fact in respect of the doctor's misconduct…show that his/her fitness to practise is impaired in the sense that s/he:

a. *Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

b. *Has in the past and/or is liable in the future to bring the medical profession into disrepute; and/or*

c. Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future."

The Tribunal's Determination on Impairment

Misconduct

198. The Tribunal considered whether the facts determined and found proved, and admitted and found proved, amounted to misconduct.

199. The Tribunal first considered that Dr Foroghi Fard failed to make an accurate record in respect of Patients A, C, E and K. It was of the view that whilst these failures had the potential to amount to misconduct, they did not either in isolation, or cumulatively, amount to serious misconduct. It noted that in respect of Patients C and K, the failure was not limited to a failure to record, but included wider failings.

200. The Tribunal considered the wider failings which included inadequate history taking, safety netting, and to provide adequate advice/ signposting information. In respect of Patients C, E, G, H, I, J, K, and L, Dr Foroghi Fard failed to obtain an adequate history. In respect of Patients E, I, K and L, Dr Foroghi Fard failed to provide safety netting advice, and in respect of Patients E and K, Dr Foroghi Fard failed to provide adequate advice/ signposting information.

201. In respect of Patient G, and Dr Foroghi Fard's failure to obtain an adequate history, the Tribunal considered that its findings did not fall within the same context as that of Patient's C, E, H, I, J, K, and L. At Stage 1 both experts accepted that the outcome for Patient G would not have been any different had Dr Foroghi Fard obtained an adequate medical history as the patient had been advised to see his GP for an examination.

202. In the circumstances, the Tribunal concluded that Dr Foroghi Fard's failings in respect of Patients C, E, H, I, J, K and L had the potential to cause patient harm, were seriously below the standard expected of a doctor, and crossed the threshold so as to amount to serious misconduct. The Tribunal noted that there was no evidence of any patient harm, but did not accept Ms Barnfather's characterisation of Dr Foroghi Fard's failings as amounting to a mere misunderstanding of his role in a remote consultation. Rather, the Tribunal considered that Dr Foroghi Fard ought to have appreciated that any advice he gave or actions he took on the basis of incomplete patient assessments had the potential to be incorrect or inadequate and

placed his patients' safety at risk. The Tribunal considered that this was a basic principle of medicine and that it did not require Dr Foroghi Fard to have any special understanding of his role in a remote consultation.

Impairment

203. The Tribunal then went on to consider whether Dr Foroghi Fard's fitness to practise is currently impaired by reason of his misconduct.

204. The Tribunal had regard to Good Medical Practice (2013) ('GMP') and considered paragraphs 15a, b and c, and 16a, to be engaged:

> *"15. You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must:*
>
> *a. adequately assess the patient's conditions, taking account of their history (including the symptoms and psychological, spiritual, social and cultural factors), their views and values; where necessary, examine the patient*
>
> *b. promptly provide or arrange suitable advice, investigations or treatment where necessary*
>
> *c. refer a patient to another practitioner when this serves the patient's needs.*
>
> *16. In providing clinical care you must:*
>
> *a. prescribe drugs or treatment, including repeat prescriptions, only when you have adequate knowledge of the patient's health and are satisfied that the drugs or treatment serve the patient's needs…"*

205. In respect of the approach of Dame Janet Smith in her fifth Shipman Report, the Tribunal determined that limbs 'a' and 'c' were engaged in this case, namely that Dr Foroghi Fard; has in the past acted so as to put a patient or patients at unwarranted risk of harm; and that he has in the past breached one of the fundamental tenets of the medical profession.

206. The Tribunal then considered whether Dr Foroghi Fard's conduct was remediable, has been remedied and whether there was a risk of repetition.

207. The Tribunal considered that as the matters before it were in respect of Dr Foroghi Fard's clinical practice, as opposed to any deep-seated attitudinal concerns, they were matters which could be addressed through training and supervision. The Tribunal was therefore satisfied that Dr Foroghi Fard's conduct was remediable.

208. The Tribunal went on to consider whether the conduct had been remedied. The Tribunal had before it a significant volume of CPD which Dr Foroghi Fard had undertaken. Dr Foroghi Fard completed a 'Telephone Consultation Skills and Triage Training' course on 14 September 2021, the only course available in respect of undertaking online / telecon consultations. In addition, the Tribunal had regard to the seven clinical supervisor reports between 20 April 2023 and 4 April 2024. Dr T implied in her Supervisor Reports that Dr Foroghi Fard had completed everything that he could and that there were no further concerns or other courses for him to take.

209. The Tribunal noted that there was limited evidence of specific training undertaken or direct case-based discussions with his clinical supervisor in relation to remote consultations and the difficulties presented by not seeing the patient in person, but noted that Dr Foroghi Fard was not currently working in a remote context and that he only had limited opportunity to provide such evidence.

210. In his reflective statement and oral evidence, Dr Foroghi Fard told the Tribunal that his consultations were a combination of face-to-face and telephone. Video is also used, but for end-of-life consultations only. He was asked about the consultation models which he mentioned using in his reflective statement. He described several different models and how they could be used to ensure an adequate history was taken and appropriate advice given. He told the Tribunal that he used a variety of different models, but that there were some consultations when he would not use any such model. He told the Tribunal that one of the models used was a specific protocol in which he would follow a question-and-answer tick box proforma which would guide him on what he should be asking a patient.

211. There is no evidence before the Tribunal that there has been any repetition of the concerns before it.

212. In his reflective statement Dr Foroghi Fard stated that he was *"extremely thankful to learn that the audit undertaken by Livi did not reveal any harm to patients and I would like to extend my apologies to any patients which may have been impacted upon by my actions".* The Tribunal was satisfied that Dr Foroghi Fard had demonstrated a genuine expression of apology, regret and remorse for his conduct.

213. Dr Foroghi Fard has been assessed by two clinical supervisors with positive outcomes.

214. The Tribunal was satisfied that Dr Foroghi Fard now understands what went wrong, what the consequences of his actions could have been, and is grateful that no patients came to harm as a result of his actions.

215. Given the evidence before it, namely Dr Foroghi Fard's reflective statement, the supervisor reports, case-based discussions, extensive CPD and the passage of time without any evidence of the misconduct being repeated, the Tribunal was satisfied that Dr Foroghi Fard has remediated his misconduct in the sense of adequately addressing the training and development needs which his misconduct demonstrated.

216. The Tribunal considered that Dr Foroghi Fard had attained a sufficient level of insight into his misconduct, and with the salutary lesson which this process has brought about for him, that the Tribunal was satisfied that the risk of repetition was low.

217. Whilst the Tribunal has determined that Dr Foroghi Fard has remediated his misconduct, that he has sufficient insight into his actions and that the risk of any repetition was low, it went on to consider whether a finding of impairment was required on public interest grounds. In making its decision the Tribunal considered the balance to be struck between the doctor's interests and those of the public in upholding proper professional standards and public confidence in the profession.

218. The Tribunal considered that the misconduct was serious and that there has been a breach of fundamental tenets of the profession. The Tribunal considered that Dr Foroghi Fard's actions did not reveal an isolated incident of professional misjudgement, but, rather, a pattern of serious professional omissions and failings in respect of a number of patients. The Tribunal further considered that Dr Foroghi Fard's failure to carry out proper assessments of his patients put their safety at risk and that these failings struck at the heart of the patient/doctor relationship.

219. The Tribunal determined that a finding of impairment was necessary under limbs 2 and 3 of the overarching objective, namely, in order to promote and maintain public confidence in the medical profession; and promote and maintain proper professional standards and conduct for members of that profession. In all the circumstances the Tribunal concluded that confidence in the profession would be undermined if a finding of impaired fitness to practise were not made.

220. The Tribunal has therefore concluded that Dr Foroghi Fard's fitness to practise is currently impaired by reason of his misconduct.

Determination on Sanction - 25/04/2024

221. Having determined that Dr Foroghi Fard's fitness to practise is impaired by reason of his misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

The Evidence

222.The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction. In addition, Dr Foroghi Fard provided oral evidence at this stage. The Tribunal also received further documentary evidence on behalf of Dr Foroghi Fard in the form of a further witness statement, dated 24 April 2024. Exhibited to that witness statement were a copy of the conditions that Dr Foroghi Fard was subject to, and a copy of the relevant sections of the Medical Act and The National Health Service (Performers Lists) (England) Regulations 2013, in respect of a practitioner being removed from the Medical Performers List as a consequence of suspension of the practitioner's registration.

Submissions on behalf of the GMC

223. Ms Emsley-Smith referred the Tribunal to the relevant case law when considering sanction and to the relevant paragraphs of the Sanctions Guidance (18 November 2020) ('SG') and the overarching objective.

224. Ms Emsley-Smith submitted that the SG communicates the importance of maintaining public confidence in the profession and reminded the Tribunal that the reputation of the profession as a whole is more important than the interests of any individual doctor. She said that given the basis upon which the Tribunal concluded that current impairment is found in this case, it may take the view that this has significance when determining the appropriate sanction to impose upon Dr Foroghi Fard.

225. Ms Emsley-Smith informed the Tribunal that the GMC had originally intended submitting that a period of further conditions was the appropriate sanction but had revised that submission in light of the basis of the finding of impairment. She said that this process is self-evidently a dynamic one and the GMC responded to the Stage 2 determination of the

Tribunal and the detail provided in that when reflecting upon the appropriate sanction in this case. She said that there is always going to be scope for that kind of situation within the currency of a hearing.

226. Ms Emsley-Smith reminded the Tribunal that GMP is the benchmark that doctors are expected to meet and that action is required where a serious departure from professional standards means the doctor poses a current and ongoing risk to one or more of the three elements of public protection. She also reminded the Tribunal to have regard to the principle of proportionality.

227. Ms Emsley-Smith submitted that there were a number of mitigating factors in this case, namely; Dr Foroghi Fard's admissions; that he has worked hard to remediate his actions; the passage of time since the incidents in question; the many positive testimonials; and, his expressions of regret and apology. Ms Emsley-Smith submitted that the case is aggravated by the repetitive nature of the failures.

228. When considering the appropriate sanction, Ms Emsley-Smith submitted that taking no action would only be appropriate in exceptional circumstances. She said that there were no unusual, special or uncommon features in this case and that Dr Foroghi Fard's remediation does not, of itself, represent such an exceptional circumstance that would justify no action. She said that the Tribunal determined that Dr Foroghi Fard's misconduct was so serious that a finding of impairment was required to uphold standards and public confidence in the profession. Ms Emsley-Smith reminded the Tribunal that it determined Dr Foroghi Fard's misconduct was a pattern of serious professional omissions and failings in respect of a number of patients which put them at risk. She submitted therefore that taking no action could not be justified and would fail to send the message that the Tribunal has indicated is required in this case.

229. In respect of conditions, Ms Emsley-Smith submitted that given the Tribunal has found that remediation is complete in respect of the specific clinical failings, it follows that there can be no necessity for any further retraining or assessment, which would ordinarily in most cases be the primary purpose for the imposition of conditions. She reminded the Tribunal that it determined Dr Foroghi Fard's failures were so serious that they undermined the reputation of the profession. She submitted that conditions could not effectively or appropriately meet the basis upon which impairment is found in this case.

230. Ms Emsley-Smith referred the Tribunal the relevant paragraphs of the SG in respect of suspension, that the tribunal have determined that Dr Foroghi Fard's actions have undermined standards and the reputation of the profession and that suspension is an

appropriate response to those concerns. She submitted that suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor.

231. Ms Emsley-Smith submitted that suspension may be appropriate where there has been acknowledgement of fault and where the Tribunal is satisfied that the behaviour or incident is unlikely to be repeated. She said that this was the position in Dr Foroghi Fard's case. Ms Emsley-Smith submitted that, based on the Stage 2 findings of the Tribunal, a period of suspension to mark the seriousness of the conduct is a proportionate response to the case.

Submissions on behalf of Dr Foroghi Fard

232. Ms Barnfather submitted that there is no question of repetition or future harm or risk to the public and the conduct admitted and found proved is not of a nature or level that requires deterrent action in order to maintain public standards or confidence within the profession. She said that a sanction was not required in this case on public safety grounds and that the wider public interest, maintenance of standards and public confidence does not require further action against Dr Foroghi Fard's registration.

233. Ms Barnfather referred the Tribunal to the case of *Giele v GMC (2005) EWHC 2143 (Admin)* in which it was stated that what was required in order to vindicate the public interest must be assessed in light of the views of a fully informed and reasonable member of the public. She cited the principles set out in *Wallace v Sec of State for Education (2017) EWHC 109 (Admin)* in which it stated that public confidence in the profession must be assessed by reference to the standard of the ordinary intelligent person who appreciates the seriousness of the proposed sanction as well as the other issues in the case.

234. Ms Barnfather submitted that such a person would be informed as to: the facts admitted and found proved and that they do not involve a deliberate or reckless disregard for patient safety and hence are not amongst the most egregious failings; the prompt and genuine nature of Dr Foroghi Fard's insight and remediation; the long and ultimately successful period under which Dr Foroghi Fard has been subject to interim conditions; his exemplary co-operation with the regulatory process; his good character; positive testimonials and the fact that Dr Foroghi Fard is otherwise a hard-working, empathetic and caring GP who is a credit to the profession. She said that it was positively contrary to the public interest for the GMC to submit that his registration ought to be suspended and his patients and the public be deprived of his services. Ms Barnfather said that such a decision on the facts of this case would only have a punitive purpose.

235. Ms Barnfather submitted that a finding of impairment of fitness to practise was in, and of, itself a serious, significant and public marker against a doctor. She said that it marks to Dr Foroghi Fard and to the public that the doctor's conduct has fallen seriously short of the standards to be expected and merits the opprobrium of the profession. She said that the finding of current impairment was required to uphold proper professional standards and public confidence, and that in itself satisfies the public interest, and the public interest did not now require further action to be taken against Dr Foroghi Fard's registration. She said that the failings arose within a particular context some considerable time ago and, as has been recognised by the Tribunal, have been remediated by Dr Foroghi Fard and he has been found to have shown insight. She invited the Tribunal to consider that any broader public interest concerns had been satisfied by the regulatory process and the Tribunal's finding in respect of impairment.

236. Ms Barnfather referred the Tribunal to the relevant paragraphs of the SG when determining what, if any, action to take. She reminded the Tribunal that it should use its own judgement in respect of the overarching objective of public protection and that the SG should not be read as laying down rigid guidelines as each case turns on its own unique facts. Ms Barnfather submitted that there was an absence of aggravating features in this case. In mitigation she said that whilst there was a breach of a basic principle of medicine, Dr Foroghi Fard's failings were not the result of 'a deliberate or reckless disregard for patient safety'. She submitted that it was therefore not at the most serious end of the spectrum of clinical failings. Ms Barnfather acknowledged that whilst the consequences of Dr Foroghi Fard's failings had the potential to impact patient care, they did not, and the failings themselves were confined to a particular context and time and were not so serious of themselves as to warrant further sanction against Dr Foroghi Fard on the broader grounds of public protection.

237. Ms Barnfather submitted that Dr Foroghi Fard has remediated his misconduct and the Tribunal found it "was satisfied that Dr Foroghi Fard has remediated his misconduct in the sense of adequately addressing the training and development needs which his misconduct demonstrated". She submitted that Dr Foroghi Fard demonstrably has insight which merits particular consideration at this stage, he has reflected, shown himself to be empathetic and understanding, and is a practitioner who genuinely has his patients' best interests at the forefront of his care. Ms Barnfather submitted that Dr Foroghi Fard has provided genuine expressions of regret and apology and has done so in a timely way. She said since these events Dr Foroghi Fard has demonstrated that he consistently adheres to all the principles of good practice and strives to provide the best care for his patients. Ms Barnfather submitted

that Dr Foroghi Fard is otherwise of unblemished character and has co-operated during these proceedings in an open, candid and exemplary manner.

238. Ms Barnfather submitted that no sanction was required on the basis of patient protection and there was insufficient public interest on the basis of standards and public confidence for the imposition of any sanction. She said that to impose any sanction would not meet an identifiable public protection purpose but would furthermore be disproportionate. She reminded the Tribunal of the principle of proportionality, weighing the interests of the public against those of the doctor. She submitted that Dr Foroghi Fard could have done nothing more by way of remediation and apology. She said that further restriction was unnecessary, would serve no purpose and would risk humiliating and demoralising an otherwise valuable member of the profession and deprive his patients and the public of a much-needed GP.

239. Ms Barnfather submitted that Dr Foroghi Fard has been subject to regulatory scrutiny for coming up to three years, he has been under restrictive conditions since 18 August 2021 and his career put on hold. She said he has been forced to live and work away from his home and family and remain effectively in a locum GP Registrar/trainee position. She said that the impact to date of these proceedings should not be underestimated. Notwithstanding, Dr Foroghi Fard has fully engaged with good grace and dignity and there have been no issues with compliance with his conditions in spite of the fact that for some time there have been zero issues as to his value and safety as a practitioner. Ms Barnfather submitted that Dr Foroghi Fard's Clinical Supervisor, Dr T, has no concerns whatsoever about Dr Foroghi Fard's resumption of unrestricted practice.

240. Ms Barnfather submitted that suspension was grossly disproportionate and carries very significant consequences including financial harm and professional damage. She said that any suspension would result in Dr Foroghi Fard's removal from the Performers List and that given Dr Foroghi Fard's age and career stage, it could be career terminating.

241. In respect of conditions, Ms Barnfather submitted that these were not appropriate as there were no longer any identifiable failings that need further assessment or training. She said that to impose a further period of conditions would be disproportionate and would serve no legitimate purpose. Ms Barnfather submitted that the delay in concluding these matters is in no part the fault of Dr Foroghi Fard, and that conditions would be not only unnecessary, but excessive and unjust. She said that the public interest does not require any further action against Dr Foroghi Fard and it is contrary to his interests to have these matters further prolonged.

242. Ms Barnfather referred the Tribunal to the case of *Kamberova v NMC [2016] EWHC 2955 (Admin*) it which was held (in respect of a sanction of suspension but the same principles apply to conditions) that a Tribunal must take account of any interim order and its effect on the registrant in deciding whether any sanction was proportionate, *"This is no more than common fairness dictates. If proceedings are long delayed and a person is subject to suspension in the interim period, that period of suspension may affect the proportionality of the length of the subsequent period of suspension.".* She then referred the Tribunal to the case of *GMC v Ahmed [2022] EWHC 403 (Admin)* in which Murray J confirmed that although undue weight should not be placed on interim orders when considering sanction, it was nonetheless a relevant factor when considering proportionality.

243. Ms Barnfather submitted that a properly informed and reasonable member of the public would consider suspension grossly disproportionate and question what a further period of conditions would achieve in the public interest. She said that Dr T has informed the Tribunal that she has no concerns regarding Dr Foroghi Fard's practice. She submitted that it would be potentially illogical as well as disproportionate to impose any sanction on Dr Foroghi Fard in order to send a wider signal to the profession and the public about what standards are expected. The requirements of the public interest are adequately vindicated in this particular case by the finding of current impairment made against Dr Foroghi Fard. The failings arose within a particular context some considerable time ago and have been remediated by Dr Foroghi Fard and any broader public interest concerns that the case might have given rise to within the wider context have been satisfied by the regulatory process and the Tribunal's findings. Ms Barnfather submitted that to have been the subject of regulatory scrutiny, a protracted period of interim conditions and to have a finding of impairment more than meets the public interest and that no sanction is warranted.

The Tribunal's Determination on Sanction

244. The Tribunal's decision as to the appropriate sanction to impose on Dr Foroghi Fard's registration, if any, was a matter for the Tribunal exercising its own independent judgment. In reaching its decision, the Tribunal has taken account of the SG and the overarching objective.

245. In making its decision, the Tribunal had regard to the principle of proportionality, and it weighed Dr Foroghi Fard's interests with those of the public. Throughout its deliberations the Tribunal bore in mind that the purpose of sanctions is not to punish doctors although they may have a punitive effect. It also took into account the overarching objective which is to protect the health, safety and wellbeing of the public, maintain public confidence in the profession, and promote and maintain proper professional standards and conduct for the members of the profession.

246. The Tribunal has also borne in mind that in deciding what sanction, if any, to impose, it should consider all the sanctions available, starting with the least restrictive and then consider each sanction in ascending order.

Aggravating & Mitigating Factors

247. In reaching its decision, the Tribunal first considered the aggravating and mitigating factors present in this case.

248. The Tribunal considered that the repetition of the misconduct in respect of a number of patients was an aggravating factor.

249. In mitigation, the Tribunal considered that Dr Foroghi Fard made admissions at an early Stage. Whilst his admissions were not complete, the Tribunal bore in mind that where Dr Foroghi Fard denied the allegations, those denials were supported by the expert report from Dr S. There has been a notable passage of time since these incidents occurred dating back to July 2021. Dr Foroghi Fard has produced many positive testimonials which spoke not only to his character but also addressed the concerns demonstrated by the misconduct. Many of those authors of the testimonials were fully informed of the matters before this Tribunal and several of them attested to not having seen a deficiency in Dr Foroghi Fard's practice. Dr Foroghi Fard told the Tribunal that he had given a copy of the Tribunal's Stage 1 decision to his supervisor and to all the medical staff at the Willows Practice. Dr Foroghi Fard has positive patient and colleague feedback. Dr Foroghi Fard is of previous good character. He has demonstrated genuine expressions of apology, regret and remorse and did so in a timely manner. Dr Foroghi Fard has remediated the clinical concerns raised by his misconduct and has a sufficient level of insight into his actions. He understands what went wrong and why it went wrong.

250. In Dr Foroghi Fard's oral evidence at Stage 3, he told the Tribunal that had to pay for his own supervision at a personal cost to him of £400 per session, and that for those supervision sessions, he was not remunerated. Essentially, he worked unpaid for each of these sessions. The effective cost to Dr Foroghi Fard was therefore £800 for each session he was supervised. During the period when he was subject to conditions he estimated that complying with the supervisory condition had cost him in the region of £48,000 in fees and lost remuneration. He had continued to work as a doctor and to pay for supervision so as not to breach his conditions and to ensure he had remediated his actions. The Tribunal considered that Dr Foroghi Fard did this in a professional and positive way without any further repetition of the misconduct, or with any further concerns raised. In fact, his

supervisor's reports were positive and demonstrated that he was a competent clinician. Whilst the Tribunal bore in mind that the stringent conditions were not imposed for the purpose of punishment, the effects of those conditions on Dr Foroghi Fard were considerable and the fact that he had persevered to fulfil the conditions on him to remediate is a mitigating factor.

251. When weighing the considerable mitigating factors against the aggravating factor, whilst serious, the Tribunal determined that the mitigating factors outweighed the aggravating factor.

No Action

252. In reaching its decision as to the appropriate sanction, if any, to impose in this case, the Tribunal first considered whether to take no action.

253. The Tribunal had regard to paragraph 131 and 132 of the SG:

> *"131 Remediation (where a doctor addresses concerns about their knowledge, skills, conduct or behaviour) can take a number of forms, including coaching, mentoring, training, and rehabilitation (this list is not exhaustive), and, where fully successful, will make impairment unlikely.*
>
> *132 However, there are some cases where a doctor's failings are irremediable. This is because they are so serious or persistent that, despite steps subsequently taken, action is needed to maintain public confidence. This might include where a doctor knew, or ought to have known, they were causing harm to patients and should have taken steps earlier to prevent this."*

254. The Tribunal determined that Dr Foroghi Fard's case could be distinguished from the majority of cases envisaged by paragraph 131 of the SG because the basis of the finding of impairment was independent of the evidence of remediation. The Tribunal has already determined that Dr Foroghi Fard has fully remediated his conduct and that no further training or mentoring was required, it has however found impairment on public interest grounds and whilst there was the potential for harm to patients, there was no actual harm to any patient. Dr Foroghi Fard has done everything that the Tribunal would have expected to see from him.

255. The Tribunal then had regard to paragraphs 68 and 69 of the SG:

"68 Where a doctor's fitness to practise is impaired, it will usually be necessary to take action to protect the public (see paragraphs 14–16). But there may be exceptional circumstances to justify a tribunal taking no action.

69 To find that a doctor's fitness to practise is impaired, the tribunal will have taken account of the doctor's level of insight and any remediation, and therefore these mitigating factors are unlikely on their own to justify a tribunal taking no action."

256. The Tribunal noted that the SG does not preclude a Tribunal from taking no action following a finding of impairment, nor from taking remediation into account in deciding to take no action, although it suggests that it would be unusual for a Tribunal to do so. The Tribunal considered that this case is unusual because the basis of the finding of impairment was not related to any lack of remediation. The Tribunal was satisfied that there were no remaining clinical concerns. It had regard to the overarching objective and reminded itself that its finding of impaired fitness to practise was not based on a lack of insight or remediation, rather, it was based on the need to uphold public confidence and professional standards. The Tribunal therefore considered that the option of taking no action was open to it. It than had regard to paragraph 70 of the SG:

"70 Exceptional circumstances are unusual, special or uncommon, so such cases are likely to be very rare. The tribunal's determination must fully and clearly explain:

a what the exceptional circumstances are
b why the circumstances are exceptional
c how the exceptional circumstances justify taking no further action."

Exceptional circumstances and why are they exceptional

257. The Tribunal's decision at Stage 2 was not made on the basis of Dr Foroghi Fard's insight or remediation. At Stage 2 it noted that Dr Foroghi Fard's reflective statement, the supervisor reports, case-based discussions, extensive CPD and the passage of time without any evidence of the misconduct being repeated. The Tribunal was satisfied that Dr Foroghi Fard has remediated his misconduct in the sense of adequately addressing the training and development needs which his misconduct demonstrated. Dr Foroghi Fard had attained a sufficient level of insight into his misconduct, and with the salutary lesson which this process has brought about for him. The Tribunal was satisfied that the risk of repetition was low. It was satisfied that there was nothing more that Dr Foroghi Fard could have done and he has sufficient insight.

258. Dr Foroghi Fard has been subject to a very lengthy period of stringent conditions. During this period he has demonstrated commitment to his profession without any further concerns being raised. To the contrary, the supervisor reports and patient and colleagues feedback demonstrated that Dr Foroghi Fard is a competent doctor. The testimonials not only spoke to Dr Foroghi Fard's good character but they were also relevant, positive and several of them focussed the Stage 1 findings of this Tribunal.

259. The repetition of the misconduct was serious and an aggravating factor. There was nevertheless an absence of other aggravating factors. The Tribunal has already concluded that it was satisfied the risk of any repetition was low.

260. The significant number of mitigating factors, as set out above, outweighed the aggravating factor.

261. The Tribunal was told that prior to the Stage 2 determination the GMC had originally considered this case was suitable for conditional registration and had intended to submit that a period of further conditions was the appropriate sanction. It was only because the Tribunal found impaired fitness to practise on public interest grounds that the GMC made a submission for suspension. The Tribunal considered that it would be a perverse and disproportionate outcome if Dr Foroghi Fard were to receive a more serious sanction (i.e. suspension) than he might have received if he had not remediated (i.e. conditional registration).

How the exceptional circumstances justify taking no further action.

262. The Tribunal had specific regard to paragraph 20 of the SG, in respect of the principle of proportionality:

> *"20 In deciding what sanction, if any, to impose the tribunal should consider the sanctions available, starting with the least restrictive. It should also have regard to the principle of proportionality, weighing the interests of the public against those of the doctor (this will usually be an impact on the doctor's career, e.g. a short suspension for a doctor in training may significantly disrupt the progression of their career due to the nature of training contracts)."*

263. The Tribunal considered, on the basis of evidence put before the Tribunal by Dr Foroghi Fard and not challenged by the GMC, that if Dr Foroghi Fard was suspended even for a short period of time, he would be removed from the Performers List, meaning that he would then be unable to work within the NHS as a GP. It was unclear how long it could take for Dr Foroghi Fard's to return to the Performer's List following any period of suspension. This would have a disproportionate effect on Dr Foroghi Fard, his patients and the public, denying

them access to a competent doctor for an unspecified amount of time until he could get back on the Performers List.

264. The conditional registration was for almost three years, without a breach. This, together with these regulatory proceedings, the Tribunal's findings of fact, and of a finding of impaired fitness to practise, have all been a salutary lesson to Dr Foroghi Fard.

265. Despite the significant financial and personal pressures, Dr Foroghi Fard continued to be a hardworking, empathetic, caring GP who has not had a single issue raised by his assessors or colleagues.

266. A period of suspension, and subsequent removal from the Performers List would have a significant impact on Dr Foroghi Fard and his family. The Tribunal bore in mind that Dr Foroghi Fard is the sole financial provider for his family XXX.

267. The Tribunal considered that Dr Foroghi Fard has completed almost 3 years of conditional registration and no further training or supervision is required.

268. The Tribunal also considered the issue of proportionality. It considered that the appropriate sanction would be one which reflected the need to uphold public confidence and proper professional standards whilst also considering the effect of the sanction upon Dr Foroghi Fard. It had regard to the principle enunciated in the cases of *Kamberova* and *Ahmed*, that the Tribunal should bear in mind the effect of any interim orders in weighing the proportionality of the sanction. In particular, it bore in mind the judgement of Dingemans J at paragraph 40 if the judgement in *Kamberova* to this effect: *"This is no more than common fairness dictates. If proceedings are long delayed and a person is subject to suspension in the interim period, that period of suspension may affect the proportionality of the length of the subsequent period of suspension."*. The Tribunal also had regard to the case of *Ahmed* which reiterates this principle. The Tribunal considered that the lengthy period of conditions to which Dr Foroghi Fard had been subject was one of the relevant factors which it ought to take into account in considering the proportionality of the sanction.

269. When considering what weight to attach to the period of conditions, the Tribunal considered that the impact of the conditions upon Dr Foroghi Fard had been significant and would be considered to be so by a fully informed observer. It also considered that a fully informed observer would conclude that the period of conditions had served to allow Dr Foroghi Fard to demonstrate that he had remediated the concerns raised by his misconduct and that this was a factor to which the Tribunal could attach some weight when considering the proportionality of the sanction it imposed.

270. The Tribunal considered that the finding of current impairment and the publication of that finding would serve to sufficiently mark disapproval of Dr Foroghi Fard's misconduct and thereby uphold public confidence and proper professional standards.

Conditions

271. The Tribunal considered that in light of the remediation demonstrated this was not an appropriate case for conditions to be imposed.

Suspension

272. The Tribunal considered the GMC submission that to mark the seriousness of the misconduct and the need to uphold the public interest, a period of suspension was required.

273. The Tribunal considered that even if the Tribunal were to impose a period of suspension, weighing the extensive mitigating factors against the aggravating factor, any period of suspension would likely be a short one. It considered that the effect of such a short period of suspension would be that Dr Foroghi Fard was removed from practice for an unknown period of time. Whilst a short period of suspension would have the effect of publicly marking disapproval of Dr Foroghi Fard's misconduct, it would also have a disproportionate effect on his ability to practise as a doctor for a longer period than the period of suspension.

274. In his oral evidence Dr Foroghi Fard told the Tribunal that he does 6,000 patient consultations a year, in a GP practice where there is a waiting list of 3 weeks, where the practice is struggling to recruit doctors and is now seeking to recruit from South Africa. The Tribunal decided that it would not be in the public interest to deprive patients of a competent doctor and that public interest would be better served if Dr Foroghi Fard were able to return to unrestricted practice.

275. The Tribunal was assisted by Dr Foroghi Fard's open and honest evidence, providing information that he did not need to give during these proceedings. It tested his evidence and it considered him to be credible and reliable.

276. The Tribunal accepted the submission of Ms Barnfather that a fully informed and reasonable member of the public in the knowledge of all the facts of this case would consider that the finding of impaired fitness to practise was sufficient in order to mark the public

interest in this case. It considered that the imposition of a period of suspension would be both disproportionate and punitive.

277. In all the circumstances, and for the reasons given above, the Tribunal determined that acceding to the submission of suspension would be inappropriate and disproportionate. The Tribunal has balanced the interests of the Dr Foroghi Fard against that of the public. It was satisfied that the need to uphold public confidence in the profession and professional standards has been sufficiently addressed by a finding of impairment.

278. The Tribunal therefore determined that there were exceptional circumstances in this case and that the proportionate and appropriate response was to take no action. It therefore determined to take no further action against Dr Foroghi Fard.

279. The current interim order of conditions imposed on Dr Foroghi Fard's registration is revoked with immediate effect.

280. That concludes this case.

ANNEX A – 21/09/2023

Application to amend the Allegation under Rule 17(6)

281. At the conclusion of the GMC's case, Ms Emsley-Smith, counsel on behalf of the GMC, made an application pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to amend the Allegation.

Proposed Amendments

282. Ms Emsley-Smith applied for the following paragraphs to be struck through:

Patient F

43. On 18 June 2021 you consulted with Patient F by telephone and you did not provide good clinical care in that you failed to:

…

a. ~~provide safety netting advice~~.

Patient G

17. On 18 June 2021 you consulted with Patient G by telephone and you did not provide good clinical care in that you failed to:

…

c. ~~provide safety netting advice~~.

Patient J

25. On 28 June 2021 you consulted with Patient J by telephone and you did not provide good clinical care in that you failed to:

…

c. ~~provide safety netting advice~~.

Patient M

37. On 30 June 2021 you consulted with Patient M by telephone and you did not provide good clinical care in that you failed to:

…

a. ~~provide safety netting advice~~.

283. Ms Emsley-Smith applied for the following paragraphs to be amended:

15. You knew when taking the actions described at:

a. paragraph 14a, that you had not given ~~any~~ the safety netting advice set out in paragraph 14a;

19. You knew when taking the actions described at:

a. paragraph 18a, that you had not given ~~any~~ the safety netting advice set out in paragraph 18a;

27. You knew when taking the actions described at:

a. paragraph 26a, that you had not given ~~any~~ the safety netting advice set out in paragraph 26a;

39. You knew when taking the actions described at:

a. paragraph 38a, that you had not given ~~any~~ the safety netting advice set out at paragraph 38a;

Submissions

<u>On behalf of the GMC</u>

284. Ms Emsley-Smith submitted that the proposed strikethroughs at paragraphs 13(d), 17(c), 25(c) and 37(c) are to reflect the evidence given by the expert witness Dr O, and that the GMC is no longer seeking to pursue these paragraphs in light of the evidence that safety netting advice was given to these patients.

285. In respect of paragraphs 15, 19, 27 and 39 Ms Emsley-Smith submitted that it has always been the GMC's case that these paragraphs relate to the pro forma safety advice included in the medical records by Dr Foroghi Fard. She submitted that this is clearly part and parcel of the probity allegations, but that the current wording may fail as a consequence of a

technicality because it may be that the Tribunal take the view that Dr Foroghi Fard did give some safety netting advice.

286. Ms Emsley-Smith submitted that it has always been plain that the probity allegations and the allegations of dishonesty relate to that specific part of the safety netting advice and that this has always been understood by Dr Foroghi Fard. Therefore, she submitted, there would be no injustice to Dr Foroghi Fard in making the proposed amendments.

On behalf of Dr Foroghi-Fard

287. Ms Barnfather, counsel on behalf of Dr Foroghi Fard submitted that she did not object to the proposed strikethroughs as the GMC withdrawing these paragraphs reflected the expert witness evidence.

288. In respect of paragraphs 15, 19, 27 and 39, Ms Barnfather submitted that the proposed amendments are material, would change the nature of the allegations against Dr Foroghi Fard and that the defence case has always been based on the original wording. She submitted that to make these amendments at such a late stage in proceedings would be unfair to Dr Foroghi Fard, particularly given that they relate to alleged dishonesty, which is a very serious matter.

289. Ms Barnfather submitted that this is a case of the GMC seeking to amend the Allegation to fit the evidence, having concluded its case and heard from the GMC expert witness, and that she would not have the opportunity to cross-examine Dr O on these matters.

290. Ms Barnfather submitted that what the GMC is seeking to do is tailor the dishonesty allegation to a different case where it is no longer alleged that Dr Foroghi Fard was covering up an omission, but rather that he was using a safety netting advice template when creating medical records. She submitted that it would be prejudicial to move the goalposts in such a fashion and the application should therefore be refused because injustice would be caused to Dr Foroghi Fard.

291. Ms Barnfather further submitted that if the application was allowed Dr Foroghi Fard would seek further particulars of the Allegation from the GMC to make it clear what the newly-alleged dishonest intent of Dr Foroghi Fard was.

The Tribunal's Approach

292. The GMC applies under Rule 17(6) to amend the particulars of some of the allegations of dishonesty. Rule 17 (6) states that:

> *Where, at any time, it appears to the Medical Practitioners Tribunal that— (a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and (b) the amendment can be made without injustice, it may, after hearing the parties, amend the allegation in appropriate terms.*

293. The central issue is whether the amendment can be made without injustice to Dr Foroghi Fard. In considering the application the Tribunal will consider the submissions of both counsel and, in particular, the submissions by Ms Barnfather on behalf of Dr Foroghi Fard about the prejudice which she submits Dr Foroghi Fard would be caused if the application were granted.

294. In considering whether the proposed alteration of the wording of the dishonesty allegation causes injustice to Dr Foroghi Fard the Tribunal will need to consider the legal basis for a finding of dishonesty which will be applied by the Tribunal at the time when it considers whether the facts alleged by the GMC are proved. The test for dishonesty is as follows:

- The Tribunal must first ascertain (subjectively) the actual state of the doctor's knowledge or belief as to the facts. The reasonableness or otherwise of his belief may evidence whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it was genuinely held.

- Once that has been established the Tribunal must determine whether his conduct was dishonest by applying the objective standards of ordinary decent people. It is not necessary for the individual to appreciate that what she has done is, by those standards, dishonest.

295. The Tribunal should not, at this stage make determinations about these matters, but will consider, in light of the legal test for dishonesty, whether injustice is caused to Dr Foroghi Fard by the proposed amendment of the dishonesty allegations.

296. The Tribunal is permitted to allow the amendment of charges at any stage so as to avoid undercharging. The test is whether the amendment can be made without unfairness or injustice to the doctor (*Professional Standards Authority v Health and Care Professions Council and Doree [2017] EWCA Civ 319* considered). Allegations of dishonesty should only be made on solid grounds. The allegation should not be made without good reason. When the

allegation is made it should be clearly particularised so that the doctor knows how the allegation is put. The allegation should be put fairly and squarely to the doctor so that they have an opportunity to answer it. Nobody should be found to be dishonest on a side wind or by some kind of default setting in the mechanism of the inquiry. It is an allegation that should be articulated, addressed and adjudged head-on (*Fish v GMC [2012] EWHC 1269* considered).

297. When exercising its functions, the Tribunal must have particular regard to the statutory overarching objective:

a. *To protect, promote and maintain the health, safety and wellbeing of the public;*
b. *To promote and maintain public confidence in the medical profession; and;*
c. *To promote and maintain proper professional standards and conduct for members of that profession.*

The Tribunal's Decision

298. The Tribunal noted that there was no objection from Ms Barnfather in respect of the proposed strikethroughs at paragraphs 13(d), 17(c), 25(c) and 37(c). It considered that the oral evidence of Dr O was that he accepted that some safety netting advice was provided and it considered that it would be fair and appropriate to make the amendments proposed by the GMC to strikethrough these paragraphs, which the GMC was no longer seeking to pursue.

299. The Tribunal then went on to consider the proposed amendments to paragraphs 15, 19, 27 and 39. In doing so, it noted the submissions made on behalf of the GMC that the amendments did not materially change the Allegation and that it was clear that this was the GMC's case from the outset, and therefore the proposed amendments would clarify the wording without causing Dr Foroghi Fard injustice. The Tribunal also noted the submissions made on behalf of Dr Foroghi Fard that these proposed amendments are material, would change the nature of the charges, that the defence case and Dr Foroghi Fard's responses have been based on the original wording and that to make these amendments at such a late stage would be unfair.

300. The Tribunal considered whether there would be any injustice or unfairness to Dr Foroghi Fard in allowing these amendments. It was of the opinion that whilst the existing wording may be unclear or not reflect the specifics of the GMC's case in this regard, to allow the amendment would represent more than just a technical correction or clarification of the allegations. It considered that the allegation that Dr Foroghi Fard had not provided any safety netting advice and had dishonestly included a pro forma record stating that he had done so

was materially different from an allegation that he had provided some safety netting advice, but that this advice was not accurately reflected in the pro forma wording.

301. The Tribunal accepted that had the Allegation been worded differently, the defence case may have been approached differently, noting that in his written witness statement Dr Foroghi Fard responded to the allegation that he gave no safety netting advice at all (rather than responding to an allegation that he had misrepresented in the consultation notes the safety netting advice which he had given).

302. The Tribunal also considered that the application was made after the conclusion of the GMC's case and the evidence of the GMC expert witness Dr O. Whilst the Tribunal accepted that the matters surrounding probity and dishonesty are a matter for it to determine, Dr O did provide his opinion on probity, but this evidence was, at the relevant parts, based on the incorrect conclusion that Dr Foroghi Fard had provided no safety netting advice to the relevant patients. The Tribunal noted that it could not be sure how the difference in wording and context (of some safety netting advice versus none) may have affected Dr O's opinion, and that this could not be put to him by either the Tribunal or Ms Barnfather at this stage.

303. The Tribunal also considered whether there would be any unfairness to the GMC or the public interest in refusing the application, bearing in mind the legal advice in respect of undercharging and the importance of the overriding objective. In doing so, it noted that there would remain paragraphs of the Allegation on which the GMC could make the case for, and the Tribunal could find, dishonesty. The balance of fairness required the Tribunal to refuse the application because to allow the application would cause injustice to Dr Foroghi Fard.

304. The Tribunal also noted that the GMC had been in possession of the relevant evidence, showing that Dr Foroghi Fard had provided some safety netting advice, for some time and so could have drafted the Allegation more accurately from the outset.

305. The Tribunal concluded that in light of the potential for injustice to Dr Foroghi Fard, it would not be appropriate to allow the proposed amendments, particularly at this stage of proceedings.

306. Therefore the Tribunal determined to grant the application in regard to paragraphs 13(d), 17(c), 25(c) and 37(c) in respect of paragraphs 15, 19, 27 and 39, but refused the application in respect of paragraphs 15, 19, 27 and 39.

ANNEX B – 21/09/2023

Application of no case to answer under Rule 17(2)(g)

307. At the conclusion of the GMC's case, Ms Barnfather, counsel on behalf of Dr Foroghi Fard, made an application pursuant to Rule 17(2)(g) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), of no case to answer in respect of the following paragraphs of the Allegation.

- Patient C: 5cii & 6e and 6f
- Patient C: 5di & 6g
- Patient I: 23c & 24c, d & e

Submissions

On behalf of Dr Foroghi-Fard

308. Ms Barnfather, submitted that in respect of the applicable paragraphs, what has effectively happened is that the GMC have mistakenly drafted the allegations so that some of the actions Dr Foroghi Fard is alleged to have failed to carry out were consequent on the potential outcomes of assessments that were not undertaken. Ms Barnfather submitted that where it is admitted that Dr Foroghi Fard did not carry out certain preceding actions, it could therefore not be considered that he had a duty to carry out subsequent dependent actions or had failed to do so. She submitted that the same rationale applies for the alternatives set out in the Allegation as if Dr Foroghi Fard had no duty or obligation to carry out those actions it follows that he was not under a duty to record them in the medical records.

309. In respect of paragraphs 5(c)(ii) and 6(e) and (f), Ms Barnfather submitted that it cannot be said that Dr Foroghi Fard had failed to implement an adequate treatment plan in that he failed to consider changing the medication dose and making a referral to counselling or mental health services because an adequate mental state examination had not been carried out. She submitted that the evidence of Dr O was that consideration of a change in the medication dose and consideration of making a referral for counselling or mental health services was dependent on the outcome of a mental state examination and that as the latter did not occur, the former could not have either. She submitted the effect of Dr O's evidence was that he cannot accuse Dr Foroghi Fard of the positive failure to implement an adequate treatment plan, in that he failed to consider changing the medication dose or making a referral to counselling because all of that was conditional on Dr Fard having carried out the mental health assessment.

310. Ms Barnfather submitted that in respect of paragraphs 5(d)(i) and 6(g), the evidence of Dr O was also that providing appropriate advice, including prescribing advice was dependent on an adequate mental state examination, which did not occur. She submitted that, therefore, a positive failing on the basis of the evidence cannot be asserted given that those allegations are conditional.

311. Ms Barnfather submitted that Dr O confirmed this in cross- and re-examination and repeated that he was not critical of the fact the Dr Foroghi Fard had prescribed the drug and that he was not saying that it was not appropriate to do so, but rather that further questions ought to have been asked.

312. In respect of paragraphs 23(c) and 24(c), (d) and (e) Ms Barnfather submitted that the evidence from Dr O was that the actions set out at paragraph 23(c) were dependent on Dr Foroghi Fard carrying an out an adequate mental state examination. She submitted that as Dr Foroghi Fard admits that he did not do this (at paragraph 23(b)), it cannot be asserted there was a positive duty in respect of paragraph 23(c) because of the original failings alleged and admitted, and that paragraph 23(b) captures the gravity of the failing in respect of Patient I. She submitted that the alternatives set out at paragraphs 24(c), (d) and (e) fall away as, if there was no duty or obligation to conduct the actions at 23(c), then there could be no duty to record.

<u>On behalf of the GMC</u>

313. Ms Emsley-Smith, counsel on behalf of the GMC submitted that the GMC opposes the submission of no case to answer.

314. In respect of paragraphs 5(c)(ii) and 6(e) and (f), Ms Emsley-Smith submitted that Dr O's criticism of Dr Foroghi Fard is that, in respect of Patient C, he did not obtain an adequate history and had a duty so to do. Further, he had a duty to consider changing the medication dose and making a referral to counselling or mental health services. She submitted that irrespective of the outcome of Dr Foroghi Fard's actions in respect of Patient C, he had a duty to consider those things and failed to do so.

315. Ms Emsley-Smith submitted that in respect of paragraphs 5(d)(i) and 6(g), the fact that Dr Foroghi Fard did not obtain an adequate history did not remove his duty to provide appropriate advice, including prescribing advice. She submitted that simply because one has not done the first part of what they should do, this does not negate the existence of a duty to do the rest of what is obliged.

316. Ms Emsley-Smith submitted that the same rationale applies to paragraphs 23(c) and 24(c), (d) and (e) and that the GMC therefore oppose the application. She submitted that Dr Foroghi Fard has admitted that he failed to obtain an adequate history and carry out an adequate mental state examination and that the argument that, having failed to do that, no duty existed to go on to consider changing the dose of antidepressant or making a referral is incorrect. She submitted that these duties remained and therefore the Tribunal should reject the application.

The Tribunal's Approach

317. Rule 17(2)(g) of the Rules states that the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld.

318. In deciding whether sufficient evidence has been adduced to find the facts proved at this stage the Tribunal's task is not to determine whether, on the balance of probabilities, the GMC has proved its case.

319. The approach the Tribunal should take is to apply the same test as would be apply at the close of the prosecution case in criminal proceedings – namely the test set out in the case of *R v Galbraith [1981] 1 WLR 1039*.

320. In respect of each allegation, if there is no evidence that the doctor behaved in the manner alleged by the GMC then the Tribunal will stop the case. If the Tribunal determines that there is some evidence, but it is of a weak and tenuous character, for example, because of inherent weaknesses or because it is inconsistent with other evidence, then the Tribunal should consider whether the GMC's case at its highest is such that a properly directed tribunal could not properly find the allegation proved. If the Tribunal finds that a properly directed tribunal could not properly find the allegation proved, the Tribunal will stop the case. Where the GMC's evidence is such that the strength or weakness of it depends on the view the Tribunal takes of a witness' reliability, or other matters which are within the province of the Tribunal as finders of fact, and where there is evidence on which the Tribunal could properly come to the conclusion that the doctor behaved as alleged, then the Tribunal should allow the case to proceed.

The Tribunal's Decision

321. In determining whether to allow the half-time application, the Tribunal considered that the context and rationale submitted by Ms Barnfather was essentially the same for both patients and the respective paragraphs.

322. Ms Barnfather submitted that these paragraphs of the Allegation were framed incorrectly on the basis of failures to carry out actions which were subsequent to, and dependent on, previous actions. She submitted that as these preceding actions did not occur there was no duty on Dr Foroghi Fard to carry out the subsequent actions and therefore no failure.

Patient C
Paragraphs 5(c)(ii), 6(e), 6(f)

323. In respect of paragraph 5(c)(ii) and its alternatives at 6(e) and (f), the Tribunal noted that the wording of the Allegation is that Dr Foroghi Fard failed to *"consider"* those matters. It is not alleged that he did not undertake these subsequent actions, but rather that he was under a duty to consider those matters. The Tribunal did not accept the submission of Ms Barnfather and determined that there was evidence from Dr O on the basis of which it could properly conclude that this duty remained even though Dr Foroghi Fard had not undertaken a mental state examination. The Tribunal also noted that those matters were not necessarily consequent on the mental state examination having been conducted.

324. The Tribunal was satisfied that there was evidence before the Tribunal on the basis of which the Tribunal could properly conclude that Dr Foroghi Fard had a duty and failed to consider those matters and therefore refused the submission of no case to answer. It also concluded that the alternatives at paragraphs 6(e) and (f) could also be found proved on the evidence.

Paragraphs 5(d)(i), 6(g)

325. In respect of paragraph 5(d)(i) and its alternative at 6(g), the Tribunal noted that the same rationale and considerations apply, namely the submission that as Dr Foroghi Fard failed to carry out an adequate mental state examination he could not have been expected to have provided appropriate advice, including prescribing advice.

326. For the reasons set out above in respect of 5(c)(ii), the Tribunal determined that Dr Foroghi Fard's duty to give proper advice did not necessarily fall away as a result of his failure

to examine the patient adequately. It therefore concluded that there was sufficient evidence that a properly directed Tribunal could find this paragraph of the Allegation proved and determined to refuse the submission of no case to answer.

Patient I
Paragraphs 23(c), 24(c), (d), (e)

327. For the reasons set out in respect of paragraphs 5(c)(ii) and 5(d)(ii), and their respective alternatives, as set out above, the Tribunal concluded that there was sufficient evidence on which a Tribunal could find the allegations proved.

328. Accordingly, the Tribunal determined to reject the submission of no case to answer in respect of all paragraphs.