PUBLIC RECORD

Dates: 09/03/2026 - 16/06/2026

Doctor:	Dr Moboladale OJUTIKU
GMC reference number:	4086068
Primary medical qualification:	MB BS 1985 University of Ibadan

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

Summary of outcome

Suspension, 12 months

Review hearing directed

Tribunal:

Legally Qualified Chair	Mrs Christine McLoughlin
Lay Tribunal Member:	Ms Jo Palmiero
Registrant Tribunal Member:	Dr Deborah Brooke

Tribunal Clerk:	Ms Ciara Fogarty

Attendance and Representation:

Doctor:	Present, represented
Doctor's Representative:	Dr Oluwatoyin Ogunsanya, Solicitor Advocate, instructed by Taylor Wood Solicitors
GMC Representative:	Mr Alan Taylor, Counsel

Attendance of Press / Public

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

Protecting the Public

Throughout the decision making process the tribunal has borne in mind the statutory duty as set out in s1(1) of the Medical Act 1983 (the 1983 Act) to protect the public. The tribunal has considered the relevance and impact on each of the three distinct parts of public protection 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 - 10/06/2026

Background

1. Dr Ojutiku qualified in 1985. Prior to the events which are the subject of the hearing, he was employed by Mid and South Essex NHS Foundation Trust, formerly the Basildon and Thurrock University Hospitals NHS Foundation Trust (BTUH, 'the Trust') from November 2000. He retired in May 2023. During the relevant period, Dr Ojutiku was practising as a Consultant Obstetrician and Gynaecologist at Basildon Hospital, undertaking clinical duties in obstetrics and gynaecology, labour ward work, teaching, research, audit and wider Supporting Professional Activities (SPA). Dr Ojutiku also undertook disclosed private practice, agreed in accordance with his contractual arrangements in place at the Trust.

2. It is alleged that Dr Ojutiku dishonestly performed additional private work during hours when he was contracted to undertake NHS work for the Trust. The GMC's case is that Dr Ojutiku's job plan consisted of programmed activities, including Supporting Professional Activities ("SPA"), which were to be undertaken for the Trust and, unless otherwise agreed, on site. It is alleged that during SPA and/or administration time, Dr Ojutiku instead conducted private clinics at Chartwell Private Hospital and received payment from Ramsay Health for that work, whilst also receiving payment for his NHS contracted hours scheduled at the same time.

3. The GMC relies on Dr Ojutiku's job plans, *Terms and Conditions – Consultants (England) 2003* (2003 Terms) ,the *BTUH NHS Foundation Trust Job Planning Policy* (August

2017) ('Job Planning Policy'), the *Department of Health document 'A Code of Conduct for Private Practice'* (January 2004) ('Code of Conduct'), and witness evidence from senior Trust staff. The GMC alleges that those documents and communications made clear that private professional services were not to be undertaken during NHS programmed activities, including SPA time, unless specifically job planned or otherwise authorised.

4. The concerns initially arose following events on 1 March 2019, when Dr Ojutiku was expected, according to his job plan, to be undertaking SPA work for the Trust. On that afternoon, the Trust attempted to contact him in relation to an urgent matter arising from a Care Quality Commission (CQC) inspection concerning the Women's and Children's Department. It was subsequently established that Dr Ojutiku was undertaking private work at Chartwell Private Hospital. The GMC alleges that further enquiries identified a pattern of Dr Ojutiku undertaking private clinics on many Friday afternoons during NHS contracted hours over the period April 2017 to May 2019.

5. The GMC's case is that Dr Ojutiku undertook private work on 44 occasions during NHS contracted time and received payment for that work. It is alleged that he did so despite knowing that private practice was prohibited during NHS contracted hours and despite not having obtained prior approval to be off site during those scheduled times and or undertake private work during SPA sessions. The GMC alleges that Dr Ojutiku's conduct was dishonest.

The Outcome of Applications made during the Facts Stage

6. The Tribunal refused Dr Ojutiku's application, made pursuant to Rule 17(2)(a) of the General Medical Council (Fitness to Practise) Rules 2004 as amended ("the Rules"), for an indefinite stay of proceedings on the grounds of abuse of process. The application was advanced on the basis that the GMC referral was said to be inaccurate and misleading, that the case had evolved over time, and that the proceedings were founded upon unresolved contractual and employment issues. The Tribunal's full decision on the application is included at Annex A.

7. The Tribunal granted the GMC's application, made pursuant to Rule 34(1) of the Rules, to admit additional evidence comprising supplemental witness statements from Mr A, Dr B, Mr C and Mr D, together with responses from Dr I. The application was made following receipt of Dr Ojutiku's witness statement and associated defence disclosure. The Tribunal's full decision on the application is included at Annex B.

8. The Tribunal granted Dr Ojutiku's application, made pursuant to Rule 34(1) of the Rules, to admit additional evidence comprising a witness statement from Dr F. The GMC

opposed the application on the basis that the evidence was disputed and confirmation had not initially been provided regarding Dr F's availability for cross-examination. Following confirmation that Dr F would attend to give oral evidence, the Tribunal determined that it was fair and appropriate to admit the statement. The Tribunal's full decision on the application is included at Annex C. However, Dr F was subsequently not called to give evidence and the Tribunal did not rely upon his witness statement.

9. The Tribunal refused Dr Ojutiku's application, made pursuant to Rule 17(2)(g) of the Rules, of no case to answer at the close of the GMC's case. Dr Ojutiku submitted that the GMC had failed to adduce sufficient evidence capable of proving the factual and mental elements of the allegations, including dishonesty. The GMC opposed the application and submitted that sufficient evidence had been adduced upon which a properly directed Tribunal could find the allegations proved. The Tribunal's full decision on the application is included at Annex D.

The Allegation and the Doctor's Response

10. The Allegation made against Dr Ojutiku is as follows:

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

1. At all material times you were employed as a Consultant Obstetrician and Gynaecologist by Mid and South Essex NHS Foundation Trust, formerly the Basildon and Thurrock University Hospitals NHS Foundation Trust ('the Trust'). *To be determined Amended under Rule 17(6)*

2. On one or more of the dates set out in Schedule 1, during your contracted hours with the Trust, you undertook clinics at Chartwell Private Hospital for Springfield Hospital, Ramsay Health Care UK ('Ramsay Health'). *To be determined*

3. You received payment for the clinics you undertook for Ramsay Health, although you were paid by the Trust for the same period as part of your contracted hours as set out in Schedule 1. *To be determined*

4. You knew that:
   a. during your contracted hours with the Trust you:
      i. were not permitted to undertake work for any other provider; *To be determined*

ii. had to work onsite; ***To be determined***

b. you had not obtained permission from the Trust to:

i. undertake work for any other provider during your contracted hours with the Trust; ***To be determined***

ii. work offsite during your contracted hours with the Trust. ***To be determined***

5. Your conduct as described at paragraphs 2 and 3 was dishonest by reason of paragraph 4. ***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***

Witness Evidence

11. The Tribunal received oral evidence on behalf of the GMC from the following witnesses:

• Mr A, Deputy Chief Executive and Director of Strategy and Transformation at Mid and South Essex NHS Foundation Trust, by video link. His witness statements were dated 20 January 2025, 8 April 2025, 29 December 2025 and 11 May 2026.

• Mr G, former Managing Director at Basildon and Thurrock University Hospitals NHS Foundation Trust, by video link. His witness statement was dated 5 January 2026.

• Dr B, Interim Chief Medical Officer and Responsible Officer at Mid and South Essex NHS Foundation Trust, by video link. His witness statements were dated 7 May 2024, 29 April 2025, 15 December 2025 and 15 May 2026.

• Mr C, General Manager for Obstetrics and Gynaecology at Mid and South Essex NHS Foundation Trust, by video link. His witness statements were dated 30 January 2025, 8 April 2025 ,17 December 2025 and 17 May 2026.

• Dr I, Consultant Obstetrician and Gynaecologist, by video link. His witness statements were dated 4 February 2025 and 8 July 2025.

• Mr D of Ramsay Health Care UK, by video link. His witness statement was dated 18 December 2025 and 14 May 2026.

12. Dr Ojutiku provided his own witness statements dated 21 March 2026 and 21 April 2026 but did not give oral evidence.

Documentary Evidence

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

- Dr Ojutiku's Job Plans with Mid and South Essex NHS Foundation Trust (formerly Basildon and Thurrock University Hospitals NHS Foundation Trust), various dates.

- Email from Mr G to Dr B dated 1 March 2019.

- Email chains between Trust staff, including Dr B, Mr C, Mr A and Dr Ojutiku, dated variously between 2019 and 2024.

- Referral to the GMC with supporting documentation dated 3 November 2021.

- The Trust's Job Planning Policy dated 23 August 2017.

- Email from Dr B to Trust consultants, including Dr Ojutiku, regarding private practice and SPA time dated 16 June 2017.

- Emails from Dr I to consultant colleagues dated 17 February 2016 and 3 May 2018

- Department of Health "A Code of Conduct for Private Practice", dated January 2004.

- Schedule of clinics undertaken by Dr Ojutiku at Chartwell Hospital between 28 April 2017 and 10 May 2019.

- Documentation confirming payments made to Dr Ojutiku in respect of private practice, dated 17 March 2024.

- Consultant Contract (2003) National Terms and Conditions.

- Car parking and vehicle entry and exit data relating to Dr Ojutiku's vehicles, dated between 2017 and 2019.

- Spreadsheets prepared during the Trust's Counter Fraud investigation, undated.

• BMA Guidance "Defining best practice for the work environment – Guidance for consultant doctors", dated April 2008.

• Examples of Dr Ojutiku's output for SPA sessions, undated.

• Correspondence between Dr Ojutiku and Dr I, dated between 2015 and 2020.

• Article entitled "Assessing the New NHS Consultant Contract", dated May 2006.

• Screenshots of messages and call records between Dr Ojutiku and Dr I, undated.

The Tribunal's Approach

14. In reaching its decision on the facts, the Tribunal applied the civil standard of proof. This means that the Tribunal decided whether, on the balance of probabilities, the GMC was able to prove it was more likely than not that the matters occurred as alleged. The burden of proof was with the GMC and it was for the GMC to prove the case that it was presenting against the doctor. There was no burden on the doctor to prove or disprove anything.

15. The Tribunal approached fact finding by firstly identifying agreed facts and evidence. To reach a decision on the disputed facts, the Tribunal assessed the evidence in the round. It considered what conclusions and inferences could be drawn from the documentary evidence. The Tribunal then considered the available oral evidence and subjected that evidence to critical scrutiny against the agreed facts and documentary evidence to consider a witness' reliability and credibility. The Tribunal did not decide reliability and credibility based on the demeanour of a witness alone.

16. The Tribunal was advised that it may draw reasonable inferences from the evidence using common sense and experience, but that it must not speculate about matters or consider evidence which might have been available but was not before it. The Tribunal was reminded that it must consider the totality of the evidence, form its own judgment as to the reliability of witnesses, and determine the weight to be attached to the evidence of each witness.

17. The Tribunal was advised that the mere fact that Dr Ojutiku denied allegations could not be held against him. Rather, the Tribunal's role was to assess whether any denial was supported or undermined by the evidence. In assessing witness reliability, reference was made to the case of *R (on the application of Dutta) v General Medical Council {2020} EWHC*

1974 (Admin), in which it was stated that a Tribunal should make a rounded assessment of a witness's reliability rather than considering reliability in relation to each individual allegation in isolation.

18. The Tribunal was advised that, when assessing evidence, it should consider matters including any inconsistencies within a witness's own evidence, conflicts between witnesses or documentary evidence, the presence or absence of corroborative evidence, contemporaneous documents and any reason why an allegation could not be true.

19. In relation to inherent probability or improbability, the Tribunal was advised that this may be taken into account when weighing the evidence and deciding whether an event occurred, although it was noted that the principle had little, if any, application to the present facts.

20. In relation to hearsay evidence, the Tribunal was advised that although Dr F's statement had originally been intended to be adduced in evidence, Dr Ogunsanya subsequently confirmed that he did not seek to rely upon it. The Tribunal was therefore advised that it should place no weight upon the statement and should not take its contents into account.

21. In relation to the allegations of dishonesty, the Tribunal was advised of the principles set out in *Ivey v Genting Casinos (UK) Limited (t/a CROCKFORDS) [2017] UKSC 67*. The Tribunal was advised that, first, it must ascertain the individual's actual state of knowledge or belief as to the facts. The reasonableness of any belief was relevant only as evidence of whether that belief was genuinely held and was not itself a separate requirement. Secondly, once the individual's actual state of mind had been established, the Tribunal must determine whether the conduct was honest or dishonest by applying the objective standards of ordinary decent people. The Tribunal was advised that there is no requirement for the individual to appreciate that the conduct would be regarded as dishonest by those standards.

22. The Tribunal was also advised in relation to the issue of adverse inference. It was advised that an adverse inference is a conclusion drawn against a party arising from a failure to give evidence, produce documents, or otherwise cooperate. Reference was made to the submissions advanced by both parties concerning the circumstances in which such an inference may properly be drawn.

23. The Tribunal was referred to the safeguards identified in R (KUZMIN) *v General Medical Council [2019] EWHC 2129 (Admin)*, namely that proceedings must remain fair and that generally no adverse inference should be drawn unless: a prima facie case to answer has been established; the individual has been given sufficient notice and warning that an

inference may be drawn; the individual has had an opportunity to explain the reason for not giving evidence; there is no reasonable explanation for the failure to give evidence; and there are no other circumstances which would render it unfair to draw such an inference.

24. The Tribunal was advised that it was ultimately a matter for it to determine whether it was appropriate to exercise its discretion to draw any adverse inference in the circumstances of the case.

The Tribunal's Analysis of the Evidence and Findings

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

Paragraph 1

26. The Tribunal considered and determined that paragraph 1 of the allegation is proved. The Tribunal noted that it was undisputed that Dr Ojutiku was employed as a Consultant Obstetrician and Gynaecologist by the Trust, throughout the material period. The Tribunal had regard to the contractual documentation consented to by Dr Ojutiku in 2005 and backdated to 2003. Whilst Dr Ojutiku disputed the interpretation and application of certain contractual terms, he accepted that he was employed by the Trust under that contract during the relevant period.

27. Accordingly, the Tribunal determined as a matter of fact that paragraph 1 of the Allegation is proved.

Paragraph 2

28. The Tribunal noted that Schedule 1, detailing dates on which Dr Ojutiku undertook clinics at Chartwell Private Hospital during Friday afternoons, was not contested by Dr Ojutiku. The Tribunal had regard to the documentary evidence of the email from Mr H to Dr B dated 7 March 2019.

> *''Dear both*
>
> *We had the job planning discussion with Dale this afternoon. I led the discussion supported by* [Mr C] *and* [Dr I].

In relation to the incident last Friday, Dale admitted to have been working in the private sector from 13:00 that afternoon, and that he regularly has a private clinic on the afternoons on Friday Week 1 and 3 of the 4 weeks job plan cycle. This at present states he is working an SPA.

There is evidence of communication from [Dr I] *to all the consultants over the past 2-3 years of the principles of providing SPAs on site which Dale was included in and I made it clear to him that we are working to the job planning policy which states on site working during SPA time.*

One of the actions for him is to state clearly when he is working in the private sector which he agreed he will do.

His job plan could not be signed off as it is locked down at the moment and needs to be updated. Once he has done that it will be reviewed and signed off by [Dr I] *and then me if we are happy with its contents.*
Kind regards
[Mr H]''

29. The Tribunal noted that Dr Ojutiku accepted that he was undertaking the relevant private clinical work whilst employed by the Trust and during the periods identified by the GMC. Having considered the documentary evidence and the oral evidence before it, the Tribunal was satisfied as a matter of fact that on the balance of probabilities Dr Ojutiku undertook the clinics as alleged and accordingly found paragraph 2 is proved.

Paragraph 3

30. The Tribunal accepted the documentary evidence, including the information provided by Chartwell, which confirmed that Dr Ojutiku received payment from Ramsay Health for undertaking clinics on the dates identified in Schedule 1. The Tribunal also accepted that, during the same periods, Dr Ojutiku was receiving payment from the Trust pursuant to his contractual job plan. Dr Ojutiku was scheduled to undertake SPA work for the Trust during those periods and was expected to be present at the hospital. The Tribunal noted that Dr Ojutiku did not contest that he had received the amounts detailed in Schedule 1.

31. Accordingly, the Tribunal determined that as a matter of fact that paragraph 3 is proved.

Paragraph 4

32. The Tribunal next considered paragraphs 4(a)(i) and 4(a)(ii), namely whether Dr Ojutiku knew that during his contracted hours with the Trust he was not permitted to undertake work for another provider and that he was required to work onsite.

33. The Tribunal carefully considered the chronology of the documentary evidence and the contractual framework within which Dr Ojutiku was working. The Tribunal reminded itself of its earlier considerations in Annex D regarding the contractual position and job planning arrangements. In particular, the Tribunal had previously determined that there was sufficient evidence upon which it could find that Dr Ojutiku was working under the relevant contractual framework and agreed job plans.

> *'' Whilst the Tribunal considered the above submission, it accepted Mr Taylor's submission that the absence of a signed contract was not determinative. The Tribunal noted that Dr Ojutiku had accepted in his own statement that he had moved onto the 2003 consultant contract, in December 2005, backdated to April 2003. It further noted that the evidence from the GMC witnesses and the 2003 Terms was that the job plans formed part of a consultant's contractual arrangements. The Tribunal therefore determined that there was sufficient evidence upon which it could find that Dr Ojutiku was working under the relevant contractual framework and agreed job plans.''*

34. The Tribunal accepted that Dr Ojutiku had moved onto the 2003 Consultant Contract in December 2005, backdated to April 2003, and had committed himself to the contractual framework governing consultant practice within the Trust namely *Basildon and Thurrock University Hospitals NHS Foundation Trust Job Planning policy and Department of Health Code of Conduct for Private Practice (2004)*. The Tribunal was satisfied that the relevant contractual provisions concerning SPA activity, onsite working, and private practice formed part of the applicable contractual arrangements throughout the relevant period.

35. The Tribunal noted that there was no evidence before it of concerns being raised regarding Dr Ojutiku's job planning arrangements between approximately 2005 and 2015. However, the Tribunal considered it significant that there was similarly no evidence of Dr Ojutiku challenging or disputing the contractual requirements governing SPA activity or private practice during that period.

36. The Tribunal attached weight to the chronology of communications sent to consultants concerning SPA activity and private practice. The Tribunal first considered the email from Dr I dated 17 February 2016, which stated that SPA activity was required to be

undertaken onsite at Basildon Hospital. The Tribunal considered this to be a clear contemporaneous communication of the Trust's expectations regarding onsite SPA working:

> *''Dear All*
>
> *In the last few weeks, I have had to call those colleagues on SPA as stated in their job plan for last minute cover of duties due to sudden and unforeseen circumstance. Unfortunately, on occasions, I've had a nonresponse or where there is response the individual is not on site. I like to refresh Trust policy that you are expected to carry out your SPA sessions on site unless you have specific permission to conduct a study or training from management. Where this is the case it must be in writing detailing the activity together with a start and end date.*
>
> *If you are out of the hospital during an SPA session without fulfilling the above condition a clinical incident form will be filled and an investigation carried out along the lines of absence without leave with the consequence that this brings.*
>
> *Please do not hesitate to contact me should you require further clarification.''*

37. The Tribunal then considered the subsequent job planning arrangements. The Tribunal noted the agreed job planning documentation effective from 1 April 2017. The Tribunal accepted the GMC's submission that the agreed job plans formed part of Dr Ojutiku's contractual arrangements and reflected an agreed understanding as to his programmed activities and locations of work. The Tribunal was satisfied that Dr Ojutiku was actively involved in those discussions and knowingly agreed the job plans.

38. The Tribunal attached particular significance to the email from Dr B dated 16 June 2017 referring to the Code of Conduct for Private Practice. The Tribunal noted the express statement that "*no private work can be carried out in SPA time*". The Tribunal considered this to be a direct and unambiguous communication to consultants regarding the prohibition on undertaking private work during SPA sessions:

> *''Dear Colleagues*
>
> *I am writing on this subject for a number of reasons. We have had a number of new consultant appointments in the hospital who may not be aware of the code of conduct. At least a couple have approached me for clarification. One or two questions have been asked by clinical leads. In addition a litigation case against the*

Trust & its clinicians unearthed some worrying practices that I sincerely hope will not be repeated.
· Private professional services should be included in the job plan and schedule of PAs.
· All private professional services must be arranged and undertaken in accordance with the Department of Health's Code of Conduct for private practice.
(attached). The document provides guidance & lays out the broad principles to ensure providing services for private patients should not prejudice NHS patients' interests or disrupt NHS services. Since the publication of this document, Revalidation & Responsible Officer role has been introduced that covers the full scope of clinical practice.
· Under the new consultant contract 2003 consultants wishing to undertake remunerated private clinical work outside the main contract are obliged to offer their first spare professional capacity to the NHS. This is in form of an additional PA above the standard 10 PA contract should the employing NHS Trust wish to offer such additional activity. For details of this arrangement refer to the 2003 contract.
· Part-time consultants who wish to use some of their non-NHS time to do private practice would be expected to offer up to one extra programmed activity on top of their normal working week.
I have been specifically asked to clarify on the following two points:
1. No Private work can be carried out during On call period or during SPA & Admin time.
This is self-explanatory & should be read as such.
…
I hope this is useful & gives clarity.
Thank you
[XXX]
[Dr B] FRCP''

39. The Tribunal also considered the Job Planning Policy dated 23 August 2017. The Tribunal further considered the agreed job plan effective from 1 April 2017. The Tribunal noted that the agreed job plan expressly identified SPA sessions on Friday afternoons, including the first, second and fourth Fridays within the four-week cycle.

40. The Tribunal considered it significant that the first recorded Chartwell clinic occurred on 28 April 2017, shortly after the relevant job planning arrangements had already been agreed. The Tribunal was satisfied from the documentary evidence that the Chartwell clinics were regular and pre-arranged. The Tribunal further noted that Dr Ojutiku had expressly identified and ring-fenced Tuesday mornings for private practice within his job plan. The

Friday afternoon private clinics, undertaken during SPA sessions, were not disclosed within the agreed job planning arrangements and no subsequent request was made to vary those arrangements.

41. The Tribunal also attached weight to the further email from Dr I dated 3 May 2018 reminding consultants that SPA activity was to be undertaken onsite:

> *'' Dear All*
> *I have had the need to speak to individuals this week during their SPA's only to find that they are not available and not on site. Can I remind you that the Trust expects that your SPA activity is conducted on site unless specific permission is given by management and must be SMART tested. Any other reason will be treated as absence without permission and will be escalated.*
> *Regards*
> [Dr I]''

The Tribunal considered that this reinforced earlier communications and demonstrated that the requirement for onsite SPA activity continued to be communicated during the relevant period.

42. The Tribunal considered the subsequent events in 2019, including concerns raised following the CQC meeting on 1 March 2019, the meeting with Mr G on 14 March 2019, and the evidence arising from the NHS Counter Fraud investigation. The Tribunal accepted the evidence of Mr C that concerns were specifically raised, at a point prior to 1 March 2019, with Dr Ojutiku regarding undertaking private work during periods when he was contracted to undertake NHS work.

43. The Tribunal took into account the oral evidence of Dr B regarding the rationale underpinning the contractual and job planning arrangements. The Tribunal accepted his evidence that the purpose of the framework under the 2003 Terms was to ensure transparency and accountability regarding the use of NHS contracted time and public funds.

44. The Tribunal considered the defence position that SPA work could be undertaken flexibly and that Dr Ojutiku believed he could complete SPA activity whilst also undertaking private work offsite. The Tribunal considered Dr Ojutiku's statement regarding his understanding of SPA flexibility and the position historically said to have applied in 2005:

> *''In practice SPA sessions were frequently interrupted or cancelled due to clinical pressures (including red or black alerts), not formally recorded when deferred, and*

routinely undertaken flexibly, including outside normal hours, and consultants did undertake SPA work off-site, or recoup SPA at a later date. The importance of flexibility in the scheduling and location of SPAs has been explained in the BMA document - Defining best practice for the work environment; Guidance for consultant doctors April 2008 (Appendix 1)''

However, the Tribunal was not persuaded by that explanation. The Tribunal considered that the contemporaneous documents repeatedly and clearly communicated that SPA activity was to be undertaken onsite unless permission had been obtained and that private work was not permitted during SPA time.

45. The Tribunal had evidence before it that job planning was agreed for the period 8 October 2015 to 31 March 2017, being the period prior to Dr Ojutiku commencing the private clinics at Chartwell. Tuesday mornings from 8 October 2015 onwards were ringfenced for private practice work. At that stage Dr Ojutiku was distinguishing between his private practice work and SPAs in his job planning. He may have quoted a historical position from 2005 but the documentation the Tribunal has seen shows that from 2015 onwards there was a clear demarcation enforced by the Trust through its job planning regarding private practice and contracted NHS hours, whereby neither could be overridden or varied without express Trust agreement.

46. The Tribunal further considered Dr Ojutiku's own witness statement, including where he described SPA sessions being "*frequently interrupted or cancelled*". The Tribunal considered that this demonstrated Dr Ojutiku's awareness that SPA sessions formed part of his NHS contractual responsibilities and that consultants undertaking SPA work were expected to remain present, onsite and available to the Trust.

47. The Tribunal accepted that it was not drawing an adverse inference from Dr Ojutiku's decision not to give oral evidence. However, the Tribunal considered that the documentary evidence and oral evidence of the GMC witnesses established a clear and consistent chronology demonstrating that Dr Ojutiku had repeatedly been informed of the relevant restrictions and requirements concerning SPA activity and private practice.

48. The more contemporaneous evidence of Mr C provided to the Counter Fraud investigation showed that the issue of Dr Ojutiku conducting private practice work during SPAs was not a new concern. Mr C detailed in that statement how Dr Ojutiku was hostile about being challenged by Dr I about doing private work during NHS contracted hours. He especially recalled it because of the reference Dr Ojutiku made to being likened to a taxi driver. This evidence was given to the Counter Fraud investigation in November 2021 and

further repeated in Mr D's more recent statement for the GMC. It demonstrated to the Tribunal the fact that Dr Ojutiku was aware of the concern had been previously challenged about it and was therefore aware of the prohibition on private practice work being undertaken during NHS scheduled hours. Whilst Mr C could not be precise about the date of that meeting, he confirmed that it predated the 1 March 2019 index event because when he was informed by Dr Ojutiku's secretary that he was doing private work he stated in his statement that he was "*not shocked*" to learn of this fact.

49. Further the Tribunal did not accept the defence position that the terms in respect of private practice and SPA session to be onsite were onerous terms which had to be brought expressly to the attention of Dr Ojutiku before it could be a part of his contractual terms. It was clear to the Tribunal from the Terms 2003 accepted by Dr Ojutiku from 2005 onwards, his own job plan agreed in October 2015 and annually from 1 April 2017 and the LNC agreed job planning policy from 2017 that this information was clearly within his knowledge at all relevant times, there was no basis to consider that he had not received the emails sent to him addressing private practice and onsite requirements, and such contractual terms were not onerous and simply routine parts of the 2003 Terms and other auxiliary documents which rehearsed the same contractual expectations.

50. Accordingly, the Tribunal concluded that Dr Ojutiku knew that during his contracted hours with the Trust he was not permitted to undertake work for another provider and that he was required to work onsite unless permission had been obtained. The Tribunal therefore found paragraphs 4(a)(i) and 4(a)(ii) proved.

51. The Tribunal next considered paragraph 4(b)(i) and 4(b((ii).

52. The Tribunal had regard to the evidence of Dr B, Dr Ojutiku's job plans, the *Job Planning Policy, the 2003 Terms and the Code of Conduct for Private Practice*.

53. The Tribunal noted that Dr Ojutiku did not contend that he had expressly sought or obtained permission from the Trust to undertake private practice during his contracted SPA sessions. Rather, Dr Ojutiku's position was that he did not believe permission was required because he considered that he could legitimately to use his Friday afternoon SPA sessions for private practice work, because he was completing his SPAs at other times and was effectively repurposing his Friday scheduled time for private practice instead.

54. The Tribunal determined that the evidence did not support that interpretation. The Tribunal accepted the evidence of Dr B that SPA time formed part of Dr Ojutiku's contracted NHS duties and was not time which could be repurposed for private practice without the

Trust's knowledge and agreement. The Tribunal noted the definition of *Supporting Professional Activities* within the *Consultant Contract (2003) National Terms and Conditions*:

> *''Supporting Professional Activities: activities that underpin Direct Clinical Care. This may include participation in training, medical education, continuing professional development, formal teaching, audit, job planning, appraisal, research, clinical management and local clinical governance activities.''*

55. The Tribunal also had regard to Dr Ojutiku's job plans, which identified SPA sessions as programmed activities forming part of his contractual NHS obligations. The Tribunal was satisfied that these sessions remained contracted Trust time notwithstanding that they were not Direct Clinical Care sessions but viewed as equally important.

56. The Tribunal accepted the evidence that NHS contracted hours were required to take priority over private practice and that consultants were expected to be available to the Trust during those hours unless permission had been granted otherwise.

57. The Tribunal further accepted Dr B's evidence that, had the Trust been aware that Dr Ojutiku intended to undertake private practice during SPA time, permission would not have been granted. The Tribunal also accepted Dr B's evidence that public confidence in the profession would be undermined were members of the public to discover that a doctor was undertaking remunerated private practice whilst simultaneously being paid by the NHS during contracted hours.

58. The Tribunal therefore determined that Dr Ojutiku had not obtained permission from the Trust either to undertake work for another provider during his contracted hours or to work offsite during those hours.

59. Accordingly, the Tribunal found paragraph 4(b)(i) and (ii) proved.

Paragraph 5

60. The Tribunal next considered whether the conduct found proved at paragraphs 2 and 3 was dishonest by reason of paragraph 4.

61. The Tribunal reminded itself of the test for dishonesty set out in *Ivey*. The Tribunal first considered Dr Ojutiku's actual state of knowledge or belief as to the facts and then considered whether, viewed objectively, his conduct would be regarded as dishonest by the standards of ordinary decent people.

62. The Tribunal was satisfied that paragraphs 2, 3 and 4 had been proved. The Tribunal therefore considered Dr Ojutiku's knowledge and understanding at the relevant time.

63. The Tribunal determined that Dr Ojutiku knew that he was not permitted to undertake private practice offsite during his contracted NHS hours without the Trust's knowledge and permission. In reaching that conclusion, the Tribunal had regard to Dr Ojutiku's agreed job plans, including the *April 2017 job plan, the 2003 Terms, the Trust's policies, and the Code of Conduct for Private Practice*.

64. The Tribunal accepted that SPA sessions formed part of Dr Ojutiku's contractual NHS obligations and could not simply be repurposed for private practice activities without permission from the Trust. The Tribunal was satisfied that the contractual documentation and job planning arrangements made this clear.

65. The Tribunal also accepted the evidence of Mr C regarding a conversation with Dr Ojutiku prior to March 2019 concerning private practice and SPA time. The Tribunal noted that this evidence was not materially challenged. The Tribunal considered that this supported the conclusion that Dr Ojutiku was well aware of the Trust's expectations and requirements regarding offsite work and private practice during contracted hours.

66. The Tribunal further determined that Dr Ojutiku knew that any proposal to undertake regular private practice during SPA sessions would have required disclosure to, and agreement from, the Trust and inclusion within formal job planning arrangements. The Tribunal considered it significant that Dr Ojutiku neither sought nor obtained such permission, and that the private practice sessions undertaken between 28 April 2017 and 1 March 2019 did not appear within his agreed job plans.

67. The Tribunal considered whether there was any realistic innocent explanation for Dr Ojutiku's conduct. The Tribunal took account of Dr Ojutiku's position that he believed he could legitimately use SPA time for private practice. However, the Tribunal did not consider that belief to be genuinely sustainable in light of the contractual documents, the job planning requirements, the emails from management and the Trust policies. Whilst the Tribunal considered Dr Ojutiku's seniority and experience as a consultant as detailed in his witness statement the Tribunal had to bear in mind it had not had the opportunity to test this evidence in cross examination.

68. Accordingly, the Tribunal was satisfied that, subjectively, Dr Ojutiku knew that he was undertaking private practice offsite for another provider during NHS contracted hours without permission from the Trust.

69. The Tribunal therefore went on to consider the objective limb of the test. The Tribunal determined that ordinary decent people would regard it as dishonest for a consultant doctor to undertake remunerated private practice for another provider during contracted NHS hours, whilst continuing to receive payment from the Trust for those same hours, without the Trust's knowledge or permission.

70. Accordingly, the Tribunal found paragraph 5 proved.

The Tribunal's Overall Determination on the Facts

71. The Tribunal has determined the facts as follows:

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

1. At all material times you were employed as a Consultant Obstetrician and Gynaecologist by Mid and South Essex NHS Foundation Trust, formerly the Basildon and Thurrock University Hospitals NHS Foundation Trust ('the Trust'). ***Determined and found proved Amended under Rule 17(6)***

2. On one or more of the dates set out in Schedule 1, during your contracted hours with the Trust, you undertook clinics at Chartwell Private Hospital for Springfield Hospital, Ramsay Health Care UK ('Ramsay Health'). ***Determined and found proved***

3. You received payment for the clinics you undertook for Ramsay Health, although you were paid by the Trust for the same period as part of your contracted hours as set out in Schedule 1. ***Determined and found proved***

4. You knew that:
    a. during your contracted hours with the Trust you:
        i. were not permitted to undertake work for any other provider; ***Determined and found proved***
        ii. had to work onsite; ***Determined and found proved***
    b. you had not obtained permission from the Trust to:
        i. undertake work for any other provider during your contracted hours with the Trust; ***Determined and found proved***

ii. work offsite during your contracted hours with the Trust.
Determined and found proved

5. Your conduct as described at paragraphs 2 and 3 was dishonest by reason of paragraph 4. *Determined and found 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 - 11/06/2026

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Ojutiku's fitness to practise is impaired by reason of misconduct.

The Evidence

2. The Tribunal has reviewed its findings of fact and in addition, the Tribunal received a reflective statement from Dr Ojutiku.

Submissions

Submissions on behalf of the GMC

3. Mr Taylor, Counsel, submitted that the Tribunal should have regard to the statutory overarching objective under section 1A of the Medical Act 1983, namely the protection of the public, which includes: protecting, promoting and maintaining the health, safety and wellbeing of the public; promoting and maintaining public confidence in the medical profession; and promoting and maintaining proper professional standards and conduct. He submitted that all three limbs of the overarching objective were engaged in the present case.

4. Mr Taylor referred the Tribunal to the Guidance for MPTS Tribunals: Section 3 – MPT Hearings (effective from 24 November 2025) ('the Guidance'), in particular Part B concerning impairment. He submitted that the Tribunal was required to follow the two-stage approach identified in *Cheatle v General Medical Council [2009] EWHC 645 (Admin)*, namely first determining whether the facts found proved amounted to misconduct and secondly determining whether, as a result, the doctor's fitness to practise was impaired.

5. Mr Taylor submitted that misconduct was a matter for the Tribunal's judgment. He referred to the definition in *Roylance v General Medical Council (No 2) [2000] 1 AC 311*, namely that misconduct is "*a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances*", qualified by the requirements that it be both professional and serious. He further referred to *Nandi v General Medical Council [2004] EWHC 2317 (Admin),* in which Collins J emphasised that seriousness must be given proper weight, and to *Meadows v General Medical Council* [2007] QB 462, where Auld LJ observed that misconduct could be conduct regarded as deplorable by fellow practitioners.

6. Mr Taylor also relied upon *R (Remedy UK Ltd) v General Medical Council [2010] EWHC 1245 (Admin),* submitting that misconduct may involve either sufficiently serious misconduct in professional practice or conduct of a dishonourable or disgraceful kind bringing the profession into disrepute. He submitted that both forms of misconduct were engaged in the present case.

7. Mr Taylor submitted that the Tribunal's findings demonstrated that Dr Ojutiku had undertaken private work during contracted NHS time over a prolonged period, despite clear instructions that SPA work was to be undertaken on site with private work prohibited from that activity. He submitted that the conduct involved dishonesty, persistent breaches of trust, and personal financial gain. He submitted that the conduct would likely have continued had it not been discovered and that it represented a serious departure from the standards expected of a registered medical practitioner.

8. Mr Taylor submitted that the facts found proved amounted to serious professional misconduct and represented serious breaches of trust and serious departures from the standards set out in Good Medical Practice ('GMP') (2013), including the duties to act honestly, with integrity, and in accordance with the law.

9. Turning to impairment, Mr Taylor submitted that the Tribunal should consider the Guidance relating to dishonesty allegations. He referred the Tribunal to paragraphs 77–94 of the Guidance Introduction section, concerning dishonesty and submitted that dishonesty cases commonly fall at the higher end of the spectrum of seriousness. He submitted that the doctor's dishonesty had the potential to impact patient care because Dr Ojutiku was not on site, as required by the Trust, in case of clinical emergency. He further submitted that dishonest conduct towards colleagues undermined collaborative working and safe patient care.

10. Mr Taylor submitted that the conduct undermined public confidence in the profession and breached the fundamental tenets of the profession requiring doctors to act

honestly and with integrity. He referred to the Guidance stating that it would be unusual for a proven allegation of dishonesty not to undermine public confidence in the profession.

11. Mr Taylor further submitted that, pursuant to paragraphs 26, 27 and 31 of Section 3 of the Guidance, the conduct fell at the higher end of the spectrum of seriousness because it involved dishonesty arising within the doctor's professional role, repeated over a sustained period, and involving significant financial benefit.

12. Mr Taylor submitted that dishonesty allegations at the higher end of seriousness are more difficult to remediate and that evidence of insight and remediation may carry less weight in such cases. He submitted that Dr Ojutiku continued to pose a current and ongoing risk to public protection and that a finding of impairment was therefore necessary in order to uphold public confidence in the profession and maintain proper professional standards and conduct.

13. In further submissions, Mr Taylor addressed the reflective statement provided by Dr Ojutiku and received by the Tribunal shortly after its determination on facts had been handed down.

14. Mr Taylor referred the Tribunal to paragraph 87 of the Guidance for MPTS Tribunals: Section 3 – MPT Hearings concerning the nature, quality and timing of material said to demonstrate insight. He submitted that the reflective statement had been produced approximately two hours after the Tribunal's findings and invited the Tribunal to consider whether the document represented genuine insight or whether it had been prepared in an attempt to say what the Tribunal might expect to hear.

15. Mr Taylor submitted that genuine insight carried greater weight where it arose voluntarily rather than because the doctor believed reflection was "required". He referred the Tribunal to the wording of the reflective statement, namely "*I understand that this stage requires me to reflect on the professional standards engaged*" and submitted that this suggested the reflection was prompted by the procedural stage rather than arising spontaneously or from genuine personal acknowledgment of wrongdoing.

16. Mr Taylor submitted that the Tribunal should carefully assess what, if anything, Dr Ojutiku had accepted about the determination of facts within the reflective statement. He submitted that there was no express acknowledgment or acceptance within the document that Dr Ojutiku had acted dishonestly. Mr Taylor submitted that this fell short of an acceptance of dishonesty and instead framed the matter as an issue of misunderstanding or interpretation by him.

17. Mr Taylor submitted that the Tribunal should therefore treat the reflective statement with caution, bearing in mind both its timing and its contents, and assess whether the purported insight was genuine.

18. Mr Taylor further referred the Tribunal to *Sayer v General Osteopathic* Council *[2021] EWHC 370 (Admin),* in which Morris J reviewed the authorities relating to insight, Morris J concluded that the authorities established that insight was principally concerned with future risk of repetition and was distinct from mere remorse for past misconduct. He accepted that denial of misconduct should not automatically be equated to a lack of insight and that maintaining innocence was not of itself a reason to increase sanction. However, Morris J stated that a registrant's attitude towards the underlying misconduct remained highly relevant when assessing the genuineness and extent of insight.

19. Mr Taylor also referred the Tribunal to *General Medical Council v Khetyar [2018] EWHC 2747 (Admin),* in which Andrew Baker J observed that insight requires the motivations and triggers for the misconduct to be identified and understood, and that this would rarely be possible without acceptance that the conduct had in fact occurred. Mr Taylor submitted that any assessment of ongoing risk must pay close attention to the doctor's current understanding of and attitude towards the misconduct.

20. Mr Taylor submitted that the Tribunal should therefore consider whether Dr Ojutiku genuinely accepted that he had acted dishonestly. He submitted that, absent such acceptance, the Tribunal would be entitled to conclude that the insight demonstrated was limited. He characterised the reflective statement as perfunctory and superficial. He submitted that the Tribunal should carefully assess whether genuine insight had in fact been demonstrated.

Submissions on behalf of Dr Ojutiku

21. On behalf of Dr Ojutiku, Dr Ogunsanya, Solicitor advocate, submitted that the Tribunal's assessment at the impairment stage was a forward-looking exercise concerned with whether Dr Ojutiku's fitness to practise was impaired as at the date of the hearing, rather than solely with past misconduct.

22. Dr Ogunsanya referred the Tribunal to the decision of *Professional Standards Authority for Health and Social Care v General Medical Co [2015] EWHC 1304 (Admin)* submitting that the appropriate approach was summarised at paragraphs 69 and 70, namely that the question was whether the registrant's fitness to practise was impaired at the time of the hearing. He submitted that although the Tribunal was entitled to take account of the past

misconduct, the issue was whether there remained a current risk requiring a finding of impairment.

23. Dr Ogunsanya accepted the Tribunal's findings of fact, including the finding of dishonesty, and acknowledged that the conduct found proved was serious. However, he submitted that seriousness alone was not determinative of impairment. He submitted that the Tribunal must also consider the context of the misconduct, the issue of current risk, insight, remediation, and whether a finding of impairment was necessary to maintain public confidence and uphold professional standards.

24. In relation to the first limb of public protection, Dr Ogunsanya submitted that there was no patient safety concern arising from the misconduct. He submitted that there had been no findings of clinical incompetence, unsafe patient care, inappropriate prescribing, falsification of patient records, deception of patients, or exploitation of patients. He submitted that the work undertaken at Chartwell involved NHS patients and had contributed to reducing waiting lists. He further submitted that the Trust itself contracted work to private providers for this purpose and that consultants could undertake similar additional work through NHS arrangements. Accordingly, he submitted that the first limb of the overarching objective was not significantly engaged.

25. Dr Ogunsanya submitted that the SPA activities had ultimately been completed, albeit not at the allocated time, such that there had been no financial loss to the NHS or the Trust. He submitted that while Dr Ojutiku had obtained financial gain, the case was not one involving an attempt dishonestly to obtain money from the NHS.

26. Turning to current impairment, Dr Ogunsanya submitted that the conduct had ceased in May 2019 following clarification of the SPA arrangements and the alteration of Dr Ojutiku's SPA and subsequent job planning. He submitted that there had been no recurrence of similar conduct since that time and no further concerns raised by the Trust or any other organisation following Dr Ojutiku's retirement in 2023. He submitted that the absence of repetition over a number of years substantially reduced the risk of recurrence.

27. Dr Ogunsanya submitted that Dr Ojutiku's retirement was a relevant factor because it reduced any practical risk of repetition in the same employment or job-planning context. He further relied upon Dr Ojutiku's reflective statement, which he submitted demonstrated genuine insight and acceptance of the seriousness of the Tribunal's findings.

28. Dr Ogunsanya submitted that the fact Dr Ojutiku had contested the allegations should not be treated as evidence of a lack of insight. He submitted that Dr Ojutiku had consistently

maintained the same explanation from the outset when first challenged and had not fabricated a defence at a later stage.

29. In relation to public confidence and professional standards, Dr Ogunsanya accepted that members of the public may regard the conduct unfavourably. However, he submitted that the conduct should be viewed in context. He submitted that this was not a case where patient care had been abandoned in order to undertake private work, nor a case where a surgical list had been left unattended. Rather, it concerned SPA activity which had been undertaken flexibly, albeit without the required authorisation.

30. Dr Ogunsanya submitted that the misconduct was historic, had been corrected in 2019, and that the risk of repetition was low. He submitted that, in light of the passage of time, Dr Ojutiku's retirement, the absence of repetition, and the reflective material provided, the Tribunal could conclude that Dr Ojutiku's fitness to practise was not currently impaired.

31. Finally, Dr Ogunsanya referred to the evidence that the Trust itself had considered formal action to be disproportionate at the relevant time. He submitted that this was not advanced to undermine the Tribunal's findings but as part of the overall context in which the impairment decision should be approached.

32. In response to the GMC, Dr Ogunsanya submitted that it was procedurally unfair for further authorities to be relied upon without having first been provided to the defence. He submitted that, unlike the GMC, he had ensured that any authorities upon which he relied had been provided to both the Tribunal and the parties in advance.

33. Dr Ogunsanya submitted that the GMC was inviting the Tribunal to take an unduly cynical approach to Dr Ojutiku's reflective statement. He submitted that Dr Ojutiku's reflection did not begin only after the Tribunal's findings but could be traced back to 2019, when Dr Ojutiku altered his SPA arrangements following discussions with the Trust and took steps to remedy the situation. He submitted that the reflective statement represented a recognition of the Tribunal's findings and the seriousness with which the Tribunal viewed the conduct but did not detract from the fact that practical remediation had already taken place several years earlier.

34. Dr Ogunsanya submitted that the authorities referred to by the GMC did not support the proposition that remorse or insight expressed at a late stage was necessarily disingenuous. He submitted that remorse could arise at any stage and that the timing of reflection alone did not render it lacking in genuineness. He submitted that it would be wrong in principle for the Tribunal to reject or diminish the reflective statement merely because it had been prepared shortly after the factual findings had been delivered.

35. Dr Ogunsanya further submitted that Dr Ojutiku had exercised his right to challenge serious allegations of dishonesty and that this should not be held against him. He submitted that, once the Tribunal had reached adverse findings, it was appropriate and expected that Dr Ojutiku would reflect upon those findings. He submitted that the fact Dr Ojutiku had only a limited period in which to prepare the reflective statement did not mean the reflections expressed were not genuine.

36. In relation to retirement, Dr Ogunsanya submitted that there had been no intention to mislead the Tribunal. He clarified that Dr Ojutiku had retired from NHS employment but had not retired from medical practice entirely, observing that Dr Ojutiku continued to hold a licence to practise. He submitted that if any misunderstanding had arisen, it was inadvertent and not a deliberate attempt to create a false impression.

37. Dr Ogunsanya submitted that the reflective statement had been prepared in the context of the Tribunal's findings of fact and should be considered fairly and in the round. He invited the Tribunal not to approach the statement cynically and maintained that it demonstrated genuine reflection and remediation.

The relevant legal principles

38. There is no burden or standard of proof at this stage of the proceedings and the decision of impairment is a matter for the Tribunal's judgment alone. The Tribunal may only make a finding of impairment where there is a legal basis for doing so and where a decision is reached that the doctor poses a current and ongoing risk to one or more of the three parts of public protection which is likely to require restrictive action in response. The three parts of public protection are to protect, promote and maintain the health, safety and well-being of the public; to promote and maintain public confidence in the profession; and to promote and maintain proper professional standards and conduct for members of the profession.

39. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct, and that the misconduct was serious, and then whether the finding of that misconduct, which was serious, poses a current and ongoing risk to public protection requiring restrictive action in response and therefore could lead to a finding of impairment.

40. To assess whether Dr Ojutiku poses any current and ongoing risk to public protection which may require restrictive action in response, the Tribunal follow the steps set out it in the Guidance. It will consider:

- where on the spectrum of seriousness the allegation lies, based on the facts found proved the impact of any relevant context known about Dr Ojutiku and/or their working environment, and
- how Dr Ojutiku has responded to the allegations.

41. The Tribunal will also have regard to the *MPTS Guidance for Tribunals > General introduction > Protecting the public in specific case types* ('the Guidance Introduction') and in particular paragraphs 77 to 79 dealing with cases of dishonesty.

42. The Tribunal had regard to the case of *Roylance v GMC (No.2) [2000] 1 AC 311:*

'Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word "professional" which links the misconduct to the profession of medicine. Secondly, the misconduct is qualified by the word "serious". It is not any professional misconduct which will qualify. The professional misconduct must be serious.'

43. The Tribunal noted the case of *Nandi v General Medical Council [2004] EWHC 2317 (Admin) (04 October 2004):*

'31 [misconduct is observed] as "a falling short by omission or commission of the standards of conduct expected among medical practitioners, and such falling short must be serious". The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners. It is of course possible for negligent conduct to amount to serious professional misconduct, but the negligence must be to a high degree.'

44. The Tribunal also had regard to *Cheatle v General Medical Council [2009] EWHC 645 (Admin) (27 March 2009):*

'22 In circumstances where there is misconduct at a particular time, the issue becomes whether that misconduct, in the context of the doctor's behaviour both before the misconduct and to the present time, is such as to mean that his or her fitness to practise is impaired. The doctor's misconduct at a particular time may

be so egregious that, looking forward, a panel is persuaded that the doctor is simply not fit to practise medicine without restrictions, or maybe at all. On the other hand, the doctor's misconduct may be such that, seen within the context of an otherwise unblemished record, a Fitness to Practise Panel could conclude that, looking forward, his or her fitness to practise is not impaired, despite the misconduct.'

45. The Tribunal had regard to the test for impairment that was set out by Dame Janet Smith, as cited in the case of *CHRE v Grant and NMC, [2011] EWHC 927 (Admin):*

'a) Whether the registrant 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;

b) Whether the registrant has in the past brought and/or is liable in the future to bring the profession into disrepute;

c) Whether the registrant has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession.

d) Whether the registrant has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

Also:

'74 In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

As stated in:

Sun v General Medical Council [2023] EWHC 1515 at [38]: '…issues of probity, integrity and honesty are fundamental tenets of the medical profession, in a context where doctors occupy a position of privilege in trust and are expected to act in a manner which maintains public confidence and uphold proper standards of conduct.'

In addition it also had regard to:

> *Nkomo v GMC [2019] EWHC 2625 (Admin) at [35]: 'The starting point is that dishonesty by a doctor is almost always extremely serious. There are numerous cases which emphasise the importance of honesty and integrity in the medical profession, and they establish a number of general principles. Findings of dishonesty lie at the top end of the spectrum of gravity of misconduct…Misconduct involving personal integrity that impacts on the reputation of the profession is harder to remediate than poor clinical performance…. In such cases, personal mitigation should be given limited weight, as the reputation of the profession is more important than the fortunes of an individual member…*

Impairment assessment was also considered in *Cohen v. GMC [2008] EWHC 581 (Admin)* where Mr Justice Silber identified criteria for assessing current impairment which can be summarised as follows:

- Is the conduct remediable?
- Has it been remedied?
- Is it highly unlikely to be repeated in the future?

The Tribunal's determination on impairment

Is there a legal basis for considering impairment?

Misconduct

46. The Tribunal reminded itself that, at Stage 2 of the impairment process, it was required first to determine whether the facts found proved amounted to misconduct and, if so, whether that misconduct was serious.

47. The Tribunal had regard to GMP in particular paragraphs 65, 66, 68 and 77 and determined these paragraphs, excluding paragraph 66, are engaged.

> *65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*
>
> *66 You must always be honest about your experience, qualifications and current role*

68 You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.

77 You must be honest in financial and commercial dealings with patients, employers, insurers and other organisations or individuals.

48. The Tribunal was satisfied that Dr Ojutiku's conduct involved dishonesty and a lack of probity arising within his professional practice over a sustained period. The Tribunal determined that the conduct represented a serious departure from the standards expected of a registered medical practitioner.

49. Accordingly, the Tribunal concluded that the facts found proved amounted to serious misconduct.

50. The Tribunal considered that honesty and integrity were fundamental tenets of the profession and that Dr Ojutiku had failed to maintain these standards.

51. As such, the Tribunal determined that Dr Ojutiku's actions amounted to serious misconduct and that this provided a legal basis for it to consider impairment.

Where on the spectrum of seriousness does the allegation lie?

52. The Tribunal next considered where the misconduct lay on the spectrum of seriousness pursuant to Step 2(b) of the Guidance for MPTS Tribunals.

53. The Tribunal reminded itself that all findings of misconduct are serious. However, the Guidance recognises that some cases fall towards the higher end of the spectrum of seriousness depending on the individual circumstances of the case.

54. The Tribunal had regard to the Guidance concerning dishonesty allegations and accepted that misconduct involving dishonesty will ordinarily fall towards the higher end of the spectrum of seriousness.

55. In this case, the Tribunal determined that the misconduct fell towards the higher end of the spectrum of seriousness.

56. The Tribunal noted that the dishonesty occurred over a prolonged period of approximately two years and involved persistent and repeated conduct arising in Dr Ojutiku's

professional working life. The Tribunal considered that the conduct was covert and financially motivated, involving personal financial gain of approximately £24,000.

57. The Tribunal further considered that the misconduct was premeditated and intentional. Dr Ojutiku had participated in the Trust's job planning process and thereafter arranged and undertook private clinics off site during periods when he was contractually expected to undertake SPA work. The Tribunal considered this demonstrated a reckless disregard for the professional standards expected of a registered medical practitioner.

58. The Tribunal also considered it significant that Dr Ojutiku omitted reference to Friday afternoon private work when discussing his job planning arrangements, despite disclosing other private work commitments. Therefore the Tribunal considered that this demonstrated an awareness that the Friday afternoon work required disclosure and authorisation.

59. The Tribunal further noted that Dr Ojutiku was not present on site during periods when he was expected to be available to his department. Whilst there was no evidence before the Tribunal that Dr Ojutiku had in fact been required for a clinical emergency during those periods, the Tribunal considered that his absence nevertheless had the potential to undermine collaborative working and departmental availability. This was in fact the reason the offsite working was discovered when the Trust could not locate Dr Ojutiku to assist with CQC questions about issues in his department.

60. The Tribunal had regard to paragraphs 43 and 44 of the Guidance, which indicate that misconduct at the higher end of the spectrum of seriousness may be more difficult to mitigate or remediate.

61. The Tribunal also noted that Dr Ojutiku himself accepted within his reflective statement that the matter was serious.

62. Taking all matters into account, the Tribunal concluded that the misconduct fell towards the higher end of the spectrum of seriousness.

<u>What is the impact of any relevant context known about Dr Ojutiku and/or their working environment?</u>

63. The Tribunal accepted that there was relevant contextual material in Dr Ojutiku's favour. The Tribunal noted that Dr Ojutiku had an extensive professional career spanning several decades. The Tribunal also noted that Dr Ojutiku continued to work for the Trust for

approximately four years after the conduct came to light and that no further concerns of a similar nature were raised during that period.

64. The Tribunal further accepted that there was evidence before it that Dr Ojutiku had worked extremely hard throughout his career and had frequently gone above and beyond in the pursuit of patient care.

65. The Tribunal had regard to paragraph 65 of the Guidance, concerning doctors in senior or leadership roles and the expectation that such doctors lead by example. The Tribunal recognised that Dr Ojutiku was an experienced senior practitioner and that this increased the expectation that he would adhere to appropriate professional standards and contractual obligations:

> *65. A doctor in a senior or leading role is more likely to be capable of influencing others and having an impact on workplace culture. Therefore, where a doctor that is in a senior or leading role frequently demonstrates inappropriate behaviour or poor performance, a departure from the professional standards expected has an additional impact.*

66. The Tribunal considered whether the contextual matters identified directly or indirectly affected Dr Ojutiku's behaviour. Whilst the Tribunal accepted the positive aspects of Dr Ojutiku's career and contribution to patient care, it did not consider that those matters explained or justified the dishonest conduct found proved.

67. The Tribunal further bore in mind paragraph 50 of the Guidance, namely that contextual factors capable of decreasing the level of risk will usually carry less weight in cases which fall towards the higher end of the spectrum of seriousness:

> *50. The impact that evidence of relevant context has on the assessment of risk, will depend on the nature of the allegation and individual circumstances of the case. However, evidence of relevant context that may decrease the level of risk to public protection posed by the doctor will usually carry less weight in cases that fall at the higher end of the spectrum of seriousness. This is because the risk to public protection arising from these concerns is generally more difficult to mitigate.*

68. Taking all matters into account, the Tribunal concluded that the contextual factors carried some weight in Dr Ojutiku's favour but did not materially reduce the seriousness of the misconduct or the level of risk identified by the Tribunal.

How has Dr Ojutiku responded to the allegation

69. The Tribunal next considered how Dr Ojutiku had responded to the allegations pursuant to Step 2(d) of the Guidance for MPTS Tribunals.

70. The Tribunal had regard to the reflective statement provided by Dr Ojutiku and considered the extent to which it demonstrated genuine insight, remediation, and reduced risk of repetition. The Tribunal also had regard to paragraphs 74, 77, 80 and 92 of the Guidance concerning insight, remediation and dishonesty allegations.

71. The Tribunal accepted that Dr Ojutiku had engaged with the proceedings and had provided reflective material following the Tribunal's findings. The Tribunal also accepted that Dr Ojutiku now acknowledged that his conduct had been wrong and accepted the Tribunal's findings.

72. However, the Tribunal considered that Dr Ojutiku continued to maintain that, at the time of the events, he believed that he was permitted to undertake the private work in question and that the matter amounted to time shifting and task repurposing rather than an issue of probity or dishonesty.

73. The Tribunal carefully considered whether this reflected genuine insight into the misconduct found proved. The Tribunal accepted that a doctor is entitled to maintain their position and that maintaining innocence does not of itself demonstrate a lack of insight. However, the Tribunal considered that Dr Ojutiku's continued reliance upon his asserted honest belief limited the extent of the insight demonstrated.

74. The Tribunal considered that the evidence demonstrated that Dr Ojutiku subjectively knew that the Friday afternoon private work required disclosure and authorisation. The Tribunal noted that the issue had been addressed during the job planning process and that, notwithstanding this, Dr Ojutiku continued to undertake private work during the relevant periods. The Tribunal also considered it significant that Dr Ojutiku omitted reference to the Friday afternoon work whilst disclosing other private work commitments.

75. The Tribunal therefore concluded that Dr Ojutiku's insight remained developing and limited. The Tribunal was not satisfied that Dr Ojutiku had fully identified or acknowledged the attitudinal concerns underpinning the dishonest conduct.

76. The Tribunal accepted that the risk of direct harm to patients was low and there was no evidence before it of deficient clinical care. However, the Tribunal considered that the

misconduct involved a failure to maintain proper professional standards and gave rise to a breakdown of trust capable of undermining public confidence in the profession.

77. The Tribunal applied the guidance in *Grant* and determined that Dr Ojutiku's conduct had brought the medical profession into disrepute, breached a fundamental tenet of the profession, and remained liable to undermine public confidence in the profession and proper professional standards if a finding of impairment were not made.

78. The Tribunal also had regard to *Cohen* accepted that dishonesty is often more difficult to remediate. The Tribunal was not satisfied that the dishonesty identified in this case had been fully remediated.

80. Taking all matters into account, the Tribunal concluded that Dr Ojutiku's developing but limited insight, together with the nature of the dishonesty found proved, did not materially reduce the level of risk identified by the Tribunal.

Tribunal's decision as to whether Dr Ojutiku poses any current and ongoing risk to public protection which may require restrictive action in response and its finding on impairment

81. In reaching its decision, the Tribunal considered its conclusions in relation to the seriousness of the misconduct, the relevant contextual factors, and Dr Ojutiku's level of insight and remediation.

82. The Tribunal determined that the misconduct found proved was persistent, premeditated and dishonest conduct occurring over a prolonged period. The Tribunal concluded that the misconduct undermined trust between colleagues and had the potential to undermine collaborative working within the department. The Tribunal accepted that there was no evidence before it of actual patient harm or deficient clinical care and therefore concluded that the risk to patient safety was low.

83. However, the Tribunal was satisfied that Dr Ojutiku's conduct engaged the second and third limbs of public protection, namely the need to maintain public confidence in the profession and the need to uphold proper professional standards and conduct.

84. The Tribunal considered that a fully informed member of the public would be concerned by conduct involving repeated dishonesty and lack of probity within a doctor's professional working life over a sustained period. The Tribunal further considered that public confidence in the profession would be undermined were a finding of impairment not made in these circumstances.

85. The Tribunal also considered that honesty, integrity and probity are fundamental tenets of the medical profession and that Dr Ojutiku's conduct represented a serious departure from those standards.

86. The Tribunal took account of the limited and developing insight demonstrated by Dr Ojutiku and was not satisfied that the risk of repetition had been fully addressed. The Tribunal determined that there remained a high risk of repetition arising from Dr Ojutiku's continuing failure fully to acknowledge the attitudinal concerns underpinning the misconduct.

87. Taking all matters into account, the Tribunal concluded that Dr Ojutiku poses a current and ongoing high risk to public confidence in the profession and to proper professional standards and conduct, requiring restrictive action in response. Accordingly, the Tribunal determined that Dr Ojutiku's fitness to practise is currently impaired by reason of misconduct.

Determination on Sanction - 15/06/2026

The Evidence

1. The Tribunal has reviewed its findings at the facts and impairment stages and taken into account evidence received during the earlier stages of the hearing, where relevant, to reaching a decision on sanction.

2. The Tribunal received a Stage 3 bundle on behalf of Dr Ojutiku enclosing:

- A character reference from Dr F, Consultant Obstetrician and Gynaecologist, dated 11 June 2026.
- A verified patient review schedule containing 96 verified patient reviews dated between 10 March 2022 and 2 June 2026.
- Patient testimonials.
- A colleague feedback report comprising responses from 15 colleagues.

Submissions

3. On behalf of the GMC, Mr Taylor submitted that the appropriate sanction in this case would be one of erasure.

4. Mr Taylor referred the Tribunal to the Sanction Principles in the MPTS Guidance for MPTS Tribunals, Section 3, Part C: Stage Three – Sanction. He submitted that those principles must remain at the forefront of the Tribunal's consideration when determining sanction.

5. Mr Taylor submitted that the Tribunal should approach sanction by first considering the least restrictive sanction and moving upwards only where necessary, ensuring that any sanction imposed was proportionate, transparent and fair. He submitted that case law made it clear that the need to protect the public outweighed the interests of the individual practitioner.

6. Mr Taylor referred the Tribunal to the sanctions bandings applicable to dishonesty cases and submitted that this case plainly fell within the higher-level dishonesty banding, namely *"9 months suspension to erasure*", owing to the seriousness of the misconduct and the continuing risk identified by the Tribunal.

7. Mr Taylor submitted that the Tribunal's findings at the impairment stage demonstrated that the misconduct lay towards the higher end of the spectrum of seriousness. He submitted that the dishonesty had occurred over a prolonged period of approximately two years and involved persistent and repeated conduct arising within the doctor's professional practice. He further submitted that the misconduct was covert, premeditated and intentional, and had been financially motivated, resulting in significant personal gain. Mr Taylor submitted that the Tribunal had also found that Dr Ojutiku demonstrated a reckless disregard for professional standards and that the misconduct had the potential to undermine collaborative working and departmental trust. Taken together, Mr Taylor submitted that these were substantial aggravating features which materially increased the seriousness of the misconduct and placed the case towards the upper end of the applicable sanctions banding.

8. Mr Taylor further submitted that the Tribunal had already determined that Dr Ojutiku's insight remained limited and developing. He referred to the Tribunal's findings that Dr Ojutiku continued to characterise the misconduct as time shifting and task repurposing, rather than acknowledging the probity concerns and dishonesty underpinning the misconduct.

9. Mr Taylor submitted that there remained a failure by Dr Ojutiku to acknowledge fully the attitudinal concerns underpinning the misconduct and therefore he had not demonstrated meaningful insight.

10. Mr Taylor relied upon the principles set out in *Cohen v General Medical Council [2008] EWHC 581 (Admin*), in which Silber J identified the relevance of insight, remediation and risk

of repetition when considering impairment and sanction. He submitted that dishonesty cases involving attitudinal concerns are inherently more difficult to remediate.

11. Mr Taylor further relied upon the judgment in *Bolton v Law Society [1994] 1 WLR 512,* where Sir Thomas Bingham MR emphasised that the purpose of professional sanction is not to punish the practitioner but to maintain public confidence in the profession and uphold proper professional standards.

12. Mr Taylor submitted that the Tribunal had already determined there remained a high risk of repetition arising from Dr Ojutiku's continuing failure to acknowledge the attitudinal concerns underpinning the misconduct. In those circumstances, he submitted that suspension would be insufficient, inadequate and disproportionate.

13. Mr Taylor submitted that conditions would be wholly inappropriate in a case concerning serious dishonesty and attitudinal concerns, particularly where the misconduct did not arise from a lack of clinical competence capable of remediation through retraining or supervision.

14. Mr Taylor submitted that this was a case in which Dr Ojutiku's behaviour was incompatible with continued registration. He submitted that the combination of prolonged and deliberate dishonesty, significant financial gain, limited insight, inadequate remediation and ongoing attitudinal concerns rendered erasure the only sanction capable of maintaining public confidence in the profession and upholding proper professional standards.

15. On behalf of Dr Ojutiku, Dr Ogunsanya submitted that the Tribunal's findings on impairment had not engaged the first limb of public protection, namely patient safety, and that the findings instead related to the second and third limbs concerning public confidence and proper professional standards. He submitted that there had been no patient harm identified, nor did the allegations involve direct clinical care. Whilst he acknowledged the seriousness of the Tribunal's findings, he said that submissions directed towards protection of patients did not materially assist the Tribunal in determining the appropriate sanction in this case.

16. Dr Ogunsanya submitted that the Tribunal should be reminded that the guidance was intended to assist tribunals rather than operate as inflexible "tramlines", and that each case must be determined on its own individual facts and merits. He submitted that the Tribunal should therefore consider the overall context of the misconduct and the surrounding circumstances.

17. Dr Ogunsanya submitted that Dr Ojutiku was not seeking to re-argue the facts nor undermine the Tribunal's findings but the context remained important when assessing proportionality. He submitted that the allegations related to SPA activity rather than direct clinical treatment and the work undertaken related to NHS patients, which he contended was a relevant mitigating feature.

18. He submitted that, once the SPA arrangements were addressed in 2019, there had been no further allegations of misconduct or dishonesty raised against Dr Ojutiku, either within NHS practice or private practice. Dr Ogunsanya submitted that the absence of repetition over a significant intervening period was highly material. He submitted that approximately seven years had now elapsed since the matters in question and no further concerns of a similar nature had arisen. In those circumstances, he submitted that the misconduct could not properly be characterised as persistent dishonesty in the wider sense contemplated by the authorities.

19. Dr Ogunsanya referred the Tribunal to the case of *Olatigbe v General Medical Council [2019] EWHC 3283 (Admin),* submitting that repeated dishonest acts may amount to persistent dishonesty, but contended that the present case was distinguishable because this was one continuous course of activity rather than repeated separate events. Further, there had been no recurrence following the resolution of the SPA issue.

20. Dr Ogunsanya further submitted that Dr Ojutiku had continued to practise for several years thereafter without complaint and had continued to receive positive feedback from patients and colleagues. Notably, he had remained in the employment of the Trust for four years post misconduct. He submitted that this was relevant both to the assessment of current risk and to the proportionality of sanction.

21. In relation to the character evidence before the Tribunal, Dr Ogunsanya submitted that such material remained relevant notwithstanding the GMC's position that testimonials carried limited weight in dishonesty cases. He submitted that the authorities demonstrated that good professional conduct, good patient feedback and colleague references remained relevant considerations.

22. Dr Ogunsanya submitted that the patient feedback and colleague surveys demonstrated that Dr Ojutiku was regarded by patients and colleagues as professional, competent, caring and trustworthy. He submitted that the colleague survey scores compared favourably against national benchmarks and showed Dr Ojutiku performing within the upper quartile in multiple domains. He further submitted that the comments from colleagues, including doctors, nurses and midwives, supported the conclusion that Dr Ojutiku was a highly regarded clinician with a longstanding positive professional reputation.

23. Dr Ogunsanya also referred the Tribunal to the character reference provided by Dr F, who had worked closely with Dr Ojutiku over many years and was said to know both Dr Ojutiku and the department well. He submitted that Dr F's evidence demonstrated that Dr Ojutiku was a hardworking and dedicated obstetrician with a longstanding commitment to the NHS. He further submitted that this was consistent with other evidence heard during the proceedings, including evidence concerning Dr Ojutiku's previous Clinical Excellence Award in recognition of additional work undertaken for the benefit of the hospital.

24. Dr Ogunsanya submitted that dishonesty did not automatically require erasure and that the Tribunal retained a broad discretion when determining sanction. He submitted that, whilst the Tribunal had made findings of misconduct and dishonesty, erasure would nevertheless be wholly disproportionate in light of the absence of patient harm, the absence of repetition over many years, the extensive positive professional evidence and Dr Ojutiku's longstanding service to the profession.

25. Accordingly, Dr Ogunsanya submitted that a short period of suspension would adequately mark the seriousness of the misconduct, uphold public confidence and maintain professional standards. He submitted that a suspension of three months would represent the highest proportionate sanction available to the Tribunal in the circumstances of the case.

The Tribunal's Determination on Sanction

26. The Tribunal was reminded of caselaw addressing dishonesty and the consideration of sanctions. Specifically, it considered:

Sun v General Medical Council [2023] EWHC 1515 at [38]:

'…issues of probity, integrity and honesty are fundamental tenets of the medical profession, in a context where doctors occupy a position of privilege in trust and are expected to act in a manner which maintains public confidence and uphold proper standards of conduct.'

Nkomo v GMC [2019] EWHC

Principles of sanction for dishonesty summarised as being:

'Where dishonest conduct combined with a lack of insight, is persistent, or covered up, nothing short of erasure is likely to be appropriate…

The sanction of erasure will often be proper even in cases of one-off dishonesty …

The misconduct does not have to occur in a clinical setting before it renders erasure, rather than suspension, appropriate ...'
Sawati v GMC [2022] EWHC 283 at [127] the judge stated:

The authorities consistently emphasise the inherent gravity of dishonesty in a doctor… Dishonesty - of any sort whatever - is unquestionably at least a yellow card issue for a doctor. But whether it is a red card issue in any case is a matter for the Tribunal to evaluate. Erasure for dishonesty is not automatic, so it is not exempt from the general requirement to assess the seriousness of misconduct in every case before a sanction is imposed. The nature and extent of the dishonesty may be variable and must be evaluated on a case by case basis.

Olatigbe v General Medical Council [2019] EWHC 3283 (Admin): the nature of persistence.

Bolton v Law Society [1994] 1 WLR 512 concerning the importance of maintaining public confidence in a profession founded upon trust and integrity.

27. The Tribunal bore in mind that the reason for imposing sanctions is to protect the public. Sanctions are not imposed to punish doctors, although they may have a punitive effect.

28. The Tribunal took a proportionate approach, balancing the interests of Dr Ojutiku with the public interest. It bore in mind that the reputation of the profession as a whole is more important than the interests of any individual doctor.

29. In making its decision on sanction, the Tribunal reviewed its decision on facts and impairment and considered the level of current and ongoing risk the doctor posed to public protection. It referred to the sanctions banding for dishonesty cases as set out in Part C of the Guidance for MPT hearings. It also considered the impact of any specific sanction type, where applicable, and any references or testimonials provided.

30. The Tribunal reminded itself of the serious nature of Dr Ojutiku's conduct, of its finding that the risk to public protection was high and that Dr Ojutiku's level of insight was limited. The Tribunal further reminded itself that, whilst the public safety limb was not engaged in this case, the second and third limbs of public protection, namely maintaining

public confidence in the profession and upholding proper professional standards and conduct, remained engaged.

31. The Tribunal considered all the available sanctions, beginning with the least restrictive.

No action

32. The Tribunal noted that, to take no action, exceptional circumstances must be present to justify such a course. The Tribunal considered that no such exceptional circumstances were present in this case. The Tribunal also noted that that Guidance indicated taking no action would not be appropriate where the risk to public protection is high. It considered that taking no action would not be sufficient, proportionate, or in the public interest.

Conditions

33. The Tribunal next considered whether to impose conditions on Dr Ojutiku's registration. It noted paragraphs 19 and 20 of the relevant section of the Guidance and bore in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

34. The Tribunal considered that the sanctions banding for this case type does not indicate that conditions would be sufficient to meet the level of risk to public protection. In any event, given the nature of Dr Ojutiku's misconduct, the Tribunal considered that an order of conditions would not be proportionate to address the seriousness of the case, nor could any appropriate, workable and measurable conditions be formulated to reduce the risk of Dr Ojutiku acting dishonestly.

35. In all the circumstances, the Tribunal concluded that a period of conditional registration would not be the appropriate sanction in this case.

Suspension

36. The Tribunal then went on to consider suspension. It referred to paragraphs 44 and 45 of Part C of the Guidance:

> *'44. In all cases where the allegation falls at the higher end of the spectrum of seriousness, the starting point for assessing current and ongoing risk to public*

protection will be high. Evidence of relevant context known about the doctor and/or their working environment and evidence of how the doctor has responded to the concern that decrease risk, will usually have less impact and carry less weight. This is because the risk to public protection arising from allegations at the higher end of the spectrum of seriousness are generally more difficult to mitigate and address.

45 Suspension may be proportionate in cases where some, or all, of the following factors are present:

a. conditions are not appropriate, measurable and/or workable
b. the level of current and ongoing risk to public protection is such that it cannot be safely managed with conditions and suspension is necessary to stop the doctor from working and putting patients at risk while they gain insight into any deficiencies and remediate, or undergo medical treatment, and/or
c. the level of current and ongoing risk to public protection is such that, although patient safety is not an issue, suspension is needed to maintain public confidence in the profession and/or maintain professional standards.'

37. The Tribunal had identified at the impairment stage that the ongoing risk to public protection was high. When referring to the Guidance regarding such cases of dishonesty, the appropriate sanction range lies between 9 months suspension and erasure. The Tribunal considered paragraphs 44 and 45 of the Guidance to be particularly relevant in this case and whether suspension would be a proportionate sanction on the facts.

38. Furthermore, if risk falls at the higher end of the spectrum of seriousness, evidence of contextual mitigation or subsequent conduct will generally carry less weight. The Tribunal considered that this applied in the present case, having already determined that the misconduct involved dishonesty and that Dr Ojutiku's insight, while developing, remained limited.

39. The Tribunal concluded that paragraphs 45(a) and 45(c) of the Guidance were engaged. It agreed that conditions were neither appropriate nor workable. The Tribunal concluded that patient safety under limb one was not engaged. It was nevertheless necessary to maintain public confidence in the profession and uphold proper professional standards and conduct.

40. The Tribunal concluded that suspension would be the most proportionate, transparent and fair restrictive action to address the concerns in this case. It was satisfied

that a period of suspension would have a deterrent effect, sending an appropriate message to both the public and the profession about the standards expected of a doctor. A period of suspension would remove Dr Ojutiku from practice, mark the seriousness of the misconduct, uphold public confidence in the profession, maintain proper professional standards and provide Dr Ojutiku with a period of reflection in which to further develop insight into the misconduct and the attitudinal concerns identified.

Erasure

41. The Tribunal had regard to paragraph 57 of the Guidance:

'57 Erasure may be the proportionate response where:

a. conditions are not appropriate, measurable and/or workable and suspension is not sufficient to protect the public
b. the doctor's behaviour or performance is such that it caused serious harm, and the risk of harm recurring cannot be mitigated sufficiently through putting conditions or suspension in place
c. the doctor has shown a persistent lack of insight into the seriousness of the allegation about their behaviour or performance and the potential or actual consequences, and/or
d. the seriousness of the facts found proven and/or impact of any relevant context that increased the current and ongoing risk to public protection mean the effect of the doctor continuing to hold registration is such that it will undermine public confidence in the profession.'

42. The Tribunal also had regard to paragraph 55 of the Guidance:

'55. Erasure is action available for those cases where a doctor's behaviour, performance, or the impact that a health condition is having on their ability to practise safely and effectively, is incompatible with continued registration at this point in time. It means the level of current and ongoing risk the doctor poses to public protection is so significant that they should not be allowed to practise.'

43. Specifically paragraph 55 refers to cases where a doctor's behaviour is incompatible with continued registration. The Tribunal did not conclude that this is the case on the current facts. It had regard to the Trust's attempt to resolve this matter locally. Unfortunately, this was unsuccessful.

44. The Tribunal recognised that Dr Ojutiku had continued to work for the Trust for a significant period following the events in question without further complaint or regulatory concern. It considered that this context, together with the absence of repetition during that period, supported the conclusion that the risk of recurrence could be managed and mitigated through a period of suspension rather than erasure.

45. The Tribunal therefore considered that erasure is unnecessary to protect the public and would not represent a proportionate response in all the circumstances of the case. It was not satisfied that Dr Ojutiku's conduct was fundamentally incompatible with continued registration.

46. The Tribunal considered that Dr Ojutiku's misconduct was remediable. Although his insight remained limited, the Tribunal did not consider that he demonstrated a complete absence of insight or a fixed unwillingness to reflect upon the misconduct.

47. The Tribunal therefore determined that erasure was not a proportionate sanction.

Length of suspension

48. The Tribunal had regard to the following paragraphs of Part C of the Guidance:

> *'46 The MPT will need to decide the appropriate length of time that suspension should be put in place for, up to the maximum of 12 months. The following factors will be relevant:*
>
> *a. the assessment of the level of current and ongoing risk to public protection posed by the doctor*
> *b. the reasons for assessing suspension as being the proportionate response*
> *c. the amount of time the doctor is likely to need to remediate, complete treatment for and/or recover from a health condition that is having, or is likely to have, an impact on their ability to practise safely and effectively, and/or*
> *d. the amount of time the parties will reasonably need to prepare for any review of whether the doctor continues to pose a current and ongoing risk to public protection requiring restrictive action in response or is safe to return to unrestricted practice.*
>
> *47 A short suspension may be appropriate in cases where: the doctor's behaviour fell at the higher end of the spectrum of seriousness; there was evidence of relevant context and/or evidence of insight and remediation that decreased the level of*

current and ongoing risk to public protection such that there are no outstanding patient safety considerations; and suspension is being imposed on public confidence grounds and/or to maintain professional standards. It might also be appropriate in relation to a very small number of clinical cases where a doctor's performance was such that although unlikely to recur, the nature of the allegation was so serious as to undermine the public's trust in the profession.

…

64 Once the MPT has applied the bandings to reach a provisional view on what sanction is appropriate, before finalising their decision they must consider if there is any additional evidence that may be relevant to deciding what sanction is proportionate. They should also remind themselves of their decision on how the case engaged one or more of the three parts of public protection with reference to their decision on impairment and the general guidance and specific case types section in the Introduction.'

49. The Tribunal also had regard to the sanctions banding and noted that, having determined to suspend Dr Ojutiku's registration, it was indicated that the appropriate length of suspension for cases of high risk should be between 9 and 12 months.

50. The Tribunal considered that a suspension of 12 months represented the appropriate and proportionate sanction. It concluded that such a sanction appropriately addressed the ongoing risk to public confidence and professional standards identified under limbs two and three of the overarching objective, whilst also serving a deterrent purpose to the wider profession.

51. The Tribunal determined to direct a review of Dr Ojutiku's case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that, at the review hearing, the onus will be on Dr Ojutiku to demonstrate to the review Tribunal's satisfaction how he has further developed his insight and remediated his misconduct. It therefore may assist the reviewing Tribunal if Dr Ojutiku provides evidence of:

- his developed insight into his misconduct.
- his remediation efforts, including any relevant CPD or training.
- how he has kept his knowledge and skills up to date during his suspension.
- Dr Ojutikuwill also be able to provide any other information that he considers will assist.

Determination on Immediate Order - 15/06/2026

1. Having determined that Dr Ojutiku's registration should be suspended for a period of 12 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Ojutiku's registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Mr Taylor submitted that an immediate order was not necessary in this case.

3. On behalf of Dr Ojutiku, Dr Ogunsanya submitted that an immediate order was not necessary in this case and reminded the Tribunal of its findings that there was some remediation and there was no engagement with the first limb of the overarching objective.

The Tribunal's Determination

4. The Tribunal referred to the relevant section of the Guidance, including:

> *'79 The MPT may impose an immediate order where it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. Where the MPT has imposed a sanction of conditions, it may impose an immediate order of conditions. Where the MPT has imposed a sanction of suspension or erasure, it may impose an immediate order of suspension.*
>
> *80 In the context of an immediate order, the best interests of the doctor includes avoiding putting them in a position where they may come under pressure from patients and/or may repeat the behaviour or poor performance giving rise to the allegation, particularly where this may also put the doctor at risk of committing a criminal offence. It may also include where the doctor's ability to practise safely and effectively may be impacted by an ongoing health condition.*
>
> *81 When deciding if an immediate order is needed, the MPT should balance these considerations against the other interests of the doctor, which may be to return to work pending the outcome of any appeal, and against the wider public interest which may require an immediate order is put in place.*

83 The decision whether to impose an immediate order is at the discretion of the MPT based on the facts of the case. When deciding if an immediate order is needed the MPT should consider the seriousness of the proved allegation and the level of current and ongoing risk to public protection posed by the doctor.

84 It will not usually be appropriate for a doctor to hold unrestricted registration until a sanction takes effect in cases where:

a. the doctor poses a risk to patient safety
b. the risk to one or more parts of public protection is high, and/or
c. immediate action is needed to maintain public confidence in the medical profession.'

5. The Tribunal considered all the evidence adduced in this case, including its findings on impairment and sanction. It noted that there are no concerns regarding patient safety and it took the view that immediate action is not needed to uphold professional standards or maintain public confidence in the medical profession. Furthermore, there was no evidence that an immediate order would be in the best interests of Dr Ojutiku. The Tribunal therefore determined that, in all the circumstances of this case, an immediate order was not necessary.

6. This means that Dr Ojutiku's registration will be suspended 28 days from the date on which written notification of this decision is deemed to have been served, unless he lodges an appeal. If Dr Ojutiku does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

7. There is no interim order to revoke.

8. That concludes this case.

ANNEX A – 01/06/2026
Application on Abuse of Process

1. This determination was handed down in public. However, the Tribunal exercised its powers under Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 (the Rules), to sit in private when the matters under consideration were confidential.

Background

2. On 26 May 2026, a Medical Practitioners Tribunal ('MPT') hearing was listed to commence to consider the case of Dr Ojutiku's fitness to practise.

3. At the outset of the hearing, Dr Ogunsanya on behalf of Dr Ojutiku made a preliminary application pursuant to Rule 17(2)(a) of the GMC (Fitness to Practise Rules) 2004 as amended ('the Rules') for an indefinite stay of proceedings on the grounds of abuse of process.

4. The Allegation made against Dr Ojutiku is set out as follows: it is alleged that between April 2017 and May 2019, whilst employed by Basildon and Thurrock University Hospitals NHS Foundation Trust which merged with Southend and Mid Essex Hospitals to form Mid and South Essex NHS Foundation Trust in 2020 (the Trust), Dr Ojutiku undertook private clinics for Ramsay Health during his contracted hours with the Trust, despite knowing that he was not permitted to work for any other provider. It is further alleged that Dr Ojutiku received payment for the clinics he undertook for Ramsay Health although he was paid by the Trust for the same period. It is alleged that Dr Ojutiku's conduct was dishonest.

5. The Tribunal received written skeleton arguments from Dr Ogunsanya on behalf of Dr Ojutiku and from Mr Taylor on behalf of the GMC. Both advocates made oral submission too.

Evidence

6. In considering the abuse of process argument, the Tribunal had regard to the background and chronology of the matters in this case. It had regard to the following evidence which included but was not limited to:

- Letter from Responsible Officer to Mr Ojutiku regarding concerns raised;
- Email thread between GMC and Mid and South Essex NHS Foundation Trust correspondence regarding the investigation;

- Email thread between counter fraud officer and Mid and South Essex NHS Foundation Trust regarding the investigation;
- GMC Referral for Dr Ojutiku outlining concerns.

- Email from Dr Ojutiku legal representation Taylor Wood Solicitors to GMC enclosing (dated 7 February 2022):
  • Employment tribunal judgment
  • Solicitor's letter to Responsible Officer Dr B

- Email correspondence between RSM UK and GMC enclosing:
  • Letter from RSM UK to GMC dated 12th May 2022
  • Letter from RSM UK to Dr Ojutiku dated 7th January 2021
  • Email correspondence between counter fraud officer and Taylor Wood Solicitors
  • Correspondence between Essex police and Taylor Wood Solicitors

- Letter from RSM UK to GMC regarding request for information under S35A(1) dated 5 May 2022
- Rule 7 letter dated 5 June 2025

Submissions on behalf of Dr Ojutiku

7. On behalf of Dr Ojutiku, Dr Ogunsanya submitted that the Tribunal should grant an indefinite stay of the proceedings as an abuse of process.

8. Dr Ogunsanya submitted that Rule 30 was the procedural mechanism by which the Tribunal could hear the preliminary legal argument, but that the Tribunal's jurisdiction to stay proceedings for abuse of process arose from its inherent power to regulate its own proceedings and from the general law.

9. He submitted that the applicable test was that identified in *R v Maxwell [2010] UKSC 48* first, whether it would be impossible for the Doctor to receive a fair hearing; and secondly, whether, in all the circumstances, it would offend the Tribunal's sense of justice and propriety to permit the proceedings to continue. He submitted that both limbs were engaged in this case.

10. Dr Ogunsanya submitted that the original referral to the GMC was materially inaccurate and misleading. He directed the Tribunal to the referral to the GMC made by Dr B, the Responsible Officer. It asserted that Dr Ojutiku had failed to cooperate with internal or external inquiries. He submitted that this was plainly wrong, because Dr Ojutiku had attended

a voluntary interview under caution with solicitors on 7 December 2021. The allegation of non-cooperation was therefore not merely mistaken, but central to the way in which the case was referred to the GMC.

11. He further submitted that the assertion, that the Trust had suffered a loss of approximately £7,761.64, was unsupported and misleading. The allegation concerned Supporting Professional Activities, which were not ordinary clinical sessions and could include training, CPD, teaching, audit, job planning and appraisal. There was no evidence that any clinic had been cancelled, that any patient care had been compromised, or that the Trust had paid another clinician to undertake work that Dr Ojutiku had failed to perform.

12. Dr Ogunsanya submitted that the Responsible Officer had a duty to ensure that any referral to the GMC was fair, accurate and complete. It was not sufficient simply to repeat an allegation said to have been made by Counter Fraud. Before making a referral in serious terms, the Responsible Officer was required to take reasonable steps to verify the factual position.

13. He submitted that Dr Ojutiku was forced to issue High Court proceedings because Dr B refused to correct the referral, despite being informed that the allegation of non-cooperation was wrong. Those proceedings alleged negligent misstatement and were settled out of court, with the Trust paying damages and costs. Dr Ogunsanya submitted that this settlement was a significant matter for the Tribunal to consider when assessing whether the original referral could safely form the foundation of ongoing regulatory proceedings.

14. Dr Ogunsanya further submitted that the GMC's case had shifted over time. It began as a referral based on alleged non-cooperation, then became a case said to involve fraud or dishonesty and now appeared to concern alleged private practice during NHS time. He submitted that this amounted to a moving target and created obvious unfairness for the Doctor.

15. He submitted that the contractual position was unresolved. The only contract before the Tribunal was the earlier contract signed in August 2000. The GMC sought to rely upon national contractual terms and Trust policies, but those could not simply be incorporated into Dr Ojutiku's individual contract without evidence of agreement or local variation. If Dr Ojutiku's case was that there had historically been an agreement between the Trust and the LNC permitting flexible off-site SPA activity, the Tribunal could not fairly determine the allegation without proper disclosure and evidence on that issue.

16. Dr Ogunsanya submitted that the case was, in substance, a contractual or employment dispute which had been transported into a regulatory jurisdiction. That created unfairness because the Tribunal was not properly equipped, on the present evidence, to determine the contractual and employment issues which underpinned the GMC's allegation.

17. He further submitted that the Trust's own evidence demonstrated that the matter could have been dealt with locally. He referred to evidence indicating that the matter could have been resolved by a letter of expectation, but that the formal route was taken because of the Trust's view about Dr Ojutiku's alleged lack of insight. Dr Ogunsanya submitted that this undermined the suggestion that the matter was properly one of serious regulatory misconduct.

18. Dr Ogunsanya also submitted that it is a serious matter for a Responsible Officer to refer a doctor to the GMC in pejorative terms, particularly by alleging non-cooperation where the factual basis for that allegation is wrong or incomplete. Such a referral inevitably undermines the professional standing and integrity of the doctor.

19. He submitted that the unfairness could not be cured simply by allowing the final hearing to proceed. The prejudice lay in the fact that the Doctor had been required to respond, over a prolonged period, to an unclear and evolving case founded on an inaccurate referral and unsupported assertions of loss, fraud and dishonesty.

20. For those reasons, Dr Ogunsanya submitted that the Tribunal should stay the proceedings indefinitely. In the alternative, if the Tribunal was not with him on a permanent stay, he submitted that the matter should be referred back to the Registrar or the GMC for proper reconsideration, with appropriate disclosure and clarification of the allegations before any substantive hearing could fairly proceed.

Submissions on behalf of the GMC

21. On behalf of the GMC, Mr. Taylor opposed the application for an indefinite stay on the grounds of abuse of process.

22. At the outset, Mr. Taylor addressed the jurisdictional basis of the application. He submitted that Rule 30 of the General Medical Council (Fitness to Practise) Rules 2004 did not apply to the present application because Rule 30 concerned the binding effect of previous determinations of preliminary legal arguments. He submitted that there had been no previous determination in relation to any application to stay the proceedings and therefore no issue of reconsideration arose.

23. Mr Taylor submitted that the present application was properly brought pursuant to Rule 17(2)(a), under which a Tribunal was empowered to hear and determine preliminary legal arguments before the substantive hearing commenced.

24. He submitted that the application was strongly opposed because there was no satisfactory explanation as to why it would be impossible for Dr Ojutiku to receive a fair hearing, or how continuation of the proceedings would offend the Tribunal's sense of justice and propriety within the meaning of *R v Maxwell*.

25. Mr Taylor accepted that *Maxwell* represented the correct legal test but submitted that neither limb of the test was remotely satisfied on the facts of the present case.

26. He submitted that, far from demonstrating unfairness, the submissions advanced on behalf of Dr Ojutiku positively demonstrated that a fair hearing was entirely possible. He observed that Dr Ogunsanya had effectively begun conducting the substantive hearing by making detailed submissions on the underlying factual matters and referring extensively to the documentary evidence.

27. Mr Taylor referred the Tribunal to the witness statement evidence of Dr B, including statements dated 7 May 2024. He submitted that the very fact that these witness statements had been disclosed demonstrated that the GMC's evidence had been properly served in advance and that the witnesses would be available for cross-examination in the ordinary course of the hearing.

28. Turning to the procedural chronology, Mr Taylor submitted that there had been nothing untoward, improper or abusive in the way the case had progressed.

29. He referred to the referral made by Dr B as Responsible Officer and Medical Director, which appeared in the main hearing bundle. He submitted that the referral was fundamentally concerned with allegations that Dr Ojutiku had undertaken private work during NHS contracted hours while employed by the Trust.

30. Mr Taylor accepted that the referral also referred to alleged non-cooperation with internal investigations but submitted that this had only ever been an additional concern and not the principal allegation. He submitted that the GMC had not pursued that issue as part of the allegations referred to the Tribunal and that it was not part of the current case before the MPT.

31. He submitted that the case had always principally concerned allegations of undertaking private work during NHS hours and that this had remained the position throughout the GMC investigation, Rule 7 process and subsequent referral to the Tribunal.

32. Mr Taylor rejected the suggestion that the GMC's case had evolved into a moving target. He submitted that there had been no change in the essential nature of the allegations and no lack of clarity as to the case which Dr Ojutiku was required to meet.

33. Referring to paragraph 2 of Dr Ojutiku's written submissions, Mr Taylor submitted that no explanation had been provided as to how the case had allegedly evolved or why it was said to be unclear.

34. He submitted that the allegations had remained consistent from the Rule 7 stage onwards and continued to concern the allegation that Dr Ojutiku had undertaken private work during periods when he was expected to be undertaking NHS duties.

35. Mr Taylor further submitted that the arguments concerning lack of clarity and insufficient particularisation were, in substance, an attempt to revisit issues already determined by the Tribunal at the preliminary hearing held in March 2026.

36. He submitted that the preliminary Tribunal had already refused an application for further and better particulars of the allegations and that determination was binding under Rule 30 in the absence of any material change in circumstances.

37. Mr Taylor submitted that the GMC had followed the proper procedural processes throughout the case. He referred to the Rule 4 promotion of allegations, the Rule 7 letter sent on 5 June 2025, Dr Ojutiku's Rule 7 response dated 17 July 2025, the Rule 8 referral decision, the First Listing Telephone Conference, the subsequent requests for further and better particulars, the GMC's responses thereto and the preliminary hearing process. He submitted that all procedural stages had been conducted properly and transparently.

38. In relation to the temporary pause in the GMC investigation pending the Trust investigation, Mr Taylor submitted that there was nothing unusual, abusive or improper about such an approach. He submitted that it was entirely normal for the GMC to pause aspects of an investigation while awaiting the progress of parallel local or external investigations. Mr Taylor submitted that the GMC's investigation was distinct from, and independent of, any Trust MHPS process or Counter Fraud investigation.

39. He submitted that the GMC was not bound by the outcome of any local investigation and was entitled to continue its own statutory investigation notwithstanding the absence of any concluded Trust outcome.

40. Mr Taylor submitted that the GMC had kept Dr Ojutiku's representatives informed throughout. He referred to correspondence dated 14 March 2022, 14 September 2023, 5 March 2024, 19 March 2024 and 8 January 2026. He submitted that the correspondence demonstrated that the GMC had repeatedly explained the nature of the investigation, the allegations being investigated, and the continuing evidence-gathering process.

41. Mr Taylor referred to the GMC's email of 19 March 2024, in which the GMC had explained that the allegations under investigation included carrying out private work during NHS time, failure to engage with investigations, and failure to attend or sign in at handover meetings.

42. He submitted that the GMC had expressly informed Dr Ojutiku that the investigation commenced at Rule 4 and did not begin at Rule 7.

43. Mr Taylor further submitted that the GMC had lawfully sought information from Ramsay Health pursuant to section 35A powers and that such requests were relevant and proportionate to the allegation that Dr Ojutiku had undertaken private work during NHS time.

44. Turning to the High Court proceedings relied upon by Dr Ojutiku, Mr Taylor submitted that those proceedings, and the issue of alleged non-cooperation, were irrelevant to the issues which the Tribunal would ultimately be required to determine.

45. He submitted that the fact Dr B later clarified that Dr Ojutiku had attended an interview with NHS Counter Fraud did not undermine the substance of the GMC's case, because the allegation pursued before the Tribunal had always principally concerned the undertaking of private work during NHS contracted hours.

46. Mr Taylor submitted that all witnesses relied upon by the GMC would attend the hearing and would be available for cross-examination.

47. He submitted that Dr Ogunsanya would be free to question Dr B regarding his role as Responsible Officer, the reasons for the referral, the duty to investigate before referral, the High Court proceedings, and any inaccuracies within the referral process.

48. Mr Taylor submitted that this demonstrated precisely why a fair hearing was entirely possible.

49. He submitted that there was no prejudice preventing Dr Ojutiku from advancing his case fully before the Tribunal.

50. Mr Taylor further submitted that the Tribunal was not being asked to determine contractual or employment disputes in the manner of an Employment Tribunal.

51. Rather, he submitted that the Tribunal was being asked to determine regulatory allegations concerning whether Dr Ojutiku had acted dishonestly in undertaking private work during NHS hours.

52. He submitted that the Tribunal was perfectly equipped to determine those issues and rejected the suggestion that the Tribunal lacked the expertise or jurisdiction to do so.

53. In relation to the alternative submission that the matter should be referred back to the Case Examiners, Mr Taylor submitted that he could identify no provision within the Rules empowering the Tribunal to do so.

54. He referred to Rule 28 concerning withdrawal of allegations but submitted that the Rules did not provide any mechanism permitting the Tribunal to remit the matter back to the Case Examiners in the manner proposed by Dr Ojutiku.

55. Turning to abuse of process generally, Mr Taylor submitted that a stay in regulatory proceedings was an exceptional and draconian remedy.

56. He referred to *Council for the Regulation of Health Care Professionals v GMC and Saluja (2006) EWHC 2784 (Admin)* and submitted that the threshold for granting a stay in professional regulatory proceedings was necessarily very high because such proceedings engaged the GMC's statutory objectives of protecting the public, maintaining professional standards and upholding public confidence in the profession.

57. Mr Taylor submitted that the present case came nowhere close to satisfying that threshold.

58. He submitted that there was no impossibility of a fair hearing, no procedural manipulation, full disclosure had been given, witnesses were available for cross-examination,

the allegations had remained clear throughout, and there had been no conduct capable of offending the Tribunal's sense of justice and propriety.

59. Mr Taylor submitted that, if anything, granting a stay would in itself undermine public confidence in the regulatory process and bring the proceedings into disrepute.

60. In conclusion, Mr Taylor submitted that the application for an indefinite stay should be refused. He submitted that there was no basis for any alternative relief, that the Tribunal was well equipped to determine the allegations fairly, and that all matters raised by Dr Ojutiku could properly be explored through the ordinary hearing process, including through cross-examination of the GMC witnesses.

The Tribunal's Approach

61. The Tribunal accepted the legal advice of the Legally Qualified Chair on its approach to the application.

62. Throughout its deliberation the Tribunal considered the matter through the lens of the overarching objective.

63. The Legally Qualified Chair explained that the Tribunal may stay either the whole case or part of the case, and this may be done on a permanent or temporary basis. However, a stay of proceedings is a remedy of last resort, regarded as exceptional. In order to grant a stay, there must be something so gravely wrong that it would be unconscionable for a hearing to go forward, such as a disregard for basic human rights or a gross neglect of elementary principles of fairness. Where a party brings an application, it is for that party to establish the abuse of process. The presumption is that the case will proceed unless the applicant can displace that presumption to the civil standard, relying on one or both of the two categories established by the Supreme Court in *R v Maxwell [2010] UKSC 48*.

64. The LQC stated that that the Supreme Court in *R v Maxwell [2010] UKSC 48* confirmed two principal categories in which a court may stay proceedings on the grounds of abuse of process.

65. The first arises where it is impossible for the Doctor to receive a fair trial. In such cases, the Tribunal must stay the proceedings. If the Tribunal is satisfied the doctor can receive a fair hearing, it should then move on to consider the second category.

66. The second applies where, although a fair trial may be possible, the Tribunal must assess whether, in all the circumstances, continuing with the hearing would offend the Tribunal's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. Here a stay will be granted where the Tribunal concludes that in all of the circumstances a trial will offend the court's sense of justice and propriety or will undermine public confidence in the justice system and bring it into disrepute. In this second category the Tribunal should balance the public interest in the allegation being heard and the competing public interest with regards to the integrity of the justice system.

67. A stay should only be granted if there is no other route to achieving a fair hearing: the Tribunal could instead make other directions or modifications to address any potential unfairness.

The Tribunal's Determination

68. In reaching its determination, the Tribunal considered whether either limb was met of the legal test as set out in *R v Maxwell [2010] UKSC 48*. The Tribunal took into account the oral and written submissions made by both parties, including the written submissions filed on behalf of Dr Ojutiku and the GMC's written response thereto.

69. The Tribunal considered the application made on behalf of Dr Ojutiku for an indefinite stay of the proceedings on the grounds of abuse of process.

70. The Tribunal first considered the issue of jurisdiction.

71. The Tribunal noted the submissions made by Mr Taylor on behalf of the GMC that Rule 30 of the Rules do not apply to the present application because there had been no prior determination relating to an application for a stay of proceedings. The Tribunal accepted Mr Taylor's submission that the present application was properly characterised as a preliminary legal argument under Rule 17(2)(a), namely whether the hearing should continue.

72. The Tribunal also considered the submissions made on behalf of Dr Ojutiku that Rule 30 was relied upon only as the procedural route through which the Tribunal could hear the application and that the power to stay proceedings arose from the Tribunal's inherent jurisdiction and the general law.

73. The Tribunal determined that, irrespective of whether the application was characterised under Rule 17(2)(a), Rule 30, or the Tribunal's inherent jurisdiction, the Tribunal had jurisdiction to determine the abuse of process application before it.

74. The Tribunal next considered the legal principles applicable to abuse of process applications.

75. The Tribunal accepted that the applicable test was that identified in *R v Maxwell*, namely:

1. whether it would be impossible for Dr Ojutiku to receive a fair hearing; and
2. whether continuation of the proceedings would offend the Tribunal's sense of justice and propriety.

76. The Tribunal recognised that a stay of proceedings in regulatory proceedings was an exceptional remedy and that the threshold for establishing abuse of process was high.

77. The Tribunal considered Dr Ojutiku's submissions that the proceedings could not fairly continue because the allegations had evolved over time and because the matter had not been properly investigated at local Trust level before referral to the GMC.

78. The Tribunal noted Dr Ojutiku's submissions that the original referral had included allegations of non-cooperation and that Dr Ojutiku maintained that he had in fact cooperated with the Counter Fraud investigation by attending an interview under caution with legal representation.

79. The Tribunal also noted Dr Ojutiku's submission that the GMC investigation had been paused pending the Trust investigation and that Dr Ojutiku contended this created prejudice and uncertainty as to the scope and basis of the allegations.

80. The Tribunal considered the submissions made by Mr Taylor that the GMC had embarked upon its own independent statutory investigation following the Trust referral and that the GMC had statutory duties arising from its overarching objective of protecting the public and maintaining confidence in the profession.

81. The Tribunal accepted Mr Taylor's submission that the GMC investigation was separate from any Trust Maintaining High Professional Standards (MHPS) investigation or Counter Fraud investigation and that the GMC was not bound by the outcome of any local investigation.

82. The Tribunal noted the GMC's submission that the allegation of non-cooperation had only ever been an additional concern and was not an allegation that had ultimately been referred to the Tribunal by the Case Examiners.

83. The Tribunal further accepted the GMC's submission that the substance of the allegations had remained consistent throughout and concerned allegations that Dr Ojutiku undertook private work during NHS contracted hours, which the GMC alleged was dishonest.

84. The Tribunal considered Dr Ojutiku's submission that the allegations had become unclear and evolved over time. However, the Tribunal accepted the GMC's submission that the allegations had been clearly set out within the Rule 7 correspondence and that the basis of the allegations had been communicated to Dr Ojutiku throughout the investigation process.

85. The Tribunal noted in particular the GMC correspondence dated 19 March 2024, in which the allegations under investigation were expressly identified. The Tribunal was satisfied that Dr Ojutiku had been aware of the nature and scope of the allegations for a significant period of time.

86. The Tribunal also took into account the procedural chronology of the case.

87. The Tribunal noted that:

- the matter had progressed through the Rule 4, Rule 7 and Rule 8 stages;
- Dr Ojutiku had been granted an extension of time to respond to the Rule 7 letter;
- requests for further and better particulars had been considered and responded to;
- a preliminary hearing had taken place in March 2026; and
- witness statements and documentary disclosure had been provided.

88. The Tribunal accepted the GMC's submission that the procedural safeguards and case management processes ordinarily applicable within fitness to practise proceedings had been followed.

89. The Tribunal considered Dr Ojutiku's submissions concerning Dr B's referral to the GMC and the allegation that the referral had been made on an incorrect basis.

90. The Tribunal noted Dr Ojutiku's contention that the allegation of non-cooperation was inaccurate and that subsequent High Court proceedings had arisen from those matters.

91. However, the Tribunal accepted the GMC's submission that the issue of non-cooperation was not itself an allegation before the Tribunal and that any concerns regarding the referral process, good faith, procedural fairness or the conduct of the Responsible Officer

could properly be explored through cross-examination of the GMC witnesses at the substantive hearing.

92. The Tribunal was satisfied that Dr Ojutiku would have the opportunity to challenge the GMC's evidence fully, including the evidence of Dr B and other witnesses, and to advance his own account of events before the Tribunal.

93. The Tribunal therefore determined that Ground 1 of the *Maxwell* test had not been established. The Tribunal was satisfied that Dr Ojutiku could receive a fair hearing.

94. The Tribunal next considered whether continuation of the proceedings would offend the Tribunal's sense of justice and propriety.

95. The Tribunal accepted the GMC's submission that there had been no evidence of procedural manipulation, bad faith, or conduct so serious as to undermine the integrity of the proceedings.

96. The Tribunal further accepted the GMC's submission that the continuation of properly constituted regulatory proceedings concerning allegations of dishonesty would not undermine public confidence in the regulatory process. Rather, the Tribunal considered that the public interest favoured allegations of this nature being determined through the ordinary hearing process.

97. The Tribunal was satisfied that the allegations against Dr Ojutiku had been consistently presented as allegations concerning private work undertaken during NHS contracted hours and that Dr Ojutiku had not been deprived of procedural fairness.

98. The Tribunal determined that the threshold for establishing abuse of process had not been met.

99. Accordingly, the Tribunal determined that there was no basis upon which the application for an indefinite stay could succeed.

100. The Tribunal therefore refused the application and directed that the substantive proceedings should continue.

ANNEX B – 01/06/2026
Application to Admit Additional Evidence

1. This determination was handed down in public. However, the Tribunal exercised its powers under Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 (the Rules), to sit in private when the matters under consideration were confidential.

2. On day two of the hearing, Mr Taylor, on behalf of the GMC, made an application pursuant to Rule 34(1) of the Rules to adduce further evidence.

3. This further evidence amounted to a bundle of rebuttal statements of Mr A, Dr B and Mr C; Supplemental witness statement of Mr D dated 14 May 2026; response from Dr I dated 7 May 2026; and response from Dr I dated 21 May 2026.

Submissions

4. On behalf of the GMC, Mr Taylor submitted that the GMC made an application to admit further supplemental witness evidence pursuant to Rule 34(1) of the Rules. He reminded the Tribunal that Rule 34(1) provides "*that a Tribunal may admit any evidence it considers fair and relevant to the case before it, whether or not such evidence would be admissible in a court of law".*

5. Mr Taylor submitted that the application arose following receipt of Dr Ojutiku's witness statement and defence disclosure in April 2026. He explained that Dr Ojutiku's statement had been served on 8 April 2026 and referred to a number of documents which had not been provided. Those documents were subsequently sought by the GMC and received on 21 and 24 April 2026. Mr Taylor further submitted that a second witness statement from Dr Ojutiku was received on 21 April 2026, with further associated documents received on 29 April 2026.

6. Mr Taylor submitted that, in light of the further material disclosed by the defence, the GMC considered it appropriate to obtain supplemental witness statements from a number of existing GMC witnesses, namely Mr A, Dr B, Mr C and Mr D. He clarified that new witnesses were not being introduced and that the evidence consisted solely of supplemental statements from witnesses already due to give evidence before the Tribunal.

7. Mr Taylor submitted that admission of the supplemental evidence would be fair and relevant. He submitted that the statements formed part of the witnesses' evidence and would assist the Tribunal by addressing documents and matters which would inevitably be

put to the witnesses during oral evidence. He submitted that obtaining the supplemental statements in advance would therefore save hearing time and assist the efficient conduct of proceedings. He further submitted that Dr Ojutiku would suffer no prejudice because the material had already been disclosed to the defence and the witnesses would remain available for cross-examination in the usual way.

8. On behalf of Dr Ojutiku, Dr Ogunsanya opposed the GMC's application to admit the supplemental witness statements. He submitted that the proposed evidence amounted to opinion evidence rather than ordinary factual witness evidence. He submitted that the witnesses were being asked to express views on documents including BMA guidance and documents produced by the King's Fund.

9. Dr Ogunsanya submitted that the Tribunal was well equipped to interpret the contents of those documents without the need for further explanation from the GMC witnesses. He submitted that the supplemental statements were unnecessary and that it would be unfair for one-sided opinion evidence to be admitted without Dr Ojutiku being afforded the opportunity to adduce evidence in response. He further submitted that permitting such evidence could unnecessarily delay the hearing.

10. Dr Ogunsanya submitted that, if the Tribunal was minded to admit the evidence, there were alternative approaches available. Firstly, he maintained that the application should be refused. Secondly, he submitted that Dr Ojutiku should be permitted to obtain witness evidence addressing the operation of the relevant documents in practice. Thirdly, he submitted that, if assistance was required in interpreting the documents, this should be provided by way of a jointly instructed expert with appropriate expertise, rather than through the GMC witnesses.

The Relevant Legal Principles

11. The Tribunal had regard to Rule 34(1) which states:

> *'The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.'*

The Tribunal's Determination

12. The Tribunal was satisfied that admission of the evidence would not prejudice Dr Ojutiku. In reaching that conclusion, the Tribunal considered that the supplemental material had already been disclosed to the defence. It considered that this evidence would be the

subject of cross-examination. The Tribunal noted that, in practical terms, Dr Ojutiku may be assisted by the provision of the supplemental statements with advance notice of the matters upon which he may be questioned during cross-examination.

13. The Tribunal further considered that any potential unfairness could appropriately be addressed through procedural safeguards. The Tribunal therefore determined that Dr Ojutiku's counsel would be afforded the opportunity to ask supplementary questions in examination in chief and to re-examine Dr Ojutiku on any matters arising from the supplemental evidence or cross-examination. The Tribunal considered that these arrangements would provide Dr Ojutiku with sufficient opportunity to address, clarify or dispute any matters contained within the supplemental witness statements and or explored in cross examination.

14. The Tribunal was satisfied that Dr Ojutiku would have every opportunity, through evidence and submissions, to challenge the contents of the supplemental statements and any issues arising from them.

15. Accordingly, the Tribunal granted the GMC's application to admit the supplemental witness evidence.

ANNEX C – 02/06/2026
Application to Admit Additional Evidence

1. This determination was handed down in public. However, the Tribunal exercised its powers under Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 (the Rules), to sit in private when the matters under consideration were confidential.

2. On day 2 of the hearing, Dr Ogunsanya, on behalf of the Dr Ojutiku, made an application pursuant to Rule 34(1) of the Rules to adduce further evidence comprising of a witness statement from Dr F.

Submissions

3. Dr Ogunsanya submitted there was no basis for Dr F's witness statement not to be before the Tribunal.

4. Mr Taylor, on behalf of the GMC, submitted that Dr F's witness statement had not been uploaded for the Tribunal because this is a disputed document given that the GMC have

confirmed they would require Dr F to be available for cross examination at hearing and Dr Ogunsanya has been unable to confirm that Dr F would be available for cross examination.

The Relevant Legal Principles

5. The Tribunal had regard to Rule 34(1) which states:

> *'The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.'*

The Tribunal's Determination

6. The Tribunal had regard to the submissions made by both parties. The Tribunal accepted that the proposed evidence was relevant to the matters before it and noted that Rule 34(1) provides that a Tribunal may admit any evidence it considers fair and relevant to the case before it, whether or not such evidence would be admissible in a court of law.

7. The Tribunal noted the GMC's concern that the witness statement had not previously been uploaded because the document's content was disputed. Ongoing uncertainty as to whether Dr F would be available for cross-examination on its contents meant the GMC would not agree to its admission, without knowing if it would be subject to cross examination or the subject of a hearsay application by Dr Ogunsanya to the Tribunal.

8. Dr Ogunsanya confirmed to the Tribunal that Dr F would be available to attend the hearing and give oral evidence being available for cross-examination by the GMC.

9. In those circumstances, the Tribunal was satisfied that the disputed contents of the statement of Dr F could be admitted without incurring unfairness to the GMC. The Tribunal considered that the GMC would have a proper opportunity to test the evidence through cross-examination and therefore it was fair to admit Dr F's statement.

10. Accordingly, the Tribunal determined that it was fair and appropriate to admit the witness statement of Dr F into evidence.

ANNEX D – 05/06/2026

DETERMINATION ON RULE 17(2)(g) APPLICATION

1. This determination was handed down in public. However, the Tribunal exercised its powers under Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 (the Rules), to sit in private when the matters under consideration were confidential.

2. At the close of the case on behalf of the GMC, Dr Ogunsanya, on behalf of Dr Ojutiku, made an application pursuant to Rule 17(2)(g) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules').

3. The Tribunal received both written and oral submissions on behalf of Dr Ojutiku and the GMC.

Submissions

On behalf of Dr Ojutiku

4. In his written submissions, Dr Ogunsanya submitted that the GMC had failed to adduce sufficient evidence upon which the Tribunal could properly find proved the essential factual and mental elements of the allegations against Dr Ojutiku. He submitted that the allegations centred upon whether Dr Ojutiku undertook work for Ramsay Health during contracted SPA ('Supporting Professional Activity') hours with the Trust, whether he was permitted to do so, and whether any such conduct was dishonest.

5. Dr Ogunsanya submitted that the GMC's case was fundamentally deficient because the contractual basis underpinning the allegations had not been established. In oral submissions, he stated that the GMC had attempted to present the matter as a simple issue of Dr Ojutiku being scheduled to undertake SPA work at Basildon Hospital whilst instead undertaking private work at Chartwell. However, he submitted that the position was not as simple as portrayed by the GMC.

6. He submitted that the allegations had not been pleaded as mere job-planning irregularities or internal policy breaches. Rather, the allegations expressly referred to "contracted hours", thereby requiring the GMC to prove the relevant contractual terms relied upon. He submitted that the first question arising was therefore: "which contract?"

7. Dr Ogunsanya submitted that the only signed contractual documentation dated back to August 2000. The GMC asserted that Dr Ojutiku was subject to the *Terms and Conditions* –

Consultants (England) 2003 (2003 Terms) however, they could not produce a signed contract to evidence Dr Ojutiku's agreement to those Terms. In the absence of that, the GMC relied instead upon Dr Ojutiku's conduct to signal acceptance of the Terms.

8. Dr Ogunsanya submitted that whilst it may be argued that a 2003 contract could be inferred by conduct, that was not the case advanced by the GMC. He submitted that no evidence had been adduced demonstrating any formal variation to the original agreement, nor had the GMC pleaded reliance upon any alleged variation by conduct. He submitted that the GMC could not remedy this evidential deficiency retrospectively.

9. Dr Ogunsanya further submitted that, as a matter of contractual law, any contractual terms relied upon by the GMC had to be clearly brought to Dr Ojutiku's attention at the time of the formation of the contract, particularly where onerous provisions were concerned. In support of that submission, he relied upon the authorities cited within his written submissions, including *Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd (1987) WL 491981.*

10. He submitted that the evidence before the Tribunal demonstrated that the relevant terms and conditions had not been personally provided to consultants. Instead, the evidence of Dr B and Mr A was that documents were placed on the Trust intranet and an email was sent to the chair of the Local Negotiating Committee (LNC). He submitted that this was insufficient to establish that Dr Ojutiku had been properly notified of the alleged contractual restrictions.

11. In his written submissions, Dr Ogunsanya submitted that the GMC witnesses had accepted that the signed consultant contract could not be located and that the relevant *Basildon and Thurrock University Hospitals NHS Foundation Trust Job Planning policy and Department of Health Code of Conduct for Private Practice (2004)* had not been personally sent to Dr Ojutiku. He submitted that a policy "hidden" on an intranet could not amount to proof of clear notice, nor proof of dishonest knowledge.

12. Dr Ogunsanya also addressed the issue of SPA work. He submitted orally that the GMC had reduced the matter to one of physical location, namely whether Dr Ojutiku was physically present at Basildon Hospital during SPA sessions. He submitted that the GMC misunderstood the nature of SPA activity.

13. He submitted that the relevant question was what the NHS was paying consultants to undertake during SPA time. He submitted that SPA sessions concerned activities such as

mandatory training, teaching, research, audit, appraisal and governance work, rather than requiring consultants simply to remain physically within the hospital building.

14. Dr Ogunsanya submitted that the evidence regarding whether SPA work had to be undertaken onsite was heavily disputed. He referred to the evidence of Dr Ojutiku, who stated that there had been discussions with the LNC regarding SPA work being undertaken onsite, and contrasted this with the evidence of Dr B, who disputed that any such agreement existed until 2020 in the context of the COVID epidemic.

15. In written submissions, Dr Ogunsanya relied upon the *BMA Good Practice Guidance regarding Supporting Professional Activities*, which indicated that SPA work could be undertaken flexibly and should not necessarily be restricted to fixed locations or rigid timetabling. He submitted that the GMC had failed to establish that SPA sessions had to be undertaken onsite, or that Dr Ojutiku had been clearly informed of any such restriction.

16. Dr Ogunsanya also referred the Tribunal to the King's Fund paper on *Assessing the New Consultant Contract* (*May 2006*) and the BMA *Defining best practice for the work environment (April 2008)* paper, both relied upon during the hearing. He submitted orally that those materials provided important national context demonstrating that SPA allocation and management represented a broader systemic issue within the NHS, involving tensions between consultants and management regarding flexibility and location of SPA work. He submitted that this undermined any suggestion that the case concerned straightforward dishonesty by Dr Ojutiku.

17. In his written submissions, Dr Ogunsanya further relied upon the evidence of Mr C, who accepted that no concerns had been raised at appraisal or revalidation regarding completion of Dr Ojutiku's SPA obligations. He submitted that this materially undermined the GMC's case because it suggested that SPA outputs had been completed.

18. He submitted that the GMC had failed to adduce evidence that Dr Ojutiku had not completed mandatory training, audit work, appraisal obligations, governance duties, teaching or research activities. At its highest, he submitted, the GMC's case amounted only to an allegation concerning timing, location or authorisation, rather than misuse of NHS time or dishonesty.

19. Dr Ogunsanya also referred to the evidence of Mr D, who confirmed that the patients concerned were NHS patients and that Dr Ojutiku was not directly paid privately by patients. He submitted that this materially weakened the GMC's reliance upon language relating to private patients or fee-paying services.

20. Turning to dishonesty, Dr Ogunsanya submitted orally that the GMC had failed entirely to establish the requisite mental element. He submitted that the evidence fell far short of establishing that Dr Ojutiku knew he was acting contrary to any contractual prohibition, or that he acted dishonestly.

21. He submitted that the Tribunal would be required to consider the principles set out in *R v Galbraith [1981] 1 WLR 1039* when determining whether the evidence was capable of proving the allegations.

22. Dr Ogunsanya submitted that the GMC had failed to meet the *Galbraith* test because there was insufficient evidence capable of proving the essential elements of the allegations. In particular, he submitted that there was insufficient evidence capable of proving dishonesty.

23. He further submitted that, even taking the GMC's case at its highest, the evidence could not amount to misconduct. He referred the Tribunal to the authority of *The Queen on the Application of David Husband v General Dental Council [2019] EWHC 2210 (Admin)* and submitted that the Tribunal was entitled at the no case to answer stage to consider whether the allegations, even if proved, could amount to misconduct.

24. In summary Dr Ogunsanya in his written submission stated that for the relevant allegation to be capable of proof the GMC must adduce evidence from which the Tribunal could properly find against Dr Ojutiku, including:

a. Evidence that Dr. Ojutiku did not perform the SPAs.
b. Evidence that Dr. Ojutiku worked privately, when he was supposed to be doing his SPA.
c. whether Dr Ojutiku performed the SPA his SPA obligations or not or at all.
d. whether those SPA sessions had to be performed on site, or whether the consultant could choose the SPA activity and deliver it flexibly, remotely, by CPD, appraisal, revalidation, teaching, audit, governance or other professional activity;
e. that the work relied upon occurred during those specific prohibited periods, rather than merely on a day on which a job plan existed;
f. that no leave, study leave, rota variation, off-site SPA agreement, annualisation, custom, practice or other arrangement removed or altered the alleged conflict;
g. that the patients were private fee-paying patients if the GMC seeks to rely on private-patient/fee-paying language; and

h. where dishonesty or fraud is alleged, evidence capable of proving Dr Ojutiku's actual state of knowledge or belief before applying the objective standard of dishonesty.

25. In the alternative, Dr Ogunsanya submitted that the allegations concerning knowledge and dishonesty should be dismissed on the basis that the GMC had adduced no sufficient evidence capable of proving the requisite mental element.

On behalf of the GMC

26. On behalf of the GMC, Mr Taylor opposed the application of no case to answer and relied upon both written and oral submissions.

27. In his written submissions, Mr Taylor submitted that sufficient evidence had been adduced upon which the Tribunal could properly find all the facts proved. He submitted that, applying the principles in *Galbraith* and *McLennan v General Medical Council (2020) CSIH 12*, the Tribunal's role at this stage was not to determine whether the facts should be proved, but whether they could be proved on the evidence adduced thus far.

28. At the outset of his oral submissions, Mr Taylor addressed what he understood to be an argument advanced by Dr Ogunsanya, namely that even if the factual allegations were proved, the conduct alleged would not be capable of amounting to misconduct. Mr Taylor submitted that he strongly opposed that proposition.

29. Mr Taylor submitted that dishonesty allegations of the nature advanced by the GMC were inherently serious. He submitted that, if the facts alleged were found proved, it would follow that such conduct would amount to serious professional misconduct.

30. Turning to the issue of SPA work, Mr Taylor submitted that the defence had sought improperly to minimise the significance of SPA's. He submitted that SPA sessions were not merely periods where consultants sat in offices undertaking optional administrative tasks. Rather, he submitted that SPA activity formed an important and integral component of a consultant's NHS role.

31. Mr Taylor referred to the evidence of Mr C, whom he described as a credible witness. He submitted that Mr C had explained clearly why SPA work was required to be undertaken onsite. In particular, he submitted that consultants undertaking SPA activity onsite could be called upon in emergencies, such as periods of increased patient demand within the hospital.

32. Mr Taylor referred to the example given by Mr C contrasting the higher likelihood of emergency requests for an obstetrician and gynaecologist as compared to some other specialties. He submitted that there was therefore a legitimate operational basis for requiring SPA sessions to be undertaken onsite.

33. Mr Taylor further submitted that Dr Ojutiku himself, within his witness statement, acknowledged having previously been called away from SPA activity to assist during emergencies. He submitted that this undermined the defence characterisation of SPA work as merely flexible or peripheral activity.

34. Mr Taylor also referred to the evidence of Dr B, who he submitted drew no distinction between Direct Clinical Care and SPA activity, describing them as intertwined and mutually supportive aspects of consultant practice.

35. In relation to remuneration and private work, Mr Taylor submitted that the principal issue was not the precise amounts earned by Dr Ojutiku, nor the financial arrangements relating to patients. Rather, he submitted that the critical issue was that Dr Ojutiku was job planned to undertake SPA work onsite at Basildon Hospital but instead chose, over a prolonged period, to undertake private remunerated work at Chartwell Hospital.

36. Mr Taylor submitted that the allegations had always been "crystal clear" in asserting that Dr Ojutiku knowingly undertook private work during periods when he was contracted and job planned to undertake onsite SPA activity for the Trust.

37. Addressing the contractual issues raised by the defence, Mr Taylor submitted orally that Dr Ojutiku himself accepted within his witness statement that he had moved onto the 2003 consultant contract in December 2005, backdated to April 2003. He submitted that it was therefore artificial to suggest there was no evidence regarding the applicable contractual framework.

38. Mr Taylor submitted that the job plans formed part of Dr Ojutiku's employment contract and represented agreed programmed activities and locations of work. He submitted that the location of Basildon Hospital was expressly identified throughout the job plans agreed with the Dr Ojutiku and that this was central to the GMC's case.

39. In his written submissions, Mr Taylor submitted that Dr B, Mr C and Mr A all confirmed that consultant job plans formed part of the employment contract with the Trust.

40. Mr Taylor further submitted that the issue was not one of subjective interpretation of SPA obligations. He referred to emails contained within the hearing bundle and submitted that whilst Dr Ojutiku may have expressed a differing interpretation of SPA work, the relevant issue was what he had agreed within his job plans, which formed part of his contractual commitments.

41. Mr Taylor submitted that flexibility in relation to SPA activity being conducted on site was accepted by the GMC witnesses, but only within defined and authorised circumstances. He referred to examples given during the evidence, including observing new techniques or equipment at alternative hospitals with prior managerial approval.

42. Mr Taylor submitted, however, that working privately for another provider for personal remuneration could never be characterised as flexible offsite SPA activity.

43. In written submissions, Mr Taylor relied upon the *Basildon and Thurrock University Hospitals NHS Foundation Trust Job Planning policy,* the *Code of Conduct for Private Practice*, the *Consultant Contract Version 9* and the *Terms and Conditions – Consultants (England) 2003*. He submitted that those documents collectively demonstrated that private work was not permitted during NHS contracted hours and that NHS work was to be undertaken onsite unless otherwise agreed.

44. Mr Taylor submitted that all the evidence demonstrated that Dr Ojutiku neither sought nor obtained permission to undertake private work during his SPA sessions.

45. Addressing the issue of whether the patients were NHS or private patients, Mr Taylor submitted that this issue was irrelevant. He referred to the evidence of Mr G, who explained that the relevant point was that Dr Ojutiku was undertaking private remunerated work at a private hospital during periods when he was contracted to undertake NHS SPA work onsite.

46. Mr Taylor disputed the defence submission that the GMC was required to prove that Dr Ojutiku failed to perform SPA obligations entirely. He submitted that failing to complete SPA outputs was not the allegation advanced by the GMC.

47. Rather, he submitted that the critical issue was whether Dr Ojutiku acted dishonestly by undertaking private remunerated work during NHS contracted hours when he knew he was not permitted to do so.

48. Mr Taylor submitted that the defence characterisation of the case as merely involving "job planning, timing, location and authorisation" understated the seriousness of the

allegations. He submitted that the Trust's concern was not simply administrative disagreement, but rather that for almost two years Dr Ojutiku worked privately for another provider whilst job planned to undertake SPA sessions at Basildon Hospital receiving payment from both.

49. Mr Taylor submitted that it was not sufficient for the defence to suggest that SPA work may have been made up at another time. He submitted that the GMC's case concerned the fact that the SPA work could not have been undertaken during the relevant Friday afternoons because Dr Ojutiku was working at Chartwell Hospital during those periods.

50. Turning to the allegations individually, Mr Taylor submitted that sufficient evidence had been adduced in relation to each paragraph of the Allegation.

51. In relation to paragraph 1, Mr Taylor submitted that all relevant witnesses had confirmed that Dr Ojutiku was employed as a Consultant Obstetrician and Gynaecologist by the Trust during the relevant period. He submitted that any suggestion there was no evidence in relation to paragraph 1 was baffling.

52. In relation to paragraph 2, Mr Taylor relied upon the evidence of the Chartwell clinic dates, the job plans and the documentary evidence demonstrating that Dr Ojutiku undertook clinics during periods allocated for SPA work.

53. In relation to paragraph 3, Mr Taylor submitted that the evidence of payments made to Dr Ojutiku by Ramsay Health was clearly established through the Ramsay Health documentary material and Trust witness evidence.

54. In relation to paragraph 4, Mr Taylor submitted that the Tribunal was entitled to draw inferences regarding Dr Ojutiku's knowledge from the job plans, the contractual documentation, the emails sent to the consultant body, and the policy documents contained within the bundle.

55. Mr Taylor submitted that it was unrealistic to suggest that the Trust was required to prove individual read receipts for emails or policies. He submitted that consultants bore individual responsibility for keeping abreast of and reading communications and policies circulated to them.

56. In relation to paragraph 5, Mr Taylor submitted that the mental element was expressly pleaded within paragraph 4 of the Allegation. He submitted that, if the Tribunal found that Dr Ojutiku knowingly undertook private clinics for personal remuneration during

NHS contracted hours, whilst also being paid by the Trust and without permission to do so, it would be open to the Tribunal to conclude that such conduct was dishonest applying the principles in *Ivey v Genting Casinos.*

57. Accordingly, Mr Taylor submitted that sufficient evidence had been adduced upon which a properly directed Tribunal could find all five paragraphs of the Allegation proved. He invited the Tribunal to reject the no case to answer application in its entirety.

The Tribunal's Approach

58. The Tribunal had regard to Rule 17(2)(g) which states:

> *'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 Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld'.*

59. The Tribunal also took into account the advice provided by the Legally Qualified Chair to the parties, and upon which the parties were invited to comment. The Tribunal fully accepted that advice. The test of no case to answer was laid down by Lord Lane CJ in the case of *Regina v Galbraith (1981) 73 Cr. App. R. 124*. It was confirmed as the appropriate test for regulatory proceedings in the case of *General Medical Council v Udoye [2021] EWHC 1511 (Admin).* The Galbraith test states that a case should not be left to the jury if there is no evidence or insufficient evidence to support a conviction. The test sets out:

> *'(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The Judge will of course stop the case.*
>
> *(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence, (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made to stop the case, (b) Where however the prosecution evidence is such that its strength or weakness depends on the view taken of a witness's reliability, or other matters that are generally speaking within the province of the jury, and where, on one possible view of the facts, there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the Judge should allow the matter to be tried by the jury.'*

60. The Tribunal was also reminded that their role was not to make findings of fact and to limit their deliberations to establish if there was sufficient evidence for the case to proceed on all or any of the allegations. The Tribunal was referred to the case of *R (on the application of Dr Alan Tutin) v General Medical Council [2009] EWHC 553 (Admin)* to consider each allegation still in dispute separately and the case of *McLennan v General Medical Council (2020) CSIH 12*, the Tribunal's role at this stage was not to determine whether the facts should be proved, but whether they could be proved on the evidence adduced thus far.

61. Finally the Tribunal was reminded of *The Queen on the Application of David Husband v General Dental Council [2019] EWHC 2210 (Admin)* and the need to exercise care in how much detail is provided in any reasons given for a decision at no case to answer stage, to avoid giving a premature indication of how the Tribunal is considering the evidence at this stage.

62. The Tribunal, having taken the advice of the Legally Qualified Chair, was careful to distinguish between its approach to the evidence at this stage and its approach at the end of the fact-finding stage. At this stage, the Tribunal had to decide whether sufficient evidence had been adduced to satisfy it to the necessary standard identified in the *Galbraith* test in relation to those outstanding paragraphs and sub-paragraphs which form the subject of the present application. It was not presently its function to determine whether those facts in the Allegation were proved but rather a determination was required whether, with the evidence taken at its highest, meant the relevant paragraphs *could* be found proved.

The Tribunal's analysis and decision

63. The Tribunal carefully considered the submissions made on behalf of Dr Ojutiku and on behalf of the GMC. It had regard to the written submissions provided by both parties and to the oral submissions made by Dr Ogunsanya and Mr Taylor.

64. The Tribunal reminded itself that the application was made pursuant to Rule 17(2)(g) of the Rules. It further reminded itself of the test in *Galbraith*, namely that the Tribunal should uphold a submission of no case to answer only where there is no evidence upon which the facts alleged could be found proved, or where the evidence is so inherently weak, vague, tenuous or inconsistent that no properly directed Tribunal could safely rely upon it.

65. The Tribunal considered the defence submissions. It noted that Dr Ogunsanya had provided a table identifying the evidence relied upon, the source of that evidence and why, in the defence submission, it mattered. The Tribunal noted that the main thrust of the defence submission was that the GMC had not proved that Dr Ojutiku failed to undertake his SPA

work. Dr Ogunsanya submitted that, if Dr Ojutiku had performed his SPA work at another time, the case could not properly amount to dishonesty or misuse of NHS time.

66. The Tribunal also noted Dr Ogunsanya's submission that the GMC had not produced a signed contract so the contractual foundation of the case was deficient. He submitted that any requirement to undertake SPA work onsite was an onerous condition which ought to have been expressly brought to Dr Ojutiku's attention, but Dr B's 2017 email had not had the *Code of Conduct/ Code of Practice for Consultants* attached. He further submitted that placing policies on the Trust intranet was insufficient to prove that Dr Ojutiku had knowledge of the relevant restrictions.

67. Whilst the Tribunal considered the above submission, it accepted Mr Taylor's submission that the absence of a signed contract was not determinative. The Tribunal noted that Dr Ojutiku had accepted in his own statement that he had moved onto the 2003 consultant contract, in December 2005, backdated to April 2003. It further noted that the evidence from the GMC witnesses and the 2003 Terms was that the job plans formed part of a consultant's contractual arrangements. The Tribunal therefore determined that there was sufficient evidence upon which it could find that Dr Ojutiku was working under the relevant contractual framework and agreed job plans.

68. The Tribunal also considered the defence submission that SPA work was flexible, that no specific SPA activity had been assigned to Dr Ojutiku on the relevant dates, and that the GMC could not identify what SPA activity had not been done. The Tribunal noted the defence reliance upon the BMA guidance and the submission that SPA work need not always be carried out onsite.

69. The Tribunal accepted that there was evidence that SPA activity could be undertaken flexibly and, in some circumstances, offsite. However, the Tribunal also noted the evidence relied upon by the GMC that any such flexibility required prior agreement or permission. The Tribunal noted the evidence of the Trust witnesses that there had been no agreed derogation from the contractual or job-planning position for Dr Ojutiku, and no permission granted to him to undertake private work at Chartwell Hospital during SPA time.

70. The Tribunal considered Mr Taylor's submissions on behalf of the GMC. It noted his submission that the issue was not whether Dr Ojutiku completed all SPA outputs at some other time, but whether he knowingly undertook private remunerated work during NHS contracted hours when he was job planned to be undertaking SPA work onsite. The Tribunal accepted that this was the way in which the allegation was framed.

71. The Tribunal noted the evidence relied upon by the GMC, including the job plans, which recorded SPA sessions at Basildon Hospital, the email from Dr B concerning private work during SPA time, and emails from Dr I stating that SPA work was to be completed onsite unless permission had been obtained. The Tribunal considered that such evidence could support an inference that Dr Ojutiku knew the parameters of his job-planned SPA work.

72. The Tribunal also noted the evidence that Dr Ojutiku had undertaken clinics at Chartwell Hospital on the dates set out in Schedule 1, and that those dates fell during periods when his job plan recorded SPA activity. It further noted the evidence that Dr Ojutiku received remuneration for the Chartwell work and was also paid by the Trust for the same periods.

73. The Tribunal considered the defence submission that the patients seen at Chartwell may have been NHS patients and that payment may have been made through a recharging arrangement. The Tribunal determined that this did not undermine the existence of an answerable case. The allegation was not dependent upon the patients personally paying Dr Ojutiku. The issue was whether Dr Ojutiku received remuneration from another provider whilst also being paid by the Trust for NHS contracted hours.

74. The Tribunal then considered each paragraph of the Allegation.

75. In relation to paragraph 1, the Tribunal noted that it was not meaningfully disputed that Dr Ojutiku was employed as a Consultant Obstetrician and Gynaecologist by the Trust during the relevant period. The Tribunal determined that there was sufficient evidence upon which paragraph 1 could be found proved.

76. In relation to paragraph 2, the Tribunal noted the evidence that, on one or more of the dates in Schedule 1, Dr Ojutiku undertook clinics at Chartwell Hospital for Ramsay Health during periods recorded in his job plan as contracted SPA time. The Tribunal determined that there was sufficient evidence upon which paragraph 2 could be found proved.

77. In relation to paragraph 3, the Tribunal noted the evidence that Dr Ojutiku received payment for the clinics undertaken for Ramsay Health and was also paid by the Trust for the same periods as part of his contracted hours. The Tribunal determined that there was sufficient evidence upon which paragraph 3 could be found proved.

78. In relation to paragraph 4(a), the Tribunal noted the GMC's reliance upon the agreed job plans, the consultant terms and conditions (which mirrored the 2003 Terms), the Trust policies, and emails from Dr B and Dr I. The Tribunal considered that this evidence could

support an inference that Dr Ojutiku knew that, during contracted hours, he was not permitted to undertake work for another provider and was required to work onsite unless otherwise agreed.

79. In relation to paragraph 4(b), the Tribunal noted the evidence of the Trust witnesses that Dr Ojutiku had not obtained permission to undertake work for another provider during contracted hours and had not obtained permission to work offsite during those periods. The Tribunal determined that there was sufficient evidence upon which paragraph 4(b) could be found proved.

80. In relation to paragraph 5, the Tribunal noted that dishonesty was alleged by reason of the knowledge pleaded at paragraph 4. The Tribunal considered that, if paragraphs 2, 3 and 4 were found proved, there was sufficient evidence upon which the Tribunal could go on to consider dishonesty by reference to the test in *Ivey v Genting Casinos.*

81. The Tribunal did not accept that the GMC evidence was inherently weak, vague, tenuous or inconsistent. It considered that the GMC witnesses had given evidence which was broadly consistent and was supported by documentary material, including job plans, emails and policy documents. The Tribunal further considered that there was evidence, including admissions and material from Dr Ojutiku's own statement, capable of supporting the allegations.

82. Accordingly, the Tribunal determined that sufficient evidence had been adduced upon which a properly directed Tribunal could find each paragraph of the Allegation proved. The Tribunal therefore rejected the submission of no case to answer. The case would proceed.

Schedule 1

Date	Payment received from the Trust	Payment received from Ramsay Health Care UK
28/04/2017	£122.45	£544
12/05/2017	£122.45	£534
09/06/2017	£122.45	£610
23/06/2017	£122.45	£652
07/07/2017	£122.45	£580
21/07/2017	£122.45	£475
04/08/2017	£122.45	£434
18/08/2017	£122.45	£547
01/09/2017	£122.45	£839
15/09/2017	£122.45	£544
29/09/2017	£122.45	£569
13/10/2017	£122.45	£475
10/11/2017	£122.45	£605
24/11/2017	£122.45	£583
08/12/2017	£122.45	£580
19/01/2018	£122.45	£414
02/02/2018	£122.45	£384
16/02/2018	£122.45	£470
02/03/2018	£122.45	£384
16/03/2018	£122.45	£445
13/04/2018	£122.45	£502.50
27/04/2018	£122.45	£466
25/05/2018	£122.45	£505
11/05/2018	£122.45	£627
08/06/2018	£122.45	£663
06/07/2018	£122.45	£284
20/07/2018	£122.45	£516
17/08/2018	£122.45	£1135.50
14/09/2018	£122.45	£621.50
28/09/2018	£122.45	£577.50
12/10/2018	£122.45	£487
09/11/2018	£122.45	£629
23/11/2018	£122.45	£366.50
07/12/2018	£122.45	£571.50
21/12/2018	£122.45	£311

04/01/2019	£122.45	£472
18/01/2019	£122.45	£479.50
01/02/2019	£122.45	£571.50
15/02/2019	£122.45	£583
01/03/2019	£122.45	£441
15/03/2019	£122.45	£566
29/03/2019	£122.45	£702
26/04/2019	£141.35	£557
10/05/2019	£141.35	£715
Total	**£5,425.60**	**£24,018**