

PUBLIC RECORD

Dates: 09/03/2026 - 10/03/2026

Doctor: Dr Moboladale OJUTIKU

GMC reference number: 4086068

Primary medical qualification: MB BS 1985 University of Ibadan

Type of case: MPT - Preliminary

Tribunal:

Legally Qualified Chair:	Mr Thomas Scapens
Registrant Tribunal Member:	Dr Andy Cohen
Registrant Tribunal Member:	Dr Janet Nicholls
Tribunal Clerk:	Miss Emma Saunders

Attendance and Representation:

Doctor:	Not present, represented
Doctor's Representative:	Dr Oluwatoyin Ogunsanya, 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.

Overarching Objective

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

Determination on Preliminary Matters - 10/03/2026

1. By way of preliminary matters at the start of this preliminary hearing, the Tribunal raised with the parties whether it would be appropriate for it to receive a full copy of the Allegation. The Tribunal had received the written skeleton arguments provided by both parties but this only contained summaries of some of the paragraphs of the Allegation. It was agreed by Dr Oluwatoyin Ogunsanya, Taylor Wood Solicitors, on behalf of Dr Ojutiku, and by Mr Alan Taylor, Counsel on behalf of the GMC, that this Tribunal would need to see the Allegation as the entire issue it was considering was whether the Allegation was sufficiently pleaded or if there needed to be further and better particulars. As such, the Tribunal received and read the Allegation with accompanying Schedule 1.

2. Mr Taylor submitted that the Tribunal should also have sight of a hearing bundle containing the evidence the GMC relies on in Dr Ojutiku's case to enable it to decide on the preliminary matters. Dr Ogunsanya stated that there was no objection for the Tribunal seeing the bundle per se. He said that he did not feel the Tribunal needed the entirety of the bundle due to its volume (735 pages) when the issue was a narrow one. The Tribunal was of the view that it should have the bundle in full. It understood that it would be difficult to try to amend it to make it shorter and, in the first instance, the Tribunal set out that it would read the Allegation only before hearing submissions. The Tribunal invited the parties to take it to any part of the bundle that they considered relevant during their submissions and the Tribunal would complete any further reading as necessary. The Tribunal stated that it would only read parts of the bundle to which it was referred by the parties; this was in the interest of fairness so that all parties knew exactly what the Tribunal had read and considered and what it had not.

3. The Tribunal also noted that Dr Ogunsanya, upon questions from the Tribunal, had said that his application related to the issue of amendment of the particulars of the Allegation only and that he would not be pursuing the issue of further disclosure from the GMC.

4. On 9 March 2026, in revised submissions, Dr Ogunsanya stated that the preliminary issues, as set out in his written skeleton argument, for determination by the Tribunal were:

- Whether paragraphs 2-4 of the Allegation (and any Schedule 1) are pleaded with sufficient particularity that Dr Ojutiku should be required to respond.

- Whether the current lack of particulars, in the context of allegations of a serious nature, creates a real risk of unfairness contrary to Article 6 of the European Convention on Human Rights (ECHR).

5. Dr Ogunsanya therefore stated that the application before the Tribunal today was for an order that:

- the GMC provides further and better particulars of paragraphs 2 - 4 of the Allegation (and any related 'Schedule 1' relied upon), ~~and to disclose further documents;~~
(Strikeout: there are no applications for disclosure and this is amended accordingly)
- directions requiring the GMC to amend/re-plead the allegations (if necessary) so that Dr Ojutiku can understand the case he has to meet and prepare his defence fairly; and
- any consequential directions.

Submissions

Submissions on behalf of Dr Ojutiku

6. Dr Ogunsanya stated that Dr Ojutiku relied, in particular, on the requirements of procedural fairness and Article 6 of the ECHR in professional disciplinary proceedings, and the established principle that serious allegations (including allegations amounting to dishonesty/fraud or misuse of NHS time) must be clearly and properly particularised.

7. Dr Ogunsanya stated that Dr Ojutiku was a Consultant Obstetrician and Gynaecologist employed by Mid and South Essex NHS Foundation Trust, formerly Basildon and Thurrock University Hospitals NHS Foundation Trust ('the Trust') since circa 2000. He stated that the Allegation principally relates to concerns that (i) Dr Ojutiku undertook private clinics at Chartwell Private Hospital (for Springfield Hospital / Ramsay Health) during 'contracted hours' with the Trust, and (ii) that Dr Ojutiku received payment for private clinics whilst also being paid by the Trust for the same period (Schedule 1).

8. Dr Ogunsanya stated that it was Dr Ojutiku's position that the current pleading of paragraphs 2 to 4 of the Allegation was vague and ambiguous, and that (given the age and volume of the dates relied upon) the absence of proper particulars is prejudicial and risked an unfair hearing. Dr Ogunsanya referred to various case law in this regard as well as to Article 6 of the ECHR, in that the practical consequence was that Dr Ojutiku must have a fair

opportunity to understand the case against him and to prepare and present his defence effectively.

9. Dr Ogunsanya stated that the dates relied upon span multiple years and include repeated clinic dates. He submitted that, without clear particulars, Dr Ojutiku could not sensibly: (i) identify what he was contractually required to do at the relevant time, (ii) identify which dates are truly in issue, or (iii) disclose documents and witness evidence to meet the allegation.

10. Dr Ogunsanya submitted that fairness required the GMC to *'nail its colours to the mast'* and provide a clear, properly particularised, and pleaded case now, rather than leaving Dr Ojutiku to guess and respond to a moving target at the substantive hearing.

Order sought

11. In Dr Ogunsanya's written skeleton argument (paragraph 24), he invited the Tribunal to make directions substantially in the following terms:

- Within 28 days, the GMC shall provide further and better particulars of paragraphs 2 to 4 of the Allegation, including an updated Schedule 1 identifying each date relied upon, the precise contractual duty said to be owed on that date and time, and the evidential basis for asserting breach.
- Within 28 days, the GMC shall disclose the contract(s), terms and conditions, job plan(s), and policy documents relied upon (including any Consultant Contract/Terms clause(s) said to be engaged).
- Within 28 days, the GMC shall provide the documentary foundation for any allegation of payment overlap, including Trust payroll evidence and Ramsay/Springfield payment evidence relied upon.
- The substantive hearing timetable shall be stayed/varied as necessary, with a further case management hearing listed if required, until after the GMC has complied and Dr Ojutiku has had a fair opportunity to respond.

12. Dr Ogunsanya submitted that, in the alternative, if the GMC is unable to particularise the allegations sufficiently, the Tribunal is invited to consider whether paragraphs 2 to 4 of the Allegation (or parts of them) should be struck out or not admitted as unfair to proceed.

13. In revised submissions, Dr Ogunsanya invited the Tribunal to make an order that:
- the GMC provides further and better particulars of paragraphs 2 - 4 of the Allegation (and any related 'Schedule 1' relied upon);
 - directions requiring the GMC to amend/re-plead the allegations (if necessary) so that Dr Ojutiku can understand the case he has to meet and prepare his defence fairly; and
 - any consequential directions.

Paragraph 2 of the Allegation

14. In written submissions, Dr Ogunsanya stated that Dr Ojutiku sought the following particulars and documents:

- The contract(s) relied upon (including the alleged 2000 contract and any 2013 contract/terms said to apply), and identification of the specific clause(s) said to require physical presence at the Trust during the relevant periods.
- For each date relied upon, the precise contractual duty said to be owed at that time (e.g. DCC, Supporting Professional Activities ('SPA'), ward round, theatre list, administration), and the basis for asserting that Dr Ojutiku "*should be at the Trusts*" premises during the relevant time.
- Identification of any patient safety incidents said to arise on the dates relied upon (or confirmation that no such patient safety incident is alleged).
- Evidence of the payments made by the Trust in lieu which gave rise to the said loss incurred by the Trust as a result of Dr Ojutiku's absence from the Trust in the relevant periods (including gross/net values, pay coding, and method/account details where relied upon).
- Evidence of any Ramsay/Springfield payments relied upon (including pay slips/remittance advice, payee details, and dates/amounts).

15. In oral submissions, Dr Ogunsanya referred to the content of Schedule 1 of the Allegation. He stated that what was not pleaded was what contracted hours Dr Ojutiku was said to be performing on behalf of the Trust on each particular date and the nature of that activity. He stated that activities are varied in clinical care where some parts require the registrant to be in the hospital to complete that work and others do not. Dr Ogunsanya stated that the Allegation related to a time now almost nine years ago so it is now quite

difficult to know what that activity relates to and why the GMC is saying that Dr Ojutiku should have been in the hospital rather than at Ramsay Health Care.

16. Dr Ogunsanya referred to Dr Ojutiku's contract with the Trust. He stated that Dr Ojutiku is allowed to do private work within the terms of that contract. Dr Ogunsanya set out a scenario whether, for example, if the contract set out that Dr Ojutiku should complete a ward round from 9 to 10am only then he could have been permitted to complete private working for the rest of the day. Dr Ogunsanya stated that Dr Ojutiku has no idea what the values relate to within Schedule 1 and so there must be a payroll or record that relates to each of them. He submitted that, because it was not specifically pleaded, it was difficult for them to respond to it and therefore created an unfairness. Dr Ogunsanya stated that it was not enough to say that the answer was in someone's witness statement; they should be pleaded to ensure matters could be effectively challenged at a substantive hearing.

17. Dr Ogunsanya stated that there may be elements of extra work, i.e. red alerts due to emergencies, where practitioners were allowed sometimes to use the SPA as free time and not restricted to any policy. Dr Ogunsanya stated that there needed to be identification and the freestanding Schedule 1 was wholly inaccurate. He submitted that serious allegations of this nature should not be allowed to be wholly inadequate and they just wanted the pleadings to be very, very clear. He referred to the 2000 and 2003 contracts. Dr Ogunsanya stated that they were asking what clause the GMC was relying on. He submitted that these matters were nine years ago and Article 6 of the ECHR requires the allegations to be properly particularised.

Paragraph 3 of the Allegation

18. In written submissions, Dr Ogunsanya stated that paragraph 3 was, in substance, a probity allegation (and may amount to an allegation akin to fraud/dishonesty). He submitted that it therefore required careful pleading and identification of the contractual prohibition relied upon. He stated that Dr Ojutiku sought the following particulars and documents:

- Clarification of the nature of the '*double payment*' allegation:
- Identification of the specific contractual or policy provision said to prohibit receiving private payment during the relevant periods, and the clause relied upon.
- Particulars of the Trust's alleged loss calculation (including the methodology and source documents), and how the alleged figure(s) are said to arise.

- Confirmation of which dates are alleged to be “*in contracted time*” (and which are not), including treatment of annual leave and study leave dates.

19. In oral submissions, Dr Ogunsanya stated that the payments of £122.45 in Schedule 1 did not identify what the payment was for. He stated that if it was being alleged that the £122.45 had been paid to Dr Ojutiku as part of his contracted hours then they needed to know that. Dr Ogunsanya stated that it was unclear whether it was a supplementary payment or for a particular activity and that it would be fair to ask the GMC to specify what the amount of money was in a pleading versus what work it represented. It was put to Dr Ogunsanya that it was payment for Dr Ojutiku’s contracted hours. Dr Ogunsanya submitted that, if so, then Schedule 1 was very otiose. He submitted that they did not know what the £122.45 related to and did not want to be surprised with anything in the substantive hearing.

Paragraphs 4(a) and (b) of the Allegation

20. In written submissions, Dr Ogunsanya stated that paragraph 4 appeared internally inconsistent, in that it was not clear whether working for another provider during contracted hours was alleged to be absolutely prohibited or permitted subject to prior approval. He submitted that this required clarification from the GMC. Dr Ogunsanya stated that Dr Ojutiku sought the following particulars and documents:

- Clarification of the GMC’s pleaded case: is the allegation (i) absolute prohibition, or (ii) failure to obtain approval, and in either case, identification of the contractual/policy basis.
- If approval is said to be required: details of the approval process, decisionmaker(s), criteria, and whether/how approval could be refused.
- Any documentary evidence relied upon that Dr Ojutiku lacked approval for the relevant periods.

21. In oral submissions, Dr Ogunsanya referred to the issue of ‘knowledge’. Dr Ogunsanya questioned whether the ability or inability to work for another provider is said by the GMC to be an issue of contract, Trust policy or permission being granted by a variation in the terms of work ie, via an internal email. He submitted that it might be clearer for the substantive Tribunal if the particulars of what the GMC was alleging was in Dr Ojutiku’s knowledge were spelt out, i.e. what clause in the contract was the GMC relying upon. Dr Ogunsanya submitted

that there must be more with paragraph 4 of the Allegation than just “*your contracted hours with the Trust*”.

Submissions on behalf of the GMC

22. Mr Taylor stated that Dr Ojutiku’s Medical Practitioners Tribunal (‘MPT’) hearing is listed to take place on 26 May 2026 to 15 June 2026. Mr Taylor stated that the GMC’s position was that the preliminary application should be refused, as no directions are necessary or applicable.

23. Mr Taylor stated that the GMC received a referral from Dr B, Medical Director and Responsible Officer at the Trust on 3 November 2021 in relation to concerns that Dr Ojutiku had been conducting private work at Chartwell Private Hospital during SPA contracted hours with the Trust. Mr Taylor set out the background of the GMC investigation, including details of the steps at Rules 7 and 8 of the GMC (Fitness to Practise) Rules 2004, as amended (‘the Rules’).

24. Mr Taylor stated that the First Listing Telephone Conference took place on 13 October 2025. He stated that the GMC subsequently received a *Request for Further and Better Particulars* dated 14 October 2025. The GMC responded on 21 November 2025. Mr Taylor stated there had been further email exchanges between the GMC and Taylor Wood Solicitors regarding particularisation of the allegations, culminating in the listing of this preliminary hearing.

25. Mr Taylor stated that it was not disputed that allegations should be sufficiently particularised such that a registrant knows what the case against them is. He submitted that the Allegation in Dr Ojutiku’s case had been drafted with sufficient clarity and were sufficiently particularised for Dr Ojutiku to know what the case against him is.

26. Mr Taylor referred to Dr Ogunsanya’s submission that the pleading of paragraphs 2 to 4 of the Allegation was vague and ambiguous. He submitted there was no indication given of how those paragraphs of the Allegation were either of those things. Mr Taylor submitted that the Allegation had been drafted with sufficient clarity and that Dr Ojutiku knew what the case against him is. Mr Taylor stated that the dates and payments had been clearly set out in Schedule 1 and there was no unfairness contrary to Article 6 of the ECHR. He submitted that

the proper procedures had been followed in this case and it was clear what the issues are that will fall to be determined by the substantive MPT.

27. In respect of documentation, Mr Taylor stated that the GMC's position was that it had served the evidence which it will rely on at the MPT hearing. Mr Taylor stated that, in the GMC's response on 21 November 2025, it had indicated to Dr Ojutiku that it would be relying on the following documents to prove the Allegation:

- (i) Dr Ojutiku's Job Plans
- (ii) the Terms and Conditions - Consultants (England) 2003
- (iii) the Consultant Contract Version 9 (paragraph 11.3).

28. Mr Taylor stated that it was also made clear that:

"The GMC's case is that (i) private practice was prohibited during hours when Dr Ojutiku was contracted to undertake work for the Trust, and (ii) Dr Ojutiku did not have prior approval to undertake private work offsite during his SPA sessions."

29. Mr Taylor stated that, since that response, supplemental statements had been obtained from various witnesses, which provided further clarification of the documents to be relied upon. He stated that the witnesses exhibiting the relevant documents were as follows:

- (i) Dr B (witness statements dated 7 May 2024, 29 April 2025 and 15 December 2025)
 - Job Plans (1 April 2017-31 March 2020)
 - Job Planning Policy - pages 4 (paragraph 1.5), 7 (paragraph 7.6), 10 and 12
 - Code of Conduct for Private Practice (paragraphs 1.4, 2.1, 2.3, 2.4, 2.8, 3.6)
 - Consultant Contract (2003) (paragraph 11.3)
- (ii) Mr A (witness statements dated 20 January 2025, 8 April 2025 and 29 December 2025)
 - Consultant National Terms and Conditions (schedule 9, paragraphs 2, 3, 5 and 6)
 - Code of Conduct for Private Practice (paragraph 1.4)

Record of Determinations
Doctors Tribunal
Preliminary

- Consultant Contract (2003) (paragraphs 11.1 and 11.3)
- Job Planning Policy (pages 7 [paragraph 7.6], 10 and 12)

(iii) Mr C (witness statements dated 30 January 2025, 8 April 2025 and 17 December 2025)

- Job Plans (8 October 2015-from 1 April 2018)
- Car Parking Data

(iv) Mr D

- Details of the clinics undertaken at Chartwell Private Hospital, including the dates and times of the clinics and the sums paid to the Registrant.

30. He stated that witness statements had also been obtained from Dr I, dated 4 February 2025 and 8 July 2025 (these exhibit various emails), and from Mr G, dated 5 January 2025.

31. Mr Taylor stated that Dr Ogunsanya invited the Tribunal to direct the GMC to provide further and better particulars of paragraphs 2 to 4 of the Allegation and to disclose further documents. Mr Taylor submitted that no such direction is necessary. He stated that the GMC's case was sufficiently particularised and numerous documents in the form of witness statements and exhibits had been disclosed to Dr Ojutiku in support of the Allegation.

32. Mr Taylor stated that Dr Ojutiku also invited the Tribunal to strike out paragraphs 2 to 4 of the Allegation *in the alternative*. Mr Taylor submitted that there is no power to strike out under the Fitness to Practise Rules as suggested by Dr Ojutiku. He stated that it remains open to Dr Ojutiku's legal representatives to apply for a decision as to whether the matter (or part of it) should be withdrawn under Rule 28(2), should he wish to do so. Rule 28 provides:

"Where after a matter has been referred to a Medical Practitioners Tribunal or Interim Orders Tribunal and before the opening of the hearing before the Tribunal, it appears to the Registrar that a matter (or part of it) should not be considered by a Medical Practitioners Tribunal or that an Interim Orders Tribunal should not consider making an order, the Registrar may refer the matter to a medical or lay Case Examiner for a decision as to whether the matter (or part of it) should be withdrawn."

33. In oral submissions, Mr Taylor reiterated several of the points above. He reminded the Tribunal that it was not deciding the merits of this case in this hearing and was not hearing competing arguments as to whether the paragraphs of the allegation should be found proved or not. Mr Taylor stated that the burden of proof was with the GMC. He submitted that it seems that much of the submissions made by Dr Ogunsanya revolve around how he will be approaching the cross-examination of the GMC witnesses rather than impinging upon the clarity of the Allegation. Mr Taylor submitted that the submissions from Dr Ogunsanya demonstrate his understanding of the Allegation. He submitted that the Tribunal and parties have to be careful not to conflate evidence to establish the Allegation with the comprehensibility of the Allegation itself. He submitted that much of what Dr Ogunsanya has said revolves around his perception of the evidence, which is something that will, no doubt, be ventilated before the substantive Tribunal.

34. Mr Taylor submitted that it was clear what was being alleged in this case. He referred to a number of pages within the hearing bundle and stated that they might be of assistance to Dr Ogunsanya and Dr Ojutiku. This included the comments within Dr B's witness statement at paragraph 15 that:

"Dr Ojutiku was paid by the Trust during the SPA time when he was supposed to be working for the Trust but was carrying out clinics at CPH. Per programmed session in 2017, 2018 and for the first three months of 2019, Dr Ojutiku was paid a gross figure of £210.66, and a net figure of £122.45. Following a pay award and increment in April 2019, per programmed session, Dr Ojutiku was paid a gross figure of £243.18 and a net figure of £141.35."

35. Mr Taylor stated that he referred to various parts of the evidence not for this Tribunal to decide on matters on an evidential basis but to benefit Dr Ogunsanya. He also submitted that they provided the evidential basis as to Dr Ojutiku's 'knowledge' as to paragraph 4 of the Allegation. Mr Taylor submitted that there was nothing unusual with the Allegation in this case and it had been drafted in accordance with the guidance. He stated that superfluous narrative is avoided and evidence is not pleaded such that the Allegation is succinct and very clear. Mr Taylor also submitted that Dr Ojutiku knows the case against him and there was no issue relating to fairness or a breach of his Article 6 rights.

36. Mr Taylor referred to the wording *"On one or more of the dates"* at the start of paragraph 2 of the Allegation. He submitted that this was a standard phrase and there had to

be some leeway in the drafting of the Allegation to allow the substantive Tribunal to decide some, but not all, or even just one of the dates in Schedule 1 was made out without the whole matter failing. Mr Taylor also submitted that the drafting of the Allegation was not vague or ambiguous and the word 'fraud' did not appear within the Allegation.

37. In terms of whether the GMC could identify a specific clause in a contract, Mr Taylor submitted that it was not as simple as this and that the various witnesses speak, and provide relevant documentation, as to the relevant job plans/contracts that applied on the dates set out within Schedule 1. He submitted that if it had been as simple as referring to a specific contract then the Allegation would have been pleaded in that manner.

The Relevant Legal Principles

38. The Legally Qualified Chair (LQC) stated that the parties were in agreement as to the legal principles that apply in this case.

39. It was agreed that the Article 6 right under the ECHR is applicable to considerations in this case, namely that Dr Ojutiku has the right to a fair trial.

40. It was also agreed that the principles established in the case law referred to by Dr Ogunsanya applied. Dr Ogunsanya stated that procedural fairness required allegations to be formulated with sufficient clarity and particularity. Vagueness can cause unfairness (and therefore unlawfulness) where it prevents a respondent from knowing or understanding the case against him. Dr Ogunsanya referred to the following cases:

- In *Sheill v GMC* [2008] EWHC 2967 (Admin), the High Court criticised unspecific drafting of serious allegations and emphasised the need to identify the circumstances and source of the allegation (for example, identifying relevant documents, dates and context where a false/dishonest claim is said to have been made).
- In *Lovett v HCPC* [2018] EWHC 1024 (Admin), the Court referred to the need for clear pleading and proper particulars in serious allegations, including allegations akin to fraud/dishonesty, and treated inadequate pleading as a significant procedural failing.
- Similarly, in *R (Wheeler) v Assistant Commissioner House* [2008] EWHC 439 (Admin), the Court recognised that vagueness may be a ground of challenge where it results in unfairness in disciplinary proceedings.

41. The LQC stated that the Tribunal had also been referred to the case of *Byrne v GMC* (2021) EWHC 2237 (Admin), where Justice Morris held that it is not the case that “*the more serious the allegation, the more cogent the evidence needed to prove it*”. It did establish that allegations should be sufficiently particularised such that the Registrant knows what the case against him is. The LQC stated that the Tribunal would remind itself that Dr Ojutiku has the right to know the case against him and the pleading should be sufficiently clear. The Tribunal is clear that the burden of proof in proving the facts is on the GMC, to the standard of the balance of probabilities.

42. The Tribunal would also have regard to the Rules, in particular in this case to Rule 28 (quoted above) and Rule 15(1)(a):

“(1) After an allegation or non-compliance matter has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal under rule 17 or 17ZA (as the case may be)—

(a) the Registrar shall give notice to the practitioner of—

(i) the allegation against the practitioner and the facts upon which it is based; or

(ii) the non-compliance matter; and...”

Tribunal’s Decision

43. The Tribunal appreciated that its role was not to conflate the evidential questions with the clarity of the proceedings and it was important that it consider what was necessary and proportionate to make the pleadings clear. The Tribunal understood that a pleading is not an index of where evidence can be found and that an Allegation was set out and then evidence served by the GMC to seek to fulfil the burden of proof.

Paragraph 2 of the Allegation

44. The Tribunal had regard to the wording of paragraph 2 of the Allegation. It appreciated that the GMC is alleging that Dr Ojutiku undertook private clinics for Ramsay Health Care UK during his contracted hours with the Trust. The wording refers to the dates set out within Schedule 1, where the dates and payment amounts are set out. The Tribunal noted that the issue of what hours Dr Ojutiku was working and where was a matter to be tested by way of evidence at the substantive hearing.

45. The Tribunal considered Dr Ogunsanya's submissions, including the particulars and documents asked for by Dr Ojutiku (as set out in full above). The Tribunal was of the view that the matter of the contract/s relied upon and the identification of specific clauses as well as the precise contractual duty said to be owed at the time were all evidential issues to be determined by the substantive Tribunal. The Tribunal noted that the fact that these matters had been raised by Dr Ogunsanya was an example of Dr Ojutiku having understood the allegations against him. Further, the Tribunal did not consider that the identification of any patient safety incidents or evidence of the payments made by the Trust in lieu of Ramsay Health Care payments relied upon were relevant to the issue of the particularisation of the Allegation. The Tribunal noted that there was no claim of loss in the current wording of the Allegation, albeit that Schedule 1 does include monies paid by the Trust and Ramsay Health Care.

46. The Tribunal also considered the wording at the start of paragraph 2 of the Allegation that the clinics were undertaken "*On one or more of the dates*". The Tribunal was of the view that this is standard wording to allow for the substantive Tribunal to find one or more of the dates proved without the entirety falling away if one was not found proved. The Tribunal was clear that the GMC was not alleging that it only relied on some of the dates within Schedule 1, it was relying on all of them, and so it could not see that any amendment to this part of paragraph 2 was needed.

47. Overall, the Tribunal was of the view that this paragraph of the Allegation was clear and that no changes were required.

Paragraph 3 of the Allegation

48. The Tribunal had regard to the wording of paragraph 3 of the Allegation. It noted that the previous paragraph related to Dr Ojutiku allegedly undertaking other work during his contracted hours. Paragraph 3 clearly relates to the payments that Dr Ojutiku allegedly received for the work undertaken from the Trust and from Ramsey Health Care. The Tribunal noted that Mr Taylor has referred to various parts of the witness statements and exhibits which are said to establish the Allegation as correct, which the Tribunal appreciates will be a matter for the substantive Tribunal.

49. The Tribunal considered Dr Ogunsanya's submissions, including the particulars and documents asked for by Dr Ojutiku (as set out in full above). The Tribunal was of the view that it was clear that paragraph 3 of the Allegation was not an allegation of fraud. There is a separate part of the Allegation (paragraph 5) that relates to dishonesty in terms of the conduct at paragraphs 2 and 3 by reason of paragraph 4 and no issue has been taken in terms of the pleading of paragraph 5. The Tribunal was unable to see how further clarification was required in terms of the nature of the 'double payment' allegation. It considered that identification of the specific contractual or policy provision said to prohibit receiving private payment during the relevant periods was an evidential point which would need to be addressed by the GMC appearing before the substantive Tribunal. It was not the case that evidence should be pleaded within an Allegation. The Tribunal noted that Dr Ogunsanya also requested particulars of the Trust's alleged loss calculation and confirmation of which dates were alleged to be "*in contracted time*". The Tribunal was of the view that there was no allegation of financial loss that was to be considered by way of the particulars and, in respect of the latter, Schedule 1 sets out the dates when the GMC say Dr Ojutiku worked under the Trust employment whilst also receiving payment for private work for Ramsay Health Care. Schedule 1 is to be read in accordance with paragraph 3 of the Allegation. The Tribunal was unable to see how this paragraph of the Allegation could be clarified.

50. Overall, the Tribunal was of the view that this paragraph of the Allegation was clear and that no changes were required.

51. The Tribunal was also of the view that Schedule 1 should remain unamended. It noted that it was suggested by Dr Ogunsanya at one point that the schedule did not assist, particularly when it was set out where the £122.45 came from. The Tribunal considered that if they were to accept this submission it would have the effect of reducing the clarity of the particulars contrary to what was being asked for by Dr Ogunsanya. The Tribunal was of the view that Schedule 1 does assist and sets out what Dr Ojutiku was allegedly paid and when. It hoped that it will assist the substantive Tribunal in cross referencing the various dates/payments/evidence before it when it comes to consider the matter.

Paragraph 4 of the Allegation

52. The Tribunal had regard to the wording of paragraph 4 of the Allegation. It relates to what it is alleged Dr Ojutiku knew in terms of his work during contracted hours (that he was

not permitted to undertake work for any other provider/had to work onsite) and that he had not obtained permission from the Trust (to undertake work offsite and with the other provider).

53. The Tribunal considered Dr Ogunsanya's submissions, including the particulars and documents asked for by Dr Ojutiku (as set out in full above). The Tribunal was of the view that it was unable to see an internal inconsistency in this paragraph of the Allegation. It appears that the Allegation is pleaded in a staged process from paragraphs 1 to 5 and relates to the knowledge Dr Ojutiku had as to his contracted hours and in terms of permission required from the Trust.

54. The Tribunal noted that Dr Ogunsanya asked for clarification of the GMC's pleaded case, i.e. whether the allegation was (i) absolute prohibition, or (ii) failure to obtain approval. The Tribunal understands that the GMC is pleading that it is both and (i) absolute prohibition and (ii) a failure to obtain approval. Further, the Tribunal understood that details of the approval process, decisionmaker(s), criteria, and whether/how approval could be refused and any documentary evidence relied upon that Dr Ojutiku lacked approval for the relevant periods were all matters of an evidential basis that would be for determination by the substantive Tribunal; no amendment to the wording of the Allegation was required.

55. Overall, the Tribunal was of the view that this paragraph of the Allegation was clear and that no changes were required. It was unable to see any ambiguity in what was pleaded and was of the view that it does make sense such that Dr Ojutiku can clearly understand what the case against him is.

Conclusion

56. The Tribunal was of the view that a lot of the questions put in this application will be pertinent to the testing of the evidence before the substantive Tribunal rather than relevant to whether or not there is clarity in the Allegation.

57. The Tribunal appreciated, as referred to in the relevant legal principles section, that the burden of proof lies with the GMC and factual matters are to be determined by the substantive Tribunal alone. The Tribunal was clear that it had to be careful not to conflate whether there was evidence to establish the Allegation with the point it was considering in this hearing, namely the comprehension of the particularisation of the Allegation itself. The

Tribunal is concerned with whether the Allegation is capable of being understood and it has determined that it is.

58. The Tribunal noted also that questions were asked of the GMC as to whether there were powers under the Rules for this Tribunal to strike out paragraphs 2-4 of the Allegation. Dr Ogunsanya conceded that he did not know if there were any such powers and did not invite the Tribunal to strike out any of the paragraphs in any event. The Tribunal was not aware of any powers and, in any event, was not minded to exercise such a power in this instance even if there was one.

59. The Tribunal referred to Rule 15(1)(a) of the Rules. It did not find any failure by the GMC in this case to particularise the allegations against Dr Ojutiku such that notice had been given of *“the allegation against the practitioner and the facts upon which it is based”*.

60. In conclusion, the Tribunal determined to refuse Dr Ojutiku’s application for the provision of further and better particulars in relation to paragraphs 2 to 4 of the Allegation.