

## PUBLIC RECORD

## Dates:

24/04/2023 – 15/05/2023

05/02/2024 – 09/02/2024

04/03/2024 – 15/03/2024

24/06/2024 – 25/06/2024

**Medical Practitioner's name:** Dr Mohammed CHAUDHRY

**GMC reference number:** 7524221

**Primary medical qualification:** BM BS 2016 Universities of Exeter & Plymouth

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

## Summary of outcome

Suspension, 5 months.

## Tribunal:

Legally Qualified Chair	Ms Amarjit Sagar
Lay Tribunal Member:	Mr Paul Curtis 24 April to 15 May 2023
Lay Tribunal Member:	Mr John Kelly 5 to 9 February 4 to 15 March 2024 24 to 25 June 2024
Medical Tribunal Member:	Dr Candida Borsada
Tribunal Clerks:	Mrs Anne Bhatti 24 April 2023 to 15 May 2023 and 5 to 9 February 2024 Ms Hinna Safdar, 4 to 15 March 2024 Ms Racheal Gill, 24 to 25 June 2024

**Attendance and Representation:**

24 April to 15 May 2023

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Ms Lizzy Acker, Counsel, instructed by Mr Surjit Dubb, Solicitor, Hempsons
GMC Representative:	Mr Ciaran Rankin, Counsel

5 to 9 February 2024

Medical Practitioner:	Not present and not represented
GMC Representative:	Mr Ciaran Rankin, Counsel

4 to 15 March 2024

Medical Practitioner:	Not present and not represented
GMC Representative:	Mr Ciaran Rankin, Counsel

24 to 25 June 2024

Medical Practitioner:	Not present and not represented
GMC Representative:	Mr Adam Lodge, Counsel

**Attendance of Press / Public**

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

**Overarching Objective**

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

## Determination on Facts - 14/03/2024

1. This determination will be handed down in private as it refers to Dr Chaudhry's personal circumstances. A redacted version will be published at the close of the hearing.

### Background

2. Dr Chaudhry qualified as a doctor in 2016 from the Universities of Exeter and Plymouth. Dr Chaudhry completed an intercalating degree at Imperial College London in Surgery and Anaesthesia. Prior to the events which are the subject of the hearing, Dr Chaudhry completed his F1 and F2 training at South Thames Deanery. At the time of the events Dr Chaudhry was practising as a doctor at two cosmetic clinics, Dermis Clinic Limited and MC Medical Aesthetics Limited ('the clinics'). He also operated at PenisFill, which traded under Dermis Clinic Limited, and MC Medical Aesthetics Limited.

3. The allegation that has led to Dr Chaudhry's hearing can be summarised as follows: between October and November 2019, Dr Chaudhry offered to supply illegal drugs and encouraged another person to take illegal drugs. It is separately alleged that, between April 2020 and August 2020, Dr Chaudhry failed to provide good clinical care to Patient A and did not obtain valid consent. It is also alleged that Dr Chaudhry recorded misleading information in Patient A's medical records and that this was dishonest. It is further alleged that he provided non-essential treatment during the COVID-19 pandemic lockdown in contravention of Government guidance in place at that time.

4. Furthermore, it is alleged that on 18 November 2020, Dr Chaudhry allowed a £1,000 treatment prize giveaway to be offered on social media. Finally, it is alleged that between November 2020 and December 2020, Dr Chaudhry knowingly provided untrue information on his website about having completed his Junior Doctor Training Programme.

5. The initial concerns were raised with the GMC by Mr B on 3 January 2020 and subsequently by Patient A on 15 October 2020.

### The Outcome of Applications made during the Facts Stage

#### Application to exclude a member of the public from observing the hearing

6. The Tribunal refused the application made by Ms Lizzy Acker, Counsel on behalf of Dr Chaudhry, pursuant to Rule 42 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), for a particular member of the public who was observing the

hearing, to be excluded. This member of public was XXX. Ms Acker submitted that there was ongoing litigation between Dr Chaudhry and XXX and therefore it was not appropriate for XXX to be privy to these proceedings. The Tribunal's full decision on the application is included at Annex A.

#### Application admissibility of video evidence

7. The Tribunal refused Ms Acker's application made pursuant to Rule 34 (1) of the Rules, that the evidence in the form of Instagram material should be excluded. Ms Acker accepted that the evidence was relevant because Paragraph 1 of the Allegation was drafted on the basis of that material. However, she submitted that it would not be fair to admit the video evidence as there was a real risk of a miscarriage of justice if the GMC was permitted to rely upon it. The Tribunal's full decision on the application is included at Annex B.

#### Application request for disclosure

8. The Tribunal granted Ms Acker's application made pursuant to Rule 16 of the Rules, for the GMC to disclose further evidence. Ms Acker asked for the GMC to provide a statement confirming how many complaints Patient A had made about doctors other than Dr Chaudhry. She also requested that the GMC confirm whether or not it was in possession of any other civil judgment documents, or Letters Before Action, relating to civil claims that Patient A may have made. The Tribunal's full decision on the application is included at Annex C.

#### Application to consider permission to give evidence from abroad

9. The Tribunal refused Ms Acker's application made pursuant to Rule 16 of the Rules, in which she requested that the GMC confirm that it had received permission from the United States of America, allowing Patient A to give oral evidence remotely at this MPTS hearing. Mr Ciaran Rankin, Counsel on behalf of the GMC, submitted that Ms Acker's application for such a direction was out of time, because it had not been raised at the Case Management hearing and in any event, permission was not required by the GMC.

10. The Tribunal did not determine that Ms Acker's application for such a direction was out of time however refused the application. It concluded that pending a High Court decision on this issue, the position remains unclear as to whether this is a legal requirement when conducting MPTS hearings. This was therefore a matter for the Tribunal. It subsequently determined that it could hear oral evidence from Patient A from the United States. The Tribunal's full decision on the application is included at Annex D.

Application for Tribunal to recuse itself/ for a newly constituted Tribunal

11. Ms Acker firstly made an application for the Tribunal to recuse itself on the grounds of the appearance of bias and prejudice towards Dr Chaudhry in view of the legal arguments that the Tribunal had heard to date. If unsuccessful, Ms Acker would apply for the Tribunal to consider her second application for a newly constituted Tribunal under the General Medical Council (Constitution of Panels, Tribunals and Investigation Committee) Rules Order of Council 2015 on interest of justice grounds. Mr Rankin asked the Tribunal to reject the application on both grounds.

12. The Tribunal refused Ms Acker's application for the Tribunal to recuse itself. Furthermore, it determined that there would be no injustice in continuing with the current Tribunal and therefore, Ms Acker's application to replace the current Tribunal was also refused. The Tribunal's full decision on the application is included at Annex E.

Further application to exclude a member of the public from observing the hearing

13. The Tribunal determined on day one of the hearing (24 April 2023) not to exclude a particular member of the public from this hearing, following an application from Ms Acker. Further on in the hearing, Ms Acker made two further applications in relation to the public observer.

14. The Tribunal granted Ms Acker's first application for the member of the public to be asked to turn on their camera without prior notice so that their identity could be confirmed. There was a concern that the member of public observing the hearing, who had already been identified XXX, was not the person behind the camera. Mr Rankin, on behalf of the GMC, did not object to this application and accepted that an online environment should replicate a face-to-face hearing in fairness to Dr Chaudhry.

15. Upon the Tribunal's request, the member of public eventually appeared on the screen and confirmed his identity as being the person who had signed the MPTS terms of access. Ms Acker then made a further application for him to be excluded. This was based on the length of time it had taken for him to switch on his camera and also the specific terms of a XXX that had recently come to light. Mr Rankin did not object to this application. The Tribunal granted Ms Acker's application for the member of public to be excluded from this hearing. Tribunal's full decision can be found at Annex F.

Application admissibility of evidence

16. The Tribunal granted Mr Rankin’s application on behalf of the GMC, made pursuant to Rule 34 (1) of the Rules, for the Tribunal to admit evidence of correspondence between Mr B, the GMC, and XXX lawyers. Mr Rankin submitted that during her cross examination of Mr B, Ms Acker had, on several occasions, referred him to correspondence between him and the GMC relating to XXX proceedings and therefore the Tribunal ought to see it. Ms Acker objected to this application on the grounds that she had only made reference to a few words that Mr B had used in the email exchanges and that this related to separate XXX proceedings. The Tribunal’s full decision on the application can be found at Annex G.

Application on how Patient A should receive evidence before giving oral evidence

17. The Tribunal refused Mr Rankin’s application for Patient A to receive documentation in advance of his live evidence, particularly in relation to a previous medical procedure. Ms Acker argued that his evidence would be impacted by advance notice of the bundle. The Tribunal directed that immediately prior to Patient A commencing his live evidence, documents would be emailed to him for reference. It formed the view that this was as close as it could replicating Patient A being given a bundle in a face-to-face hearing.

18. The Tribunal directed that Patient A be shown the documentation to which Ms Acker would refer when cross-examining him. MPTS staff would do this by sharing the evidence on their screen. The Tribunal would review this process. If Patient A is not able to refer to individual documents shared on screen, then it would consider the matter further.

Case Management Directions

19. The Tribunal made Case Management Directions, full directions can be found at Annex H.

Service and proceeding in Dr Chaudhry’s absence

20. Dr Chaudhry was not present, nor was he represented, at the reconvened hearing between 5 to 9 February 2024 and between 4 to 15 March 2024. On 5 February 2024, Mr Rankin, on behalf of the GMC, made submissions under Rules 15 and 40 of the Rules and Schedule 4, Paragraph 8 of the Medical Act 1983 (as amended) inviting the Tribunal to find that Dr Chaudhry had been properly served with notification of this hearing. Mr Rankin also applied for the Tribunal to proceed to hear the case in Dr Chaudhry’s absence. The Tribunal determined that the notice of the hearing had been served in accordance with the Rules and

granted Mr Rankin’s application to proceed in the absence of Dr Chaudhry, pursuant to Rule 31. The Tribunal’s decisions and reasons relating to both matters are contained in Annex I.

#### Admissibility of evidence

21. The Tribunal granted Mr Rankin’s application on behalf of the GMC, made pursuant to Rule 34 (1) the Rules, for the Tribunal to admit the following evidence:

- correspondence between the GMC and Dr Chaudhry relating to the readiness of the hearing;
- hearing bundle part three:
  - which contained witness statement of Mr C, GMC Investigation officer, dated 29 September 2023;
  - and definitions of ‘XXX’, ‘XXX’ and ‘bare gear’.

22. Mr Rankin submitted that the evidence was relevant, and it was fair to admit it. The Tribunal’s decisions and reasons relating to this application is contained in Annex J.

#### **The Allegation and the Doctor’s Response**

23. The Allegation made against Dr Chaudhry is as follows:

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

#### Offering to supply/encouraging to take drugs

1. Between October and November 2019, you:

- a. offered to supply drugs in that you:
    - i. recorded and sent an audio message from your Instagram account ‘XXX’ in which you said ‘we’re having a bit of a session, got XXX, XXX and all that shit’ or words to that effect; **To be determined**
    - ii. typed and sent messages stating:
      - 1. ‘we got bare gear’; **To be determined**
      - 2. ‘you wanna do XXX off the rarr’, **To be determined**
- from your Instagram account ‘XXX’; **To be determined**

- b. encouraged another person to take drugs in that you said ‘mmm, let’s go’, or words to that effect. **To be determined**

#### Treatment of Patient A

2. You failed to provide good clinical care to Patient A in that:

- a. between April and May 2020, during a telephone conversation with Patient A about the penis filler procedure (‘the procedure’), you provided misleading information in relation to the consistency of the filler when injected into the penis in that you said that the filler ‘feels hard’, or words to that effect; **To be determined**
- b. on or around 4 May 2020, during a consultation with Patient A, you:
  - i. recorded misleading ICD classifications in Patient A’s medical records during your assessment of Patient A’s mental health; **To be determined**
  - ii. did not obtain valid consent:
    - 1. for the procedure conducted on Patient A on 4 May 2020; **To be determined**
    - 2. for any subsequent treatment given to Patient A on or around:
      - a. 11 June 2020; **To be determined**
      - b. 18 July 2020; **To be determined**
    - 3. to use images of Patient A’s penis on your website in that you did not ask Patient A to sign a proper and separate photographic consent form; **To be determined**
- c. on or around 18 July 2020 you did not record details of the consultation with Patient A, within Patient A’s medical records; **To be determined**
- d. you requested an additional fee when information was asked of you from Patient A about the use of filler on:
  - i. 5 August 2020; **Admitted and found proved**



- ii. 13 August 2020; **Admitted and found proved**
- e. on or around 18 July 2020 you:
  - i. raised your voice during a consultation with Patient A when he raised an issue with the appearance of his penis; **To be determined**
  - ii. did not adequately record within Patient A's medical records:
    - 1. details of the consultation with Patient A; **To be determined**
    - 2. the technique and drug used to dissolve the filler in Patient A's penis. **To be determined**
- 3. On or around 4 May 2020 you recorded information about the reasons for Patient A seeking the procedure from you in Patient A's medical records, in that you wrote:
  - a. 'hopes this treatment will improve his confidence'; **Admitted and found proved**
  - b. 'long term concern girth length 10 years'; **Admitted and found proved**
  - c. 'partner not satisfied'. **Admitted and found proved**
- 4. Patient A did not provide you with the information referred to in paragraph 3. **To be determined**
- 5. You knew that Patient A had not provided you with the information referred to in paragraph 3. **To be determined**
- 6. Your actions at paragraph 3 were dishonest by reason of paragraphs 4 and 5. **To be determined**
- 7. You provided non-essential treatment during the Covid-19 pandemic lockdown in that you performed the procedure on Patient A contrary to government guidelines on:
  - a. 4 May 2020; **To be determined**
  - b. 11 June 2020. **To be determined**

8. Between May and October 2020, you allowed images of Patient A's penis that you had taken during consultation(s) with Patient A, to be published on the 'penisfill' website without Patient A's specific written consent. **To be determined**
9. On 1 September 2020, in a letter to Patient A you referenced Patient A having signed consent forms in that you wrote:
  - a. 'please see our terms and conditions which you agreed to when signing our consent forms'; **Admitted and found proved**
  - b. 'our consent forms (which you have signed)'; **Admitted and found proved**
  - c. 'we will issue them with your signed consent forms'. **Admitted and found proved**
10. Patient A did not sign the consent forms referred to in paragraph 9. **To be determined**
11. You knew that Patient A had not signed the consent forms referred to in paragraph 9. **To be determined**
12. Your actions at paragraph 9 were dishonest by reason of paragraphs 10 and 11. **To be determined**

Offer of treatment prize

13. On 18 November 2020, whilst you were responsible for the clinical aspects of Dermis Clinic Ltd, you allowed a £1,000.00 treatment prize giveaway to be offered on the Instagram page of Dermis Clinic Ltd. **To be determined**

Dishonest information on 'penisfill' website

14. Between on or around 19 November 2020 and on or around 4 December 2020, you stated on your website 'www.penisfill.co.uk' that you completed your junior doctor training programme with the NHS, or words to that effect. **Admitted and found proved**
15. On 19 November 2020, you stated on your website 'www.penisfill.co.uk' that you completed your junior doctor programme in London St Helier NHS Trust and East Kent Trust, or words to that effect. **Admitted and found proved**

16. You had not completed your junior doctor training programme/junior doctor programme. **Admitted and found proved**
17. You knew that you had not completed your junior doctor training programme/junior doctor programme. **To be determined**
18. Your actions at paragraphs 14 and 15 were dishonest by reason of paragraphs 16 and 17. **To be determined**

### The Admitted Facts

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

### Witness Evidence

25. The Tribunal received evidence on behalf of the GMC from the following witnesses, who also gave oral evidence at the hearing:

- Patient A, witness statement dated 30 March 2021 and 16 September 2021, by video link;
- Mr B, witness statement dated 22 July 2020, by video link;
- Mr D, witness statement dated 13 September 2021, by video link;
- Mr C, GMC Investigation Officer, witness statement dated 29 September 2023, by video link.

26. Dr Chaudhry provided his own witness statement dated 24 January 2023. Dr Chaudhry also put forward further written submissions on 5 February 2024 but did not attend the reconvened hearing.

### Expert Witness Evidence

27. The Tribunal received oral evidence on behalf of the GMC from Dr F. He also prepared 3 written reports, dated 16 November 2021, 26 April 2023 and 21 January 2024.

### Documentary Evidence

28. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:
- Correspondence between Dr Chaudhry and Patient A, dated July 2020 to 28 January 2022;
  - Patient A's relevant clinical records;
  - WhatsApp correspondence between Mr D and Patient A, dated April 2020 to August 2020;
  - Screenshots taken by Patient A of Dr Chaudhry's website (PenisFill);
  - Online complaints form completed by Mr B, dated 3 January 2020;
  - Screenshots of Dr Chaudhry's Instagram page labelled 'XXX' with his photo;
  - A screen recording containing direct messages and an audio message and two video clips, from an Instagram account labelled 'XXX';
  - Email correspondence between GMC and Mr D, dated November 2022 to February 2023;
  - GMC Guidance for doctors who offer cosmetic interventions, dated 1 June 2016;
  - Correspondence between GMC and Mr B, dated April 2023;
  - Correspondence between GMC and Patient A, dated January to May 2023;
  - Patient A's complaint against Dr B (regarding a previous similar procedure), dated 3 March 2018;
  - Correspondence between Patient A and GMC, dated May 2023;
  - Correspondence between GMC and Dr Chaudhry, dated 2023 and 2024;
  - Expert Report from Professor E, professor of Urology at University College Hospital, dated 20 October 2023.

### The Relevant Legal Principles

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

30. The Tribunal was advised that it must consider each of the paragraphs of the allegation separately. The approach must be, with regard to each individual paragraph whether the GMC has proved the facts alleged to the Tribunal's satisfaction. Anything less, the doctor would be entitled to a finding of 'not proved'.

31. It was a matter for the Tribunal what weight should be apportioned to certain witness evidence, the credibility of those witnesses, the documentary and video evidence which may

or may not support the versions, events, and the narrative in context of those events relating to the allegation.

32. In assessing a witness's credibility, the Tribunal was advised by the Legally Qualified Chair (LQC) that it should not assess witness credibility exclusively on the demeanour of the witness when giving evidence, but their veracity should be tested by reference to objective facts proved independently in their evidence, in particular, by reference to the documents in the case. The Tribunal should make a rounded assessment of a witness's reliability, rather than approaching their reliability in respect of each charge in isolation from the others: *R (on the application of Dutta) v GMC* [2020] EWHC 1974 (Admin).

33. As to individual pieces of evidence, the Tribunal is entitled to draw proper inferences and come to common sense conclusions based upon the evidence which it accepted as reliable; but it must not speculate. Similarly, the Tribunal should not speculate about what other evidence there might have been. The Tribunal should only draw an inference if it could safely exclude other possibilities: *Soni v GMC* (2015) EWAC 0364 Admin.

34. For the purposes of this Tribunal Dr Chaudhry is of good character. His good character is relevant to the Tribunal's considerations in two ways. Firstly, the Tribunal should take into account his good character when considering whether it accepts what he has stated in his written evidence. Secondly, the fact that the doctor had not acted as alleged in the past may make it less likely that he acted this way in this case.

35. Dr Chaudhry's good character is not a defence to the Allegation, it is one factor to take into account when considering all the evidence in the round. What weight should be given to the doctor's good character and the extent to which it assists on the facts of this particular case will remain a matter for the Tribunal to decide.

36. The fact that a doctor had denied the allegation cannot in itself be a factor to be held against him. However, when assessing the evidence, as was stated in the case of *Sastry & Okpara v GMC* [2021] EWCA Civ 623, it is the Tribunal's role to determine if the denial is supported or undermined by the evidence.

37. The Tribunal was advised on the test for dishonesty, as set out in *Ivey v Genting Casinos Ltd* [2017] (UKSC67) at para 74:

*'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice*

*determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'*

38. The Tribunal bore in mind the *GMC Guidance on Professional standards Decision making and consent* dated 9 November 2020, which sets out the fundamental legal and ethical principles of consent.

### The Tribunal's Analysis of the Evidence and Findings

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

#### Paragraph 1

40. The Tribunal noted that Paragraph 1 of the Allegation follows a complaint made by Mr B. Dr Chaudhry was previously XXX. Mr B believed that Dr Chaudhry was using drugs and had offered these to others. Mr B submitted an online complaint about Dr Chaudhry to the GMC on 3 January 2020. He provided the GMC with Instagram material as evidence of this. This material consisted of a screen recording from the Instagram account of '@XXX' and two video clips. The screen recording included some still images from the video clips, text messages and an audio message embedded amongst the texts (Video 1). One of the video clips (Video 2) shows a female in a Ferrari motorcar, apparently consuming drugs whilst accompanied by an unseen male who appears to be recording the clip. Another video clip (Video 3) shows a male wearing a black cap being kissed by a female, apparently in a kitchen area.

41. Mr B initially stated, in his written evidence, that he received the Instagram material from 'a friend of a friend' who had received it from Dr Chaudhry. Mr B later said in his oral evidence that the Instagram material had been provided to him by an employee of his other XXX. Mr B told the Tribunal that the Instagram material had been sent to the employee at different times, and he had been told that all three videos relate to different occasions. These were then bundled together and sent to Mr B at the same time in November 2019. He stated that he did not alter the videos in any way.

42. On the Tribunal's review of the Instagram material, it noted that there were no details of the dates on which the recipient had received each of the video clips or the text messages and audio message. There was no evidence provided as to when the videos were created. The Tribunal could not therefore be satisfied on balance that these videos were created in October and or November 2019.

Paragraphs 1(a)(i) and 1(a)(ii)

43. The Tribunal considered Paragraphs 1(a)(i) and 1(a)(ii) of the Allegation together as these relate to the same Instagram screen recording, Video 1.

44. The Tribunal first noted that Dr Chaudhry accepted that the Instagram account from which the material originated was his 'XXX' account. However, he denied making or sending this material. He said that he goes to parties and often leaves his Ferrari keys and phone unattended on the table, and the Tribunal noted that Video 1 shows a set of Ferrari car keys set out on a countertop in one of the still images. Dr Chaudhry suggested that Video 1 could have been taken by Mr D, XXX, or anyone else using his phone on that occasion. He categorically denied creating or sharing the Instagram material. Dr Chaudhry also provided the Tribunal with a XXX between December 2019 and February 2020 as indication of his behaviour towards controlled drugs. The Tribunal accepted Dr Chaudhry did not have XXX during that period however, it placed little weight on this evidence as the date of the allegation predates the XXX. Further, it was not alleged that Dr Chaudhry had consumed drugs; only that he had offered to supply them to others and encouraged other to take drugs.

45. Mr B told the Tribunal, in his oral and written evidence, that he was certain that the voice in the audio message in Video 1 was that of Dr Chaudhry. Mr B also stated that his motivation to report these matters was not based on any ill feeling towards Dr Chaudhry, but out of concern of the medical profession.

46. The Tribunal considered Mr B to be credible however it determined that he was not a completely impartial witness by virtue of Dr Chaudhry's acrimonious relationship with XXX. He therefore could not be considered as neutral as he portrayed himself to be, given the backdrop of the ongoing friction and XXX proceedings.

47. Dr Chaudhry provided a statement, dated 24 January 2023. This was his first opportunity to respond to this paragraph of the Allegation and he said:

*'I deny offering to supply drugs during this period or ever. I deny recording and sending an audio message from the 'XXX' Instagram account saying 'we're having a bit of a*

*session, got XXX, XXX and all that shit’ or words to that effect. I also deny typing and sending messages saying, ‘we got bare gear’ and ‘you wanna do XXX off the rarrri’.*  
*During the above events I was at a small gathering party with XXX (Mr D), XXX (male), his male friend and two female friends. My phone was unlocked for the duration of the gathering as it was synced to the speaker system to play music on. I did not send either of these recordings or messages and I believe someone else sent these from my phone. During the party, I did not always have sight of my phone as it was left on the breakfast bar, alongside my Ferrari keys, quite often far from where I was standing. I believe that my XXX did send these messages.’*

48. The Tribunal also considered the evidence of Mr D. In his statement, he said:

*‘I am XXX ... I can confirm that I am not the person shown in any of the videos or Photos. I confirm that I do not have an accurate recollection of whether I took the photographs and I do not know who took the photographs. I do not have an accurate recollection of whether Dr Chaudhry was in the room when any of the photographs were taken. I can confirm that the Instagram account ‘XXX’ ... does not belong to me. I do not have an accurate recollection of whether I sent the messages from Instagram account ‘XXX’. I do not know the identity of the person sending the messages from Instagram account ‘XXX’. I do not know the full address of the postcode XXX, ... It is not my postcode and I do not know this postcode. I do not know if this postcode refers to my XXX address. I do not own the Ferrari pictured in photograph five or shown in the video, ... I do not know if this car belongs to Dr Chaudhry. I do not know who owns this vehicle. I do not have an accurate recollection of whether I was in the Ferrari when the photograph was being taken. I can confirm that I did not take the video ..... I do not know who took this video. I do not have an accurate recollection of whether I was in the Ferrari when the video was being taken. I do not have an accurate recollection of whether Dr Chaudhry was in the Ferrari when this video was being taken, nor do I know the identity of the person being filmed in this video. Regarding the video..., I do not know the identity of this male. I can confirm that I do not know the identity of the second male being filmed leaning on a breakfast bar. I do not know the identity of the female in the video. I do not have an accurate recollection of whether Dr Chaudhry was in the room when this video was filmed. I do not know the location of the video. I do not have an accurate recollection of who filmed this video.’*

49. The Tribunal also heard evidence from Mr D who said, in relation to the audio message within Video 1, *‘I have no recollection if this was my voice.’*



50. In his oral evidence, Mr D suggested a XXX, 'Mr G', was the maker of the Instagram material. A statement, purportedly from Mr G, was submitted in which he accepted making and distributing the material. However, the statement did not include a statement of truth. Mr D told the Tribunal that 'Mr G' was not prepared to appear in front of the Tribunal to give evidence. The Tribunal noted that there was no mention of Mr G in Mr D's original written statement, nor was he mentioned in Dr Chaudhry's statement. The Tribunal also noted that, despite Mr G being the XXX Mr D could not recall his surname.

51. The Tribunal noted that there were several instances within Mr D's written, and oral evidence where he could not recollect who created and sent the Instagram material and to whom. It noted that he made clear denials to certain points put to him but could not recall other elements. As Mr D was not forthcoming as a witness, the Tribunal could place little weight on his evidence. In relation to Mr D's evidence about Mr G, the Tribunal was unable to establish or verify that Mr G was a genuine person. Therefore, it did not place any weight on the purported statement contained therein and did not find Mr D's evidence about Mr G to be credible. Overall, the Tribunal found Mr D's evidence to be unhelpful and obstructive.

52. The Tribunal concluded that as it could not determine that the audio message in Video 1 had been recorded and sent in October or November 2019, it could not be satisfied that Dr Chaudhry had offered to supply drugs during that period. Furthermore, for the reasons outlined above in relation to Mr B's evidence and the lack of detail as to its provenance, it could not be satisfied that the audio message in Video 1 had been recorded or sent by Dr Chaudhry. It determined that it would be inappropriate for the Tribunal to draw any inference as to whether the voice in the audio message matched that of Dr Chaudhry.

53. Subsequently, the Tribunal noted that the text messages at Paragraph 1(a)(ii) were also present in Video 1 alongside the audio message. Between the audio message and the text messages, there is nothing to suggest, by way of time or date stamp that these were sent on different dates, and rather it appeared that they were all created and sent on the same occasion. The Tribunal formed the view that any offer and supply of drugs was made at the point of the video being created and shared for the first time and not when reshared with Mr B. Furthermore, the GMC did not provide any evidence to confirm when the text messages in the screen recording were created or initially sent. Based on its findings at Paragraph 1(a)(i) of the Allegation, the Tribunal could not conclude that Dr Chaudhry had created or sent these messages between October and November 2019, or that it had been he who sent them.

54. The Tribunal therefore found Paragraphs 1(a)(i) and 1(a)(ii) of the Allegation not proved.

Paragraph 1(b)

55. The Tribunal considered the Instagram video taken inside the Ferrari, Video 2. The male present in the car is unseen, and the only audible words are ‘mmm... lets go’. Dr Chaudhry’s evidence was that he did not say those words, he was not the person who recorded the video, nor did he send Video 2 to anyone.

56. During his oral evidence, Mr D again stated that he believed the male voice heard in the car in Video 2 was that of XXX [Mr G] and that it was he [Mr G] who used Dr Chaudhry’s phone to make Video 2 and send the messages on.

57. The Tribunal had no evidence for who the creator of Video 2 was. Other than the words spoken by the male in the car, the Tribunal heard no evidence to indicate who was speaking or who made Video 2 and it was not possible to attribute these to a particular person. Again, it was not possible nor was it appropriate for the Tribunal to come to a conclusion about whether this was Dr Chaudhry’s voice in Video 2.

58. The Tribunal noted that the female in Video 2 appeared to be the same as the female in Video 3 with Dr Chaudhry. However, the Tribunal could not infer that Dr Chaudhry was the male present in Video 2. Furthermore, the Tribunal bore in mind the evidence of Mr B in which he was certain that the videos sent to him were made on 3 separate occasions. Based on this evidence it mattered not that the female in both videos appeared to be the same.

59. Again, the Tribunal could not be satisfied, from the evidence provided, when Video 2 was created, or when it was first circulated. The Tribunal therefore determined that the GMC had not proved that Dr Chaudhry was behind the camera making the comment “mmm.....lets go” and, in so doing, encouraged another person to take drugs. The Tribunal therefore found Paragraph 1(b) of the Allegation not proved.

Paragraph 2(a)

60. The Tribunal considered whether Dr Chaudhry had failed to provide good clinical care to Patient A, during a phone conversation with Patient A about the penis filler procedure (the Procedure) in providing misleading information about the consistency of the filler.

61. Patient A stated he underwent the procedure using a dermal filler at PenisFill under the care of Dr Chaudhry. He initially engaged in a WhatsApp conversation with Mr D and following this, spoke with Dr Chaudhry on the telephone. He stated that Dr Chaudhry

confirmed everything that had been discussed with Mr D. In the WhatsApp conversation, he was told that the filler *'feels hard.'* He stated that the telephone call was with Dr Chaudhry.

62. The Tribunal bore in mind Dr Chaudhry's witness statement dated 24 January 2023, which stated:

*'I cannot recall having a telephone conversation with Patient A between April and May 2020. Anyone at the clinic could have spoken to him if he did in fact call...If I had spoken to Patient A over the phone, I would have repeated the same advice that I gave at our face-to-face consultation.'*

63. Patient A's witness statement dated 30 March 2021 stated:

*'I spoke with Dr Chaudhry on a WhatsApp call. The call was purely logistical e.g., when they could see me, how I could get there (given this was during the COVID pandemic), whether Dr Chaudhry had a London clinic etc. I confirmed that I was circumcised and asked whether my skin would adapt to the filler, which Dr Chaudhry advised that it would. Nothing else was discussed about the procedure or size/shape of my penis.'*

64. In his oral evidence, Patient A stated that the telephone call was more of a *'marketing call to get me into the office'*. He also stated that he believed he was speaking to Dr Chaudhry the whole time but later realised it was Mr D.

65. The Tribunal took into consideration the following WhatsApp conversation between Patient A and Mr D:

*'The consultation you have  
With Mr D is crucial  
Before treatment  
...  
Mr D will do consultation with you before'*

66. The Tribunal determined that the WhatsApp correspondence shows that the conversation Patient A was having was with Mr D and not Dr Chaudhry.

67. It also bore in mind that the WhatsApp correspondence between Mr D and Patient A went as follows:

Mr D: *"I can explain the process to you if you like via a phone call"*

Patient A: “Ok 2 min I get headphones”

Mr D: “Ok let me know when your free”

Patient A: “Ok ready”

68. The Tribunal took account of the WhatsApp messages between Patient A and Mr D. Patient A said in his evidence that the conversation was “logistical”. The Tribunal was of the view that the tone of the WhatsApp messages was transactional and logistical in nature, after which Patient A went on to make an appointment with Dr Chaudhry.

69. The Tribunal concluded that there was no evidence to suggest Dr Chaudhry had a telephone conversation with Patient A on that occasion.

70. In the absence of independent evidence to support the suggestion that a telephone conversation took place between Patient A and Dr Chaudhry, the Tribunal could not be satisfied that Dr Chaudhry failed to provide good clinical care to Patient A at that time.

71. The Tribunal found Paragraph 2(a) of the Allegation not proved.

Paragraph 2(b)(i)

72. The Tribunal considered whether Dr Chaudhry failed to provide good clinical care to Patient A, when during a consultation on 4 May 2020, Dr Chaudhry recorded misleading ICD classifications in Patient A’s clinical notes.

73. The clinical notes included a proforma to be filled in which, amongst other information, contained a series of check boxes relating to ICD-10 codes for physical and psychological working diagnoses. The pro-forma section of the clinical notes stated:

*‘all diagnoses are official World Health Organisation (WHO) international classification of disease (ICD) codes.’*

74. The Tribunal noted the following entries, with boxes for ‘Small Penis syndrome’ and ‘ICD-10-CODE R45.81 – Low self-esteem’ which were both checked:

‘PHYSICAL WORKING DIAGNOSIS:

*ICD-10 Code N47:*

*Redundant prepuse [ ]*

*Small Penis syndrome [x]*

*Penis dysmorphic disorder symptoms [ ]*

...

PSYCHOLOGICAL WORKING DIAGNOSIS:

*ICD-10-CODE R45.81 – Low self-esteem [x]'*

75. The GMC submitted that Dr Chaudhry clearly recorded misleading ICD classifications in the records during an assessment of Patient A's mental health.

76. Dr F in his report dated 16 November 2021 stated:

*'The code R45.81 does not exist in the directory. R45 refers to disease symptoms and signs involving emotional state. R45.8 refers to "other symptoms involving emotional state including suicidal ideation." This is therefore misleading and below the standard that I would expect.*

...

*The code N47 refers to Redundant prepuce, phimosis and paraphimosis including tight foreskin and adherent prepuce. There is no disease code for small penis syndrome. The inclusion of this coding system in the medical record is therefore misleading.'*

77. The Tribunal bore in mind Dr Chaudhry's written statement in relation to the low self-esteem code R45:81. He stated:

*'R45.81 is a billable/specific ICD-10-CM code that can be used to indicate a diagnosis for reimbursement purposes.*

*The 2023 edition of ICD-10-CM R45.81 became effective on October 1, 2022.*

*This is the American ICD-10-CM version of R45.81 – other international versions of ICD-10 R45.81 may differ.'*

78. The Tribunal referred to the evidence provided by Dr Chaudhry and noted that these were American diagnosis codes. This evidence showed that this code had existed since 2016. The Tribunal also noted from the evidence that whilst the code could differ from other international codes of this kind, nevertheless it did exist. The Tribunal formed the view that it was therefore not unreasonable for Dr Chaudhry to have used it.

79. In determining the existence of ICD R45-81 code, the Tribunal concluded that Dr Chaudhry and Dr F used different resources. The Tribunal was satisfied from the evidence provided by Dr Chaudhry that the code did exist and was therefore not misleading.

80. In relation to the use of code N47, Dr F stated that this code referred to redundant prepuce, phimosis and paraphimosis and not small penis syndrome as had been ticked on the pro-forma.

81. Dr Chaudhary said in his witness statement:

*'I deny recording misleading ICD classifications. It was a layout error in the consent form. The poor formatting gave the impression that all three conditions of redundant prepuce, small penis syndrome and congenital penile curvature come under ICD-10 Code N47. Redundant prepuce should be the only condition under this code. This has now been corrected upon the GMC advice.'*

82. The Tribunal therefore accepted Dr F's evidence and found that the code N47 as used on the clinical form was misleading. Therefore, it found Paragraph 2(b)(i) of the Allegation proved in relation to code N47.

#### Paragraph 2(b)(ii)(1)

83. Patient A underwent the procedure on 4 May 2020 with Dr Chaudhry. Patient A stated in his written evidence that, on arrival at the clinic, he was asked to write his name and address on a blank piece of paper and was told this would be used to fill out a prescription for antibiotics.

84. The Tribunal had regard to three forms, submitted in evidence by Dr Chaudhry. The first two comprise of Patient A's clinical notes from 4 May 2020 (a proforma and a page of clinical notes). The second was a form entitled 'PenisFill Consent Form + Medical Form', also dated 4 May 2020 (the consent form). Both documents were filled out by hand and purported to have been signed by Patient A in order to give his consent to the procedure. In his oral evidence, Patient A admitted signing a form pertaining to terms and conditions on 4 May 2020. Patient A could not confirm what was contained within the consent form that he signed on the 4 May 2020. However, he was adamant that he had not signed either of the forms presented in evidence.

85. Patient A's written and oral evidence was that he did not recognise the forms and that his signatures on them had been forged. Patient A claimed in his oral evidence that the clinical notes and consent form contained within the evidence were not the forms given to him during the consultation. Patient A claimed that neither of the clinical notes pages were shown to him during the consultation and he did not provide the information contained therein. The first page of the clinical notes contained information about a circumcision XXX

years ago. When questioned about this, Patient A confirmed that this information was correct but that this could have been given at any time, even during the WhatsApp conversation.

86. Patient A provided a copy of his passport containing his signature, which he stated bore no resemblance to the signatures on the forms. The Tribunal noted that there was no independent evidence to confirm whether the signatures on the forms could have been written by the same person. As per the Tribunal's determination on preliminary issues, the Tribunal was not able itself to conclude if the signature was forged as it does not have the expertise to do this. However, it would use its judgement to determine whether it was likely that Patient A signed the form based on other evidence.

87. The Tribunal noted Patient A's evidence that he recalled signing a consent form containing terms and conditions but not the consent form within the evidence. In the absence of Patient A's recollection of what the consent form included, other than the terms and conditions, the Tribunal formed the view that the consent form that it had sight of was the form that Patient A had signed. The Tribunal was mindful of an 'x' that was marked in the signature space on the form, which suggested that Patient A had been invited to sign in that place. Taking that signature, the Tribunal concluded that this was not dissimilar to the signature contained within the clinical notes. Having reached this conclusion the Tribunal determined that Patient A had been given both forms and signed them. The Tribunal also bore in mind the previous medical history regarding Patient A's circumcision contained within the clinical notes and formed the view that this information had been contemporaneously given to Dr Chaudhry by Patient A and this was accurate.

88. The Tribunal had regard to Dr F's report in which he stated:

*'I believe adequate consent was achieved and recorded in relation to non-surgical treatments. There was communication before. The record is satisfactory, there is an information sheet with realistic information within and conformation of its discussion and a consent form has been signed...'*

89. In response to questions from the Tribunal, Dr F stated:

*'if the patient did sign the consent and gave oral consent in all 3 procedures, in my view, there was no need for a separate consent form for the second and third treatment, it was all the same package of treatment.'*

90. The Tribunal then considered the content and context of the disputed 4 May clinical notes. The notes included 10 stickers apparently taken off vials of Voluma dermafiller. The Tribunal considered it unlikely that Dr Chaudhry would place these batch stickers onto a form if it was not a true record of the consultation and treatment provided. It also noted that the Voluma batch stickers showed that the product expired in August 2021 and the Tribunal considered that this fit within the timeframe of when the treatment was given.

91. The Tribunal noted that Patient A underwent an identical procedure using the same filler under the care of Dr B on 1 March 2017. It had sight of a document that Patient A completed at the time of this consultation/procedure, which Patient A accepted as being an accurate record. The Tribunal noted that one of the questions posed on the form was in relation to Patient A's expectation of the treatment. The form states:

*'What do you expect from this treatment? Specify'*

to which Patient A responded:

*'Increase the penis girth'*

92. The Tribunal compared this with information contained on the clinical notes dated 4 May 2020 which under the *'concerns'* section states, *'long term concern. Girth length. 10 years'*.

93. The Tribunal considered Patient A's claims that the signatures were dissimilar. However, the Tribunal was persuaded that the nature of the information contained in the forms was accurate as this reflected the information that Patient A had provided to Dr B previously. His personal medical history was accurate, namely the circumcision procedure and there was a similar desire to increase girth. For this reason, the Tribunal did not accept Patient A's account that this form was forged or that the information contained therein had not been provided by him.

94. On the basis of the information provided, the Tribunal determined that the clinical notes and consent form completed on 4 May 2020 were more likely than not to have been signed by Patient A. The Tribunal concluded that Dr Chaudry had obtained valid written consent in relation to treatment provided on 4 May 2020. It therefore found Paragraph 2(b)(ii)(1) of the Allegation not proved.

Paragraphs 2(b)(ii)(2)(a) and 2(b)(ii)(2)(b)

95. On 11 June 2020, Patient A attended a second consultation and procedure with Dr Chaudhry. Following the initial procedure, the filler did not harden, and Patient A's penis



started to look ‘mishappen’, there was a lump and the filler remained soft. In oral evidence, Patient A stated that Dr Chaudhry suggested that further filler should be injected, and it was agreed that this would be done for free. Patient A stated that no consent form was signed however confirmed that he gave oral consent for this treatment.

96. Dr F commented:

*‘I do not feel that it was necessary to have a repeat consent form for the top up procedure performed on 11.06.2020. My opinion is that the consultation and injection treatment was all part of one package and although Patient [A] had separate appointments, my opinion applies to this course of care and components. of it rather than as separate events.’*

97. When considering Dr F’s evidence and that provided by Patient A, the Tribunal bore in mind the GMC Guidance on professional standards and ethics for doctors Decision making and consent which states:

*‘Obtaining a patient’s consent needn’t always be a formal, time-consuming process. While some interventions require a patient’s signature on a form, for most healthcare decisions you can rely on a patient’s verbal consent, as long as you are satisfied, they’ve had the opportunity to consider any relevant information (see paragraph 10) and decided to go ahead’.*

98. On 18 July 2020, Patient A attended Dr Chaudhry’s clinic for a third consultation and procedure. During the consultation, it was agreed that hylase would be injected to dissolve the lump. Patient A confirmed in his written and oral evidence that he had agreed for this procedure to take place, and albeit that no form was signed, had provided Dr Chaudhary with oral consent to proceed.

99. The Tribunal noted Dr F’s expert report in which he stated:

*‘if the 4<sup>th</sup> of May document is genuine then there would be no concerns in relation to consent on the 11 June and or 18 July 2020. In particular the 18<sup>th</sup> of July reversal procedure would not require any further consent.’*

100. Based on the expert opinion of Dr F, the Tribunal determined that once written consent had been obtained, oral consent for the following two appointments was adequate. Patient A confirmed that he had given oral consent on the following two occasions. He stated

that he was getting free filler to rectify the problem for which he was keen, and later agreed to the hylase dissolving substance being injected to reduce and dissolve the lump.

101. As the Tribunal concluded that consent had been validly obtained on each occasion, it found Paragraph 2(b)(ii)(2) of the Allegation not proved.

Paragraph 10, Paragraph 11, and Paragraph 12

102. By virtue of the Tribunal finding Paragraphs 2(b)(ii)(1) and 2(b)(ii)(2) of the Allegation not proved, it found Paragraphs 10, 11, and 12 of the Allegation, in relation to signed consent, not proved.

Paragraph 2(b)(ii)(3) and Paragraph (8)

103. Patient A stated that he consented to having ‘before and after’ images taken of his penis on 4 May 2020 in order to assist with tracking changes. However, he told the Tribunal that he did not sign a specific consent form for this. He stated that he did not believe that the images would be used for any other reason.

104. Subsequently, Patient A saw images of a penis on the PenisFill website that he thought looked like those taken of his penis on 4 May 2020. When he contacted Dr Chaudhry to ask for them to be removed, his request was ignored. Patient A stated that he had not consented to images of his penis being used. The Tribunal had regard to three sets of images, which were:

- Before and after images of Patient A’s penis taken by Dr Chaudhry on 4 May 2020. Patient A agreed that this was his penis (Image A);
- A picture of Patient A’s penis which was sent by Patient A to Mr D via WhatsApp on 14 May 2020 (Image B);
- Before and after images taken from the PenisFill website labelled “Corrective work from another clinic” (Image C).

105. The Tribunal dealt with Paragraph 2(b)(ii)(3) and Paragraph 8 of the Allegation together as the latter related to consent for those images being published. The Tribunal first considered whether the images taken by Dr Chaudhry during the consultation were in fact published on the website and thereafter, if necessary, whether consent for that publication was valid.

106. In his oral evidence, Patient A stated that he recognised Image C as his penis due to the positioning of the lump. He stated that the ‘before’ photo with the lump was his penis

after the lump had formed and the ‘after’ picture was his penis immediately after the initial filler procedure on 4 May 2020. He stated that there were no photos taken of his penis after the second filler on 11 June 2020.

107. When Patient A was asked in oral evidence, in reference to Image C, what made him believe this was his anatomy, he stated:

*‘it was more just the timing, it just looked very similar, and the timing was close to mine.’*

108. The Tribunal then compared the images on the PenisFill website with the image of Patient A’s penis which he himself sent to Mr D via WhatsApp. The Tribunal noted that the picture from Patient A displayed a lump at the top/base end of the penis whereas the lump on the penis in the picture on the website was in the middle of the penis. Furthermore, in the WhatsApp text message to Mr D, Patient A stated:

*‘for the past 3 days, the top lump has not shifted much...  
the lump at the top is not really moving and making the penis look quite bad’.*

109. The Tribunal had sight of Dr Chaudhry’s clinical notes of 11 June 2020, in which he wrote:

*‘patient concerned over small lump at base/ root of penis... otherwise no concerns...  
mild uneven distribution at focal point at penile base’.*

110. Patient A stated that when he referred to a lump at the top, he meant that this was located in the top half of the shaft. In his oral evidence, Patient A acknowledged that the caption used with those photos did not relate to him as he had not been left with a lump by a ‘competitor clinic’.

111. When asked to comment on Image A and Image C, Dr F stated that the pictures within Image C were of a:

*‘...different penis, the glans is pink, the lumpiness is in the midshaft of the penis. It looks like a completely different penis. The penis on the 2<sup>nd</sup> picture ... the filler is in the middle.’*

112. Dr F said in his oral evidence that the penis in image A looks like the penis in Image B, which was sent from Patient A via WhatsApp messages but not like Image C, the one on the website.

113. The Tribunal compared Image A and Image C. There were two notable differences. Image A, the post treatment image for Patient A, shows 3 visible birthmarks on the shaft however the image on the website, Image C, does not have any birthmarks. Furthermore, the plaster on Patient A's penis, post treatment, (Image A) is positioned lower down the shaft than the picture on the website.

114. The Tribunal also considered the explanation provided in Dr Chaudhry's statement. He stated that Image C on the PenisFill website belonged to another patient who attended the clinic on 8 July 2020. He provided date and time stamped images from that date taken at 13.53 which match Image C which Patient A claimed is his penis. Dr Chaudhry also provided a screen shot of his diary which confirmed there was a '*PenisFill consult + treatment*' booked in for 13.50 on 8 July 2020.

115. Based on the expert evidence, Dr Chaudhry's explanation, and the Tribunal's own assessment of the images, the Tribunal determined that Image C on the website did not belong to Patient A and was of a different patient.

116. As the Tribunal concluded that the images were not of Patient A, consent was not required and a separate form consenting to images being used was not necessary. Therefore, the Tribunal found Paragraphs 2(b)(ii)(3) and Paragraph 8 of the Allegation was found not proved.

#### Paragraph 2(c)

117. It is alleged that Dr Chaudhry did not record details of the consultation with Patient A on 18 July 2020. The Tribunal first noted that Dr Chaudhry's clinical notes of this appointment had not been seen by Dr F when he prepared his first report in June 2021. These notes were served on the GMC by those representing Dr Chaudhry in early 2023.

118. It was suggested by the GMC that these notes were made retrospectively. Dr F stated that they were very detailed in comparison to Dr Chaudhry's previous notes. The notes went into greater depth about the discussion with Patient A and the options available to him at the time and mentioned potential issues of the filler being used. Dr F stated in his oral evidence that these were "*almost an ideal set of notes*", and completely unlike the previous notes. He stated:

*‘...it feels like they are reactive in nature because either the patient is complaining or the doctor is now aware that there is a problem.’*

119. Dr F explained that it would be difficult to know if the notes were made contemporaneously. He did note however that each page was timed 12:52 which, in his view, was “*incredibly precise*”. Dr F questioned why the same degree of detail was not evident in the previous notes.

120. In his first report, Dr F concluded that the clinical notes of the procedures on 4 May 2020 and 11 June 2020 were adequate as they contained detailed medical history, Patient A’s desires, examination findings and a record of the procedure including a subsequent follow up annotation. Bearing this in mind and on its own examination, the Tribunal determined that the 18 July 2020 handwritten notes resembled Dr Chaudhry’s previous handwritten notes, however accepted that they were more detailed. It noted the timings were marked, not only on the 18 July notes but also on the notes dated 11 June 2020. The Tribunal however acknowledged that these notes were not provided to Dr F at the time of writing his first report and the reasons for this remained unclear.

121. The Tribunal had regard to WhatsApp conversations between Patient A and Mr D from 16 June and 25 June 2020. In these messages, Patient A made it clear that he was not happy with the results of the procedures on 4 May 2020 and 11 June 2020 because the filler had not hardened, and the lump was looking uneven. On 25 June 2020, Patient A arranged a further appointment to see Dr Chaudhry. The Tribunal formed the view that, at this point, Dr Chaudhry would have been aware that Patient A was not happy with the outcome. It concluded that it was likely that Dr Chaudhry would take extra care when writing up his clinical notes, to be able to document and respond to any further challenge from Patient A. The Tribunal therefore concluded that Dr Chaudhry did make these notes for the 18 July consultation with Patient A and found Paragraph 2(c) of the Allegation not proved.

#### Paragraph 2(e)(i)

122. The Tribunal went on to consider whether during a consultation on 18 July 2020, Dr Chaudhry raised his voice when Patient A raised an issue with the appearance of his penis.

123. In his witness statement, Patient A stated:

*'At one point, Dr Chaudhry raised his voice, implying that he was out of pocket as he had provided some of the filler for free and that it was my fault the filler hadn't hardened. I didn't think this was very called for.'*

124. The Tribunal bore in mind that Dr Chaudhry is of previous good character. In his witness statement, he set out:

*'I deny raising my voice at any time during my appointment with Patient A.'*

125. In his statement, Dr Chaudhry also stated:

*'...Patient A claimed that other clinicians at other independent clinics had raised their voices before and he seems to be seeking ways to get a refund from multiple independent clinics for the Procedure...'*

126. Patient A's evidence was the only evidence presented to the Tribunal by the GMC on this issue. However, the Tribunal was also aware that Patient A had previously made a similar complaint about Dr B's assistant shouting at him during a consultation for a similar procedure in 2017.

127. On examination of the evidence, the Tribunal found no mention of raised voices in Patient A's letter of complaint which he sent to Dr Chaudhry on 20 July 2020, two days after receiving the hylase dissolving treatment. The Tribunal would have expected this to appear in the letter of complaint if Patient A was indeed aggrieved by Dr Chaudhry's behaviour.

128. In absence of any independent evidence, the Tribunal could not be satisfied that Dr Chaudhry had raised his voice at Patient A during this consultation. Consequently, the Tribunal preferred the evidence of Dr Chaudhry and therefore found paragraph 2(e)(i) of the Allegation not proved.

#### Paragraph 2(e)(ii)(1)

129. Whilst considering the clinical notes of 18 July 2020, which the Tribunal deemed to be detailed and contemporaneously made, the Tribunal noted that there was mention of a discussion with Patient A. Dr Chaudhry wrote:

*'I advised that I can potentially spot dissolve the 'lump' to reduce the size by 50% by doing a lower dose hylase injection. However, I advised that the result can be unpredictable given the discrete anatomy + that there will be no guarantee to reduce*

*down to 50%. I advised that even a low dose of hylase injection could dissolve all the filler.*

*I also advised him that there will be no service fee for this treatment as a gesture of good will and to satisfy his concern at no additional financial strain. Despite the risk of the filler being totally removed, he still wishes to proceed with the hylase procedure. He provided me with oral consent to proceed.'*

130. On its review of these clinical notes, the Tribunal determined that these sufficiently detailed the discussion that was had in relation to resolving the lump in Patient A's penis. It concluded that Dr Chaudhry had adequately recorded details of his consultation with Patient A. It therefore found paragraph 2(e)(ii)(1) of the Allegation not proved.

Paragraph 2(e)(ii)(2)

131. The Tribunal again had regard to Dr Chaudhry's clinical notes of 18 July 2020 which made mention of the technique and drugs used to dissolve the filler in Patient A's penis. Dr Chaudhry recorded the following:

*'Aseptic technique  
1500 IV HYLASE XEP 05/24  
reconstituted with 10ML 0.9 BS Saline  
100 IV/ML  
1.5ML total drawn up  
1.5ML total dose administered to "lump"  
penis prepped with chlorhexidine.  
gentle massage was performed to allow even spread of hylase into "lump"'*

132. The Tribunal considered these notes to be adequately recorded, and therefore found Paragraph 2(e)(ii)(2) of the Allegation not proved.

Paragraph 4

133. Dr Chaudhry accepted that he had recorded the following information on Patient A's clinical notes on 4 May 2020 about the reasons Patient A was seeking the procedure:

*'hopes this treatment will improve his confidence  
Long term concern girth length 10 years  
Partner not satisfied'*

134. Patient A denied ever providing this information to Dr Chaudhry.

135. In order to determine whether Patient A had provided this information, the Tribunal considered other information contained within the clinical form and also information that Patient A had provided to Dr B previously.

136. The Tribunal noted the form made mention of low self-esteem and small penis syndrome. Patient A claimed that at no point did he inform Dr Chaudhry that he had low self-esteem. Patient A did not accept that he had been diagnosed with small penis syndrome or that he had discussed this with Dr Chaudhry. Patient A denied being worried about the size and shape of his penis. Improving his confidence was never discussed with Dr Chaudhry. He was not asked questions about anxiety or depression or mental health. He was not told that the treatment could only be offered if there was a medical reason for it. In addition, he did not state that the *'long term concern girth length 10 years, partner not satisfied'*. Patient A claims this is untrue as he did not have a partner at the time. However, Patient A agreed that the entry in relation to a circumcision he had XXX years prior was correct. This led the Tribunal to conclude that it was likely that Patient A did provide Dr Chaudhry with the information contained within the consent form on 4 May 2020.

137. When asked why he had sought this treatment, Patient A stated that the only reason for having this procedure was that he was *'in the headspace of seeing if it could happen'* and wanted to try this again given that things had now advanced and different techniques would now be used. Patient A stated in his oral evidence that he was happy with his girth however wanted the procedure for his own reasons. He stated that his mental health was good in 2020 and he was under no pressure at work. The only questions he recalled being asked of him at the initial appointment with Dr Chaudhry were in relation to his height, age, and weight.

138. Following Dr Chaudhry's request, the GMC produced evidence about a previous complaint that Patient A had made. Patient A had undergone a similar procedure in 2017 and made a complaint against the treating doctor (Dr B). The Tribunal noted that the heading entitled 'cosmetic HX' on the clinical form had 'nil' written against it. However, in his oral evidence, Patient A stated that he did inform Dr Chaudhry of this previous procedure and explained to him how it had gone wrong. He stated that Dr Chaudhry informed him that the previous procedure had not been carried out properly and that he assured him that this time it would work. The Tribunal did not accept this evidence on the basis of the clinical form of 4 May 2020 which it determined to be accurate.



139. The Tribunal bore in mind that the information in the clinical form was similar to that provided by Patient A to Dr B in the previous case, namely that there were issues with girth and reference was made to Patient A's self-confidence. This supports the notion that Patient A was likely to have provided this information to Dr Chaudhry.

140. The Tribunal also noted that, despite Patient A saying in both written and oral evidence that he did not have a partner, and that therefore '*partner not satisfied*' could not be accurate, he repeatedly asked Mr D during the WhatsApp conversations in May 2020 about when he could resume sexual activity.

141. The Tribunal went on to consider Patient A's credibility in terms of the evidence about the information that he said he did not provide to Dr Chaudhry on 4 May 2020.

142. The Tribunal had regard to evidence about Patient A's previous procedure with Dr B, which allegedly resulted in loose skin and for which he travelled to XXX for corrective surgery.

143. In relation to the previous procedure, the Tribunal noted that Dr F commented in oral evidence that it would be '*inconceivable*' for Dr Chaudhry to have not included this in the form if Patient A had declared a previous failed procedure.

144. The Tribunal determined that Patient A chose not to disclose to Dr Chaudhry that he underwent the treatment from Dr B. This weighed heavily against Patient A's credibility as a witness.

145. The Tribunal formed the view that Patient A was well aware of the risks of the procedure, having had one unsuccessful procedure in the past yet still wished to undergo the process again because he was lacking confidence. It did not accept that Patient A was simply '*in the mindset to see if this could happen*' but rather concluded that he was not happy with the shape and size of his penis. The Tribunal further noted that this was in the heart of the Covid Pandemic and therefore Patient A's desire to alter the appearance of his penis was stronger than just '*having another go at it*'. The Tribunal found that Patient A's stated reasons for wishing to undergo this treatment again after a previously failed procedure which required corrective surgery to be implausible.

146. As stated above, the Tribunal did not accept that Patient A informed Dr Chaudhry of his previous procedure. Had he done this, he risked Dr Chaudhry refusing to treat him. The Tribunal concluded that had Patient A declared the previous procedure, the evidence of this would have been obtained and served a lot sooner than it had been in this case as Dr Chaudhry would have been aware of this rather than having to make those enquiries for

himself. It is also unlikely that this material would have been served as late as it was, one working day before the case commenced in March 2023. The Tribunal therefore found paragraph 4 of the Allegation not proved.

Paragraph 5 and 6

147. Based on its findings on Paragraph 4 of the Allegation, the Tribunal subsequently found Paragraph 5 of the Allegation not proved.

148. Similarly, as it had found Paragraphs 4 and 5 of the Allegation not proved, the Tribunal determined that Paragraph 6 of the Allegation was not proved.

Paragraph 7(a) and 7(b)

149. The Tribunal determined that the procedures on Patient A were carried out on 4 May 2020 and 11 June 2020.

150. It referred to Dr Chaudhry's statement in which he stated:

*'I deny this allegation. Our clinic's address at 150 Harley Street is a CQC registered building. Our Surrey clinic has a D1 medical licence. As such, both clinics could remain open, and we were allowed to continue working during the pandemic. During the Covid-19 pandemic I received an email from our insurer on 26 June 2020 at 5:15pm which I interpreted to mean that we could continue to work and that the clinics could stay open. This was all subject to daily review and government guidelines.'*

151. In his Expert report, Dr F, stated:

*'The episodes of care took place during the Covid Pandemic and as this was not a medical condition that warranted care, this should not have been taking place, even if personal protection equipment and sanitising were taking place in the clinic spaces. I believe that this falls outside my area of expertise as a Consultant Plastic Surgeon and is one for the GMC or Police.'*

152. The Tribunal also took into account Dr F's addendum report, dated 21 January 2024, in which he referred to Dr Chaudhry as:

*'performing elective non-essential medical care within a period of COVID-19 lockdown, affecting the rest of the population in the UK.'*

153. The Tribunal did not see the D1 medical licence that Dr Chaudhry referred to and had no evidence before it as to what this was and whether this enabled Dr Chaudhry to continue working. No documentary evidence was provided by Dr Chaudhry to elaborate how a D1 medical licence or CQC registration exempted him with complying with the COVID-19 Government guidance in place at the time. Dr F's evidence did not assist with this, as it fell outside his area of expertise.

154. The Tribunal noted that Patient A had not been in pain with his penis and there was nothing to suggest he required urgent medical attention. The Tribunal was satisfied that treating Patient A by injecting him with penis filler was non-essential treatment.

155. The Tribunal had sight of the Timeline of UK Coronavirus lockdowns from the Institute for Government analysis for March 2020-March 2021. This showed that on 26 March 2020 COVID-19 measures legally came into force in the UK, obliging the public to stay home. This stated:

*'You should only leave or be away from your home for very limited purposes: shopping for basic necessities, for example food (<https://www.gov.uk/government/publications/guidance-forconsumers-on-coronavirus-covid-19-and-food>) and medicine, which must be as infrequent as possible one form of exercise a day, for example a run, walk, or cycle - alone or with members of your household any medical need, including to donate blood, avoid injury or illness, escape risk of harm, or to provide care or to help a vulnerable person travelling for work purposes, but only where you cannot work from home...'*

156. The Tribunal also had regard to the GOV.UK guidance titled '*Staying at home and away from others (social distancing)*' updated 1 May 2020, which made reference to '*Closing certain businesses and Venues*'. This guidance stated:

*'To reduce social contact, the government has required by law that certain businesses and venues close to the public. These include: ... hair, beauty and nail salons...'*

157. The Tribunal considered that Dr Chaudhry's clinic was analogous to this category as it provided aesthetic, non-essential treatments. The Tribunal took account of the expert's opinion which supported the notion that this was non-essential.

158. The Tribunal noted that the GOV.UK guidance press release document published 9 July 2020 set out that:

*'beauty salons set to reopen for some services next week under new government guidelines. Businesses including beauty salons, nail bars, tattoo studios can reopen safely from Monday 13 July.'*

159. The Tribunal noted that this guidance postdated both dates of 4 May 2020 and 11 June 2020.

160. The Tribunal considered an email to Dr Chaudhry from his insurance company which he claimed covered him to treat patients during the Pandemic. It noted that this was sent to him on 26 June 2020 which postdated the two treatment dates in the Allegation. The email clearly stated:

*'... before you make any decision to re-open you should carefully consider all of the applicable guidance issued by the Government'.*

161. The Tribunal determined that this indicated an expectation that Dr Chaudhry's business would have been closed at the time and any decision to re-open would have had to be compliant with Government guidelines. The Tribunal did not therefore accept Dr Chaudhry's explanation that he believed his insurance enabled him to continue to work. Rather, it was clear from the document that he should not have been treating patients and could only re-open had the guidelines allowed him to do so.

162. The Tribunal therefore found Paragraph 7 of the Allegation proved.

### Paragraph 13

163. The Tribunal had sight of three images of the Dermis clinic's Instagram page, from 18 November. These screenshots advertise a '*£1000 treatment prize giveaway*'. The Tribunal noted that the screenshots included instructions for potential viewers as to how to enter the prize giveaway. It also noted that the prize that was offered was for '*£1000 worth of ANY treatment we offer at Dermis Clinics*'. The Tribunal also had sight of a screenshot of Dr Chaudhry's bio on Dermis Clinic's website taken on 19 November 2020.

164. The Tribunal had sight of Dr Chaudhry's statement in response to this paragraph of the Allegation. He stated:

*'I deny being responsible for the marketing aspects of Dermic Clinic Ltd. This allegation relates to the clinic's directors and not to me personally. I am not the director of the*

*company and therefore I have no input in the marketing decisions. The man on the prize giveaway video is XXX and not me. The clinic provides non-medical procedures like facials and I would never have undertaken services requiring medical qualifications, obtained as a result of a prize. Since this issue was raised by the GMC, I have communicated it to the directors of the clinics, explaining how it conflicts with our duties as doctors. The directors have now ended treatment prize giveaway.'*

165. Thus, Dr Chaudhry denied being responsible for the marketing aspects of Dermis clinic, suggesting that this was a matter for the clinic's directors and not him personally.

166. In the screenshots provided, Dr Chaudhry is described as:

*'the director and owner of Dermis Clinic'*  
and that he has *'the ultimate and overall responsibility for all clinical aspects of the company.'*

167. The Tribunal considered Dr Chaudhry's evidence that he is not the director of the company conflicted with how he was described in his bio on the Dermis website on 19 November 2019. The Tribunal was satisfied that the treatment prize was posted on 18 November 2019. Given Dr Chaudhry's role in the company as of 19 November 2019 and the publication of the prize draw post a day prior, the Tribunal did not accept Dr Chaudhry's evidence that he was not a director of the company at that time. The Tribunal was therefore satisfied that Dr Chaudhry had allowed the £1000 treatment prize giveaway. The Tribunal therefore found Paragraph 13 of the Allegation proved.

#### Paragraph 17

168. The Tribunal had sight of a screenshot taken from the PenisFill website on 4 December 2020 which provided further information about Dr Chaudhry. This provided details about his qualifications and training and outlined his experience in providing successful cosmetic treatments. It again confirmed that he was the owner and director of the sister company of PenisFill.

169. The relevant paragraph on the website biography stated:

*'He completed his Junior Doctor Training programme within the NHS. Training included 8 months of surgical urology training at East Surrey NHS trust.'*

170. The Tribunal referred to Dr Chaudhry's response to this paragraph of the Allegation, in which he stated:

*'I apologise to the GMC if the information I posted on our website was interpreted as misleading to the public. I completed my F1 and F2 junior training and as many members of the public I genuinely interpreted this as being a 'junior doctor'. The umbrella term 'junior doctor' regularly used in books, documentaries, encompasses doctors who have yet to complete their registrar training. I was using the common knowledge interpretation of junior doctor. After I finished F2 I got into GP specialist training and did that for a year and a half before stopping for family reasons. The misleading thing would have been to present myself as anything above junior doctor such a consultant or fully qualified cosmetic doctor, which I did not. When this was raised by the GMC I immediately took down from the website any reference to terminology of junior doctor to avoid any confusion. My intention was not to mislead the public in any way and I apologise if it was interpreted as such.'*

171. The GMC did not outline in evidence what the Junior Doctor Training Programme consists of and whether the F1 and F2 training formed part of this. The Tribunal would have been assisted with evidence outlining the full scope of what the Junior Doctor Training Programme entailed and specifically how the doctor should have referred to himself after completing the F1 and F2 training.

172. The Tribunal noted that Dr Chaudhry accepted, when explained to him, that he had not completed the Junior Doctor Training Programme. The Tribunal went on to consider whether, at the time, he knew that he had not completed the Junior Doctor Training Programme. Conversely, it considered whether, by virtue of having completed his Foundation Training programme, Dr Chaudhry believed that he had completed his Junior Doctor Training Programme.

173. Dr Chaudhry stated in his written evidence:

*'I apologise to the GMC if the information I posted on our website was interpreted as misleading to the public. I completed my F1 and F2 junior training and as many members of the public I genuinely interpreted this as being a 'junior doctor'. The umbrella term 'junior doctor' regularly used in books, documentaries, encompasses doctors who have yet to complete their registrar training. I was using the common knowledge interpretation of junior doctor.'*

174. The Tribunal was unable to gain any further clarity on what constituted the Junior Doctor Training Programme.

175. The Tribunal acknowledged that Dr Chaudhry had not used terms such as ‘consultant’ on the website which would support his explanation that he considered himself a junior doctor. In absence of any other evidence, the Tribunal was satisfied by the explanation given in Dr Chaudhry’s statement that he had genuinely believed the Junior Doctor Training Programme to mean the Foundation F1 and F2 Training Programme, which he had completed. The Tribunal therefore found Paragraph 17 of the Allegation not proved.

#### Paragraph 18

176. On consideration of the evidence and by virtue of the Tribunal finding Paragraph 17 of the Allegation as not proved, Paragraph 18 of the Allegation falls away and is therefore also found not proved.

#### The Tribunal’s Overall Determination on the Facts

177. The Tribunal has determined the facts as follows:

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

#### Offering to supply/encouraging to take drugs

1. Between October and November 2019, you:

a. offered to supply drugs in that you:

i. recorded and sent an audio message from your Instagram account ‘XXX’ in which you said ‘we’re having a bit of a session, got XXX, XXX and all that shit’ or words to that effect; **Determined and found not proved**

ii. typed and sent messages stating:

1. ‘we got bare gear’; **Determined and found not proved**

2. ‘you wanna do XXX off the rarr’, **Determined and found not proved**

from your Instagram account 'XXX'; **Determined and found not proved**

- b. encouraged another person to take drugs in that you said 'mmm, let's go', or words to that effect. **Determined and found not proved**

#### Treatment of Patient A

2. You failed to provide good clinical care to Patient A in that:

- a. between April and May 2020, during a telephone conversation with Patient A about the penis filler procedure ('the procedure'), you provided misleading information in relation to the consistency of the filler when injected into the penis in that you said that the filler 'feels hard', or words to that effect; **Determined and found not proved**
- b. on or around 4 May 2020, during a consultation with Patient A, you:
  - i. recorded misleading ICD classifications in Patient A's medical records during your assessment of Patient A's mental health; **Determined and found proved**
  - ii. did not obtain valid consent:
    - 1. for the procedure conducted on Patient A on 4 May 2020; **Determined and found not proved**
    - 2. for any subsequent treatment given to Patient A on or around:
      - c. 11 June 2020; **Determined and found not proved**
      - d. 18 July 2020; **Determined and found not proved**
    - 3. to use images of Patient A's penis on your website in that you did not ask Patient A to sign a proper and separate photographic consent form; **Determined and found not proved**
- c. on or around 18 July 2020 you did not record details of the consultation with Patient A, within Patient A's medical records; **Determined and found not proved**



- d. you requested an additional fee when information was asked of you from Patient A about the use of filler on:
    - i. 5 August 2020; **Admitted and found proved**
    - ii. 13 August 2020; **Admitted and found proved**
  - e. on or around 18 July 2020 you:
    - i. raised your voice during a consultation with Patient A when he raised an issue with the appearance of his penis; **Determined and found not proved**
    - ii. did not adequately record within Patient A’s medical records:
      - 1. details of the consultation with Patient A; **Determined and found not proved**
      - 2. the technique and drug used to dissolve the filler in Patient A’s penis. **Determined and found not proved**
3. On or around 4 May 2020 you recorded information about the reasons for Patient A seeking the procedure from you in Patient A’s medical records, in that you wrote:
- a. ‘hopes this treatment will improve his confidence’; **Admitted and found proved**
  - b. ‘long term concern girth length 10 years’; **Admitted and found proved**
  - c. ‘partner not satisfied’. **Admitted and found proved**
4. Patient A did not provide you with the information referred to in paragraph 3.  
**Determined and found not proved**
5. You knew that Patient A had not provided you with the information referred to in paragraph 3. **Determined and found not proved**
6. Your actions at paragraph 3 were dishonest by reason of paragraphs 4 and 5.  
**Determined and found not proved**
7. You provided non-essential treatment during the Covid-19 pandemic lockdown in that you performed the procedure on Patient A contrary to government guidelines on:

- a. 4 May 2020; **Determined and found proved**
  - b. 11 June 2020. **Determined and found proved**
8. Between May and October 2020, you allowed images of Patient A’s penis that you had taken during consultation(s) with Patient A, to be published on the ‘penisfill’ website without Patient A’s specific written consent. **Determined and found not proved**
9. On 1 September 2020, in a letter to Patient A you referenced Patient A having signed consent forms in that you wrote:
- a. ‘please see our terms and conditions which you agreed to when signing our consent forms’; **Admitted and found proved**
  - b. ‘our consent forms (which you have signed)’; **Admitted and found proved**
  - c. ‘we will issue them with your signed consent forms’. **Admitted and found proved**
10. Patient A did not sign the consent forms referred to in paragraph 9. **Determined and found not proved**
11. You knew that Patient A had not signed the consent forms referred to in paragraph 9. **Determined and found not proved**
12. Your actions at paragraph 9 were dishonest by reason of paragraphs 10 and 11. **Determined and found not proved**

Offer of treatment prize

13. On 18 November 2020, whilst you were responsible for the clinical aspects of Dermis Clinic Ltd, you allowed a £1,000.00 treatment prize giveaway to be offered on the Instagram page of Dermis Clinic Ltd. **Determined and found proved**

Dishonest information on ‘penisfill’ website

14. Between on or around 19 November 2020 and on or around 4 December 2020, you stated on your website ‘www.penisfill.co.uk’ that you completed your junior doctor training programme with the NHS, or words to that effect. **Admitted and found proved**

15. On 19 November 2020, you stated on your website ‘www.penisfill.co.uk’ that you completed your junior doctor programme in London St Helier NHS Trust and East Kent Trust, or words to that effect. **Admitted and found proved**
16. You had not completed your junior doctor training programme/junior doctor programme. **Admitted and found proved**
17. You knew that you had not completed your junior doctor training programme/junior doctor programme. **Determined and found not proved**
18. Your actions at paragraphs 14 and 15 were dishonest by reason of paragraphs 16 and 17. **Determined and found not proved**

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

#### Determination on Impairment - 24/06/2024

178. 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 Chaudhry’s fitness to practise is impaired by reason of misconduct.

#### The Evidence

179. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence which included:

- 2023 Responsible Officer’s statement, dated 9 March 2023;
- 2024 Responsible Officer’s supplemental statement, dated 1 March 2024;
- Email correspondence with Dr Chaudhry confirming agreement to these documents being provided to the Tribunal, dated 5 March 2024;
- Further email from the Responsible officer dated 15 March 2024.

#### Submissions

180. On behalf of the GMC, Mr Rankin submitted that the Tribunal should take a two-stage approach and should consider misconduct and then current impairment. Mr Rankin

reminded the Tribunal that misconduct is a matter for its judgement, and there is no burden or standard of proof.

181. Mr Rankin set out the factors which he said may assist the Tribunal in determining if there was serious misconduct. He reminded the Tribunal of the adverse findings that it had reached in relation to Dr Chaudhry's conduct. Mr Rankin referred to Paragraph 7 of the Allegation involving the provision of non-essential treatment during the COVID-19 pandemic and Paragraph 13 of the Allegation concerning the £1000 prize giveaway, and submitted that only these paragraphs of the Allegation amount to serious misconduct.

182. Mr Rankin submitted that Dr Chaudhry's handling of non-urgent procedures during the pandemic was contrary to Government guidance in place at that time. He stated that his explanation, which the Tribunal had deemed to be inadequate, further underscored the severity of the misconduct.

183. Mr Rankin submitted that Dr Chaudhry's failure to comply with the '*Guidance for doctors who offer cosmetic interventions*' (1 June 2016) ('the Cosmetic Guidance'), by using promotional tactics and offering services as prizes, constituted a clear breach of professional standards. He referred to the following paragraphs of the Cosmetic Guidance:

*'52. You must not use promotional tactics in ways that could encourage people to make an ill-considered decision.*

*53. You must not provide your services as a prize.*

*54. You must not knowingly allow others to misrepresent you or offer your services in ways that would conflict with this guidance.'*

184. Moreover, Mr Rankin submitted that Dr Chaudhry's failure to adhere to COVID-19 rules as well as his disregard for the Cosmetic Guidance breached fundamental tenets of the profession.

185. Mr Rankin submitted that the Tribunal should evaluate Dr Chaudhry's insight into, and approach to, the allegations.

186. Mr Rankin made reference to Dr Chaudhry's denial of responsibility in relation to both allegations, adding that this amounted to a complete lack of any demonstration of insight or remediation. He submitted that Dr Chaudhry had ignored the advice while the public endured the constraints on their private lives.

187. Despite Dr Chaudhry's attempts to downplay his involvement, Mr Rankin argued that his behaviour warranted a finding of impairment due to misconduct.

188. Mr Rankin submitted that a finding of impairment is necessary to reaffirm clear standards of professional conduct and maintain public confidence in the profession, and that the need to uphold proper professional standards would be undermined if a finding of impairment were not made in these circumstances.

189. Mr Rankin urged the Tribunal to exercise its independent judgment based on Paragraphs 7 and 13 of the Allegation and their implications for Dr Chaudhry's fitness to practice. He concluded that Dr Chaudhry's actions indicated impairment due to misconduct. This emphasised the gravity of the situation and the need for appropriate disciplinary action.

### The Relevant Legal Principles

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

191. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amount to misconduct, and then, whether Dr Chaudhry's fitness to practise is currently impaired by reason of that misconduct.

192. In approaching the decision, the Tribunal had regard to the case of *Roylance v General Medical Council (No.2) [2000]1 AC 311 (UKPC)* which states:

*'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 would qualify. The professional misconduct must be serious.'*

193. The Tribunal reminded itself that in determining whether the proven facts establish misconduct, it should consider whether Dr Chaudhry has breached any of the relevant provisions of Good Medical Practice, the extent of any such breach and the circumstances or context in which the breach occurred.

194. The LQC also referred the Tribunal to the Cosmetic Guidance and that any breach of this guidance should also be considered.

195. In considering whether Dr Chaudhry's conduct was sufficiently serious so as to amount to misconduct, the Tribunal had regard to the case of *Nandi v. General Medical Council [2004] EWHC 2317 (Admin)*, in which Mr Justice Collins emphasised in his judgment, the need to give the question of 'serious misconduct' proper weight, observing that in other contexts, it has been referred to as 'conduct which would be regarded as deplorable by fellow practitioners'.

196. The Tribunal further had regard to the case of *Howd v Bar Standards Board, [2017] EWHC 210 (Admin); [2017] 4 WLR 54* in which it was said that it is, a 'high threshold' and that to amount to serious misconduct the conduct in question must be 'reprehensible, morally culpable or disgraceful'.

197. The Tribunal must determine whether Dr Chaudhry's fitness to practise is impaired today, considering Dr Chaudhry's conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

198. The Tribunal reminded itself that it would be wrong to equate Dr Chaudhry's maintenance of innocence with a lack of insight. He is entitled to contest the charge before the Tribunal and this should not be construed as a refusal to remediate, or an incapacity to remediate.

199. The Tribunal considered the overall risk to public protection and the impact of its findings on all three elements of the Overarching Objective. It also considered whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of current impairment were not made.

200. While there is no statutory definition of impairment, the Tribunal had regard to the guidance provided by Dame Janet Smith in the Fifth Shipman Report, as referred to in the case of *CHRE v NMC and Grant [2011] EWHC 927 (Admin)*, as follows:

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

- a. *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession...*
- d. *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

## The Tribunal's Determination on Impairment

### Misconduct

201. In determining whether Dr Chaudhry's fitness to practise is currently impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amount to misconduct.

### COVID-19

202. The Tribunal considered its findings in its determination on the facts in terms of Dr Chaudhry continuing to carry out non-essential treatment during the COVID-19 lockdown. His evidence was that he thought that he was exempt from the Government COVID-19 guidelines, by virtue of having a D1 licence, working in a CQC registered building and confirmation from his insurance provider that he could continue to work.

203. The Tribunal noted that the insurance company itself had informed Dr Chaudhry to comply with the Government guidelines in place at that time. An email to Dr Chaudhry from his insurer stated:

*'Before making any decision to reopen you should carefully consider all of the applicable guidance issued by the Government, Public Health England and NHS and any additional guidance issued by your regulator (s) or Professional body, Chief Professional Officers or any other relevant or applicable guidance'.*

204. The Tribunal did not have any evidence before it as to what a D1 licence was.

205. The Tribunal did not accept that Dr Chaudhry could have possibly thought that he was permitted to remain open during this period. There was wide press coverage and daily broadcast updates about the risks of the spread of COVID-19. Despite this, Dr Chaudhry chose to continue to work and remain open. The Tribunal determined that in continuing to work, Dr Chaudhry ignored the constraints imposed on the general public and acted as if that

these did not apply to him. The Tribunal bore in mind that during this period, family members could not attend the funerals of their loved ones and major surgeries needed to be postponed. Dr Chaudhry would have been aware of the seriousness of the situation. Fellow practitioners were under pressure working during COVID-19 conditions to keep the public safe, and Dr Chaudhry was also obliged to keep patients safe, in this case by closing his clinic. The Tribunal considered this behaviour to be deplorable as Dr Chaudhry had breached government guidelines. It determined that fellow practitioners would also consider this deplorable, as many were working hard under difficult conditions.

206. In terms of the degree of misconduct, the Tribunal considered that this is towards the serious end of misconduct. As the public endured the restrictions imposed by Government guidance, Dr Chaudhry continued providing non-essential treatment for financial gain. Dr Chaudhry showed no remorse.

207. The Tribunal further noted the Expert report of Dr F dated 21 January 2024 in which he stated that *'performing elective non-essential medical care within a period of covid-19 lockdown affecting the rest of the population in the UK'* fell seriously below the standard expected of a doctor.

208. The Tribunal had regard to GMP and considered the following paragraphs to be engaged in this case.

*'25 You must take prompt action if you think that patient safety, dignity or comfort is or may be seriously compromised.'*

*65 'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.'*

209. The Tribunal considered that paragraph 25 of GMP was engaged in relation to the safety of patients. Dr Chaudhry should have complied with Government guidance which made closure of non-essential care providers obligatory. Dr Chaudhry should have acted promptly to ensure patient safety and as director should have closed the clinics and cancelled any patients that were booked in. Failing to do so posed a risk to patients who were travelling, possibly on public transport, to see him as well as mixing with any staff members at the clinic.

210. The Tribunal also considered paragraph 65 was engaged in relation to his position as a doctor as his responsibility was to comply with the guidelines that were in place. It bore in mind that other healthcare professionals faced significant challenges, and by Dr Chaudhry



continuing to operate his private clinic, his conduct had the potential to undermine the public's trust in the medical profession.

211. In light of the above, the Tribunal considered that other members of the profession would find Dr Chaudhry's actions to be a serious departure from the principles set out in GMP and the Cosmetic Guidance. The Tribunal also found that Dr Chaudhry's actions brought the profession into disrepute and undermined public trust and confidence in the profession and had breached a fundamental tenet of the profession.

212. Therefore, the Tribunal concluded that Dr Chaudhry's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct.

Prize giveaway:

213. The Tribunal had regard to the Cosmetic Guidance. It also bore in mind its findings at paragraph 17 of its determination on the facts in which it determined that Dr Chaudhry was responsible for the prize giveaway despite his denial.

214. The Tribunal reminded itself that the Instagram prize giveaway offered £1000 for 'ANY' treatments from Dermis Clinic. The Tribunal noted that the type of treatments Dermis Clinic was offering included a 'barbie tip rhinoplasty' and 'lip fillers' as shown on the screenshots of the website from the 18 November 2020. Whilst these were aesthetic and cosmetic procedures, the Tribunal nevertheless considered these to be medically invasive treatments.

215. The Tribunal considered that the intention behind posting this prize draw was to attract customers and to amplify the clinic's social media presence. It was mindful of the bio provided underneath Dr Chaudhry's photo on the Dermis Clinic website on which he had made it clear that he was a doctor. The Tribunal determined that this was to provide reassurance to potential customers.

216. The Tribunal considered the Cosmetic Guidance which states:

*'53 You must not provide your services as a prize'.*

*'54. You must not knowingly allow others to misrepresent you or offer your services in ways that would conflict with this guidance.'*

217. The Tribunal therefore determined that Dr Chaudhry breached this guideline.

218. The Tribunal bore in mind that this prize draw was also being advertised during a period of national lockdown. It also noted Paragraph 52 of the Cosmetic Guidance which states:

*'52 You must not use promotional tactics in ways that could encourage people to make an ill considered decision'.*

219. The Tribunal considered that Dr Chaudhry was prompting customers to break COVID-19 guidelines by incentivising them with aesthetic procedures worth £1000.

220. The Tribunal reminded itself the Dr Chaudhry's post stated *'winner will be announced in 48 hours'*. Although there was nothing to suggest that the winner would receive the prize during the COVID-19 lockdown, the Tribunal considered the context, in which Dr Chaudhry had already previously ignored COVID-19 guidance by treating Patient A with a non-essential procedure in May 2020. The Tribunal was therefore of the view that it was possible that he would treat the winner during this period.

221. The Tribunal considered that other members of the medical profession would find Dr Chaudhry's actions to be a serious departure from the principles set out in GMC guidance such that it would be considered deplorable. The Tribunal also found that Dr Chaudhry's actions brought the profession into disrepute, and undermined public trust and confidence in the profession and had breached a fundamental tenet of the profession.

222. Therefore, the Tribunal concluded that Dr Chaudhry's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct.

Paragraphs 2(b)(i), 2(d), 3(a)(b)(c), 9(a)(b)(c), 14, 15, 16:

223. In considering the evidence before it, and in absence of any GMC submission that conduct within other allegations admitted or found proved amounted to serious misconduct, the Tribunal formed the view that the outstanding allegations did not individually or collectively amount to serious misconduct as the behaviour within these paragraphs of the allegation was not such that would be considered to be deplorable, culpable, or disgraceful.

224. In coming to this conclusion, the Tribunal noted Dr F's opinion namely regarding the £800 fee that *'encouraging an additional fee was considered below the standard expected of a dr but not seriously below.'*

225. Dr Chaudhry's expert, Professor E, stated that it would be unusual for a fee for information to be charged after treatment, but it would depend on the nature of the request and if a full literature search was required, then a fee for this amount would be justified.

226. The Tribunal referred to its finding on the facts for allegation 17 in relation to the Junior Doctor Training Programme. The Tribunal considered that this was misleading but not dishonest and therefore did not amount to serious misconduct. Although the Tribunal accepted that at the time, Dr Chaudhry did not know that he had not completed the Junior Doctor Training Programme, it found that his bio was misleading to the public, including potential patients seeking treatment of this type. This engaged paragraph 71 of GMP:

*'71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.  
a You must take reasonable steps to check the information is correct.  
...'*

227. However, despite breaching paragraph 71(a) of GMP, the Tribunal concluded that this in itself did not cross the threshold so as to amount to serious misconduct.

### Impairment

228. The Tribunal, having found that the facts found proved amounted to serious misconduct, went on to consider whether, as a result of that misconduct, Dr Chaudhry's fitness to practise is currently impaired.

229. The Tribunal considered the guidance under *Grant*, and determined that limbs *a*, *b* and *c* are engaged. In the past, Dr Chaudhry has acted as to put patients under unwarranted risk of harm by continuing procedures during the COVID-19 pandemic. This misconduct, the Tribunal opined, brought the medical profession into disrepute. By reason of his significant departure from GMP paragraphs 25 and 65, Dr Chaudhry breached the fundamental tenets of the profession. In relation to the prize draw, the Tribunal considered that Dr Chaudhry breached a clear guideline and put patients at risk of harm by advertising clinical treatments during the COVID-19 lockdown. In doing so, such was his departure from the guidance during a time of national emergency that he brought the medical profession into disrepute and breached fundamental tenets of the profession.

230. The Tribunal considered the approach taken in *Cohen*. It considered whether Dr Chaudhry's misconduct is remediable and looked for evidence of remediation and insight,

and the likelihood of repetition. The Tribunal then balanced this against the three elements of the Overarching Objective.

231. The Tribunal considered Dr Chaudhry's misconduct to be remediable. The Tribunal would have been assisted by evidence of reflection, insight, and learning on Dr Chaudhry's part as to whether Dr Chaudhry understands the importance of complying with guidance affecting public safety and his medical practice. However no evidence of remediation has been provided, nor apology and the most the Tribunal heard from Dr Chaudhry were excuses that it did not accept. There is also no evidence of any further learning or subsequent development of insight.

232. The Tribunal referred to Dr Chaudhry's statement:

*"The clinic provides non-medical procedures like facials and I would never have undertaken services requiring medical qualifications, obtained as a result of a prize. Since this issue was raised by the GMC, I have communicated it to the directors of the clinics, explaining how it conflicts with our duties as doctors. The directors have now ended treatment prize giveaway."*

233. The Tribunal reminded itself that the prize draw was advertised for 'ANY' treatment offered by Dermis Clinic which the Tribunal noted included clinical treatments, including 'Barbie rhinoplasty' and 'lip fillers' as advertised on the Dermis Clinic website. The Tribunal considered that such injectable procedures amount to clinical treatment.

234. The Tribunal accepts that there is some evidence that Dr Chaudhry showed insight in the context of the prize draw and took some steps to remediate when he was reminded by the GMC that he must not offer a prize for treatment. The Tribunal accepted that he took action on becoming aware that there was an issue and the advert was removed from the website shortly after this. This reflected the positive, albeit limited steps Dr Chaudhry had taken to remediate the issue.

235. The Tribunal saw no evidence of reflection in relation to his misconduct under allegation 7 relating to providing non-essential treatment during COVID-19. The lack of insight was demonstrated by Dr Chaudhry asserting that he had done nothing wrong. The Tribunal concluded that in so doing, Dr Chaudhry has failed to recognise or accept any wrongdoing on his part.

236. The Tribunal noted the email of Dr Chaudhry's responsible officer, Dr H, which confirmed that Dr Chaudhry had not engaged in his regular meetings since August 2023. The Tribunal noted that, when encouraged to do so by Dr H, Dr Chaudhry agreed to meet with his

new supervisor in February 2024, but the Tribunal saw no evidence of this reengagement. This was compounded by the fact that by August 2023, Dr Chaudhry had disengaged with his supervised meetings.

237. The Tribunal considered whether Dr Chaudhry would abide by any guidelines in the future, irrespective of whether these were imposed by the Government or the GMC. The Tribunal noted that there was no evidence of insight or remorse in relation to his behaviour during the COVID-19 pandemic and therefore no evidence before the Tribunal to suggest that he would adhere to guidelines in the future. Dr Chaudhry has not provided the Tribunal with any reassurances that his misconduct is unlikely to be repeated should a similar situation arise. In view of the lack of evidence before the Tribunal that Dr Chaudhry has taken steps to remediate his misconduct or has developed insight, the risk of repetition remains. Thus, the Tribunal determined that he would be liable to put patients at an unwarranted risk of harm due to his lack of compliance with guidance. Dr Chaudhry's limited insight and remediation in relation to prize draw was insufficient to displace the Tribunal's concern that this misconduct would be repeated. The Tribunal therefore concluded that a risk of repetition remains.

238. The Tribunal then turned to consider the three limbs of the overarching objective namely:

- 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.

239. Doctors occupy a position of privilege and trust in society and are expected to act with integrity. The public is entitled to expect that doctors will be honest and trustworthy at all times. Where doctors fail to uphold these standards, the public's trust in the profession is undermined and a finding of impairment of fitness to practise is required.

240. The Tribunal therefore considered that all three limbs of the Overarching Objective have been engaged and a finding of impairment is necessary in this case to protect the public, maintain public confidence and to uphold and maintain standards for members of the profession.

241. Therefore, the Tribunal determined that Dr Chaudhry's fitness to practise is currently impaired by reason of misconduct.

## Determination on Sanction - 26/06/2024

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

### The Evidence

243. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

### Submissions

244. On behalf of the GMC, Mr Lodge, Counsel, submitted that a period of suspension is the most appropriate sanction in this case and referred the Tribunal to the relevant paragraphs of the Sanctions Guidance (2020)('SG').

245. Mr Lodge submitted that it may be difficult to identify mitigating factors in this case due to the lack of recent engagement from Dr Chaudhry but noted that he has not repeated his conduct since the events in question. However, he reminded the Tribunal that, when considering lack of repeated conduct as a mitigating factor, it should take into account that we no longer live under those conditions now that the pandemic has ended.

246. Turning to aggravating factors, Mr Lodge submitted that there is a lack of timely development of insight from Dr Chaudhry in that he has shown no remorse, nor has he apologised for his behaviour. He submitted that Dr Chaudhry's understanding of his professional obligations and his failure to adhere to regulations, in place at the time, were of grave concern. He submitted that in relation to the prize draw, evidence of Dr Chaudhry's insight was scarce.

247. Mr Lodge took the Tribunal through the sanctions available. He submitted that this case was far too serious and there are no exceptional circumstances to justify taking no action and that doing so would not be an appropriate course for the Tribunal to take. He submitted that conditions need to be appropriate, proportionate and workable. However, as Dr Chaudhry has shown no evidence of insight and failed to engage, he submitted that it is difficult to guess whether he could respond positively to remediation. He further submitted that no workable conditions could be imposed that could address the concerns and the seriousness of the misconduct. He also submitted that given the serious nature of the conduct, imposing conditions in this case would not satisfy the public interest.

248. Mr Lodge invited the Tribunal to consider paragraphs 91-98 in the SG relating to suspension. He highlighted paragraphs 91, 92 and 97(a). He submitted that the breaches in the Cosmetic Guidance and GMP were serious. He submitted that while there has been no evidence of repetition of similar behaviour, due to the lack of insight and remediation, the Tribunal may have concerns regarding the risk of repetition should similar circumstances present themselves. He submitted that a period of suspension would be appropriate in this case and would be a proportionate response to the serious nature of the breaches. The breaches of GMP and the Cosmetic Guidance were further amplified by Dr Chaudhry treating patients and offering a prize during COVID conditions. A suspension would send the appropriate signal to the public and the medical profession and act as a deterrent. Mr Lodge submitted that the misconduct is serious but not fundamentally incompatible with continued registration.

249. Mr Lodge submitted that considering the guidance as set out in paragraph 109 of the SG, erasure would not be the appropriate response. He stated that none of the factors contained therein fully apply in this case.

250. Mr Lodge submitted that an order of suspension was necessary to satisfy the Overarching Objective. The period of suspension was a matter for the Tribunal however he outlined factors the Tribunal should consider in paragraph 100 of the SG, namely risk to patient safety, the degree to which Dr Chaudhry had departed from GMP and the Cosmetic Guidance, and his subsequent behaviour. Finally, he submitted that a review would not be required in this case.

251. Dr Chaudhry has not attended the latest reconvened hearing. However following GMC submissions on sanction, the Tribunal received an email from Dr Chaudhry, dated 24 June 2024, and he stated the following:

*“Dear Tribunal Members,*

*During the covid pandemic my understanding and belief was that the treatments I offer are medical. Therefore I never viewed them as non-essential. Every client that came to us during the pandemic, who was seeking treatments for purely cosmetic reasons, were not seen and advised to come after restrictions had been lifted.*

*Our clinic was not open as normal.*

*It has strict covid policies and protocols; PPE , 2metres apart and face masks etc and reduced working days and hours.*

*If it wasn't clear in my statement previously, I would like to highlight again, that I do understand the severity of breach of covid rules. I would also like to state, that the area that I work in was an extremely grey area during the pandemic. My colleague doctors, working on the same street, we're performing hundreds of cosmetic only procedures. Breast Augmentations.*

*So you can see in my defence that I was not intently or purposefully breaching covid legislation.*

*In terms of sanctions, I believe I should receive a warning or undertaking that I will not perform cosmetic procedures during another pandemic/lock down rules.*

*It was a highly unprecedented period with grand uncertainty intertwining also aspects of the working life. Again I am very sorry if this has put the public confidence in doctors at risk and jeopardising the professions reputation.*

*The five year duration of my gmc trial has been the greatest punishment, a person could receive both mentally and financially.*

*Everyday I have lived with uncertainty and I have learnt many valuable lessons from this process.*

*Yours Sincerely*

*Dr Chaudhry"*

## **The Relevant Legal Principles**

252. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal exercising its own judgment by reference to the SG. It must consider the least restrictive sanction first and then, if necessary, consider the other sanctions. The Tribunal must consider its determination on impairment and take those matters into account during its deliberations on sanction.

253. The Tribunal recognised the purpose of a sanction is not to be punitive but to protect patients and the wider public interest, although it may have a punitive effect. If the Tribunal departs from the SG, it must give reasons for departing from relevant part of the SG.



254. The Tribunal will apply the principle of proportionality, balancing the wider public interest with that of Dr Chaudhry. The Tribunal bore in mind that the reputation of the profession as a whole is more important than the interests of an individual member.

### The Tribunal's Determination on Sanction

#### Aggravating and Mitigating Factors

255. The Tribunal has already set out its decision on the facts and impairment which it took into account during its deliberations on sanction. Before considering what action, if any, to take in respect of Dr Chaudhry's registration, the Tribunal considered and balanced the aggravating and mitigating factors in this case.

256. The Tribunal considered the following to be aggravating factors in this case:

- Dr Chaudhry has not demonstrated timely evidence of insight and his level of insight remains low.
- Dr Chaudhry's email to the Tribunal, dated 24 June 2024, shows a continued lack of insight into his misconduct.
- He had failed to recognise the seriousness of his actions, particularly during the time of COVID when the public was more at risk.
- Despite the passage of time since these events, there have been no obvious steps taken towards remediation, save for Dr Chaudhry promptly having the prize draw advertisement removed.
- Dr Chaudhry has had limited contact with his Medical Supervisor. The Tribunal accepts this may have been partly due to a breakdown in the relationship and a delay in replacing the supervisor. It noted however that no further evidence has been provided to the Tribunal to confirm that Dr Chaudhry has reengaged with a supervisor.

257. Having identified aggravating factors in this case, the Tribunal identified the mitigating factors to be:

- Dr Chaudhry is of previous good character and has no prior disciplinary history. Further there was no evidence to suggest that Dr Chaudhry has failed to comply with work related guidance since his misconduct.
- In his email to the Tribunal, dated 24 June 2024, Dr Chaudhry apologised if his actions put the public confidence in doctors at risk or jeopardised the profession's reputation.

### Warning

258. The Tribunal noted Dr Chaudhry's submission made in his email to the Tribunal that he believed he should be issued a warning. On the basis that it has found Dr Chaudhry's fitness to practise to be currently impaired, the option of warning was not available to the Tribunal.

### No action

259. The Tribunal then considered whether to conclude the case by taking no action. It considered paragraphs 68-70 of the SG, which state that taking no action following a finding of impaired fitness to practise is only appropriate in exceptional circumstances. The Tribunal determined that there are no exceptional circumstances in this case. It determined that given the serious nature of the Tribunal's findings on impairment, it would be neither sufficient, proportionate nor in the public interest, to conclude this case by taking no action.

### Undertakings

260. In his email to the Tribunal, dated 24 June 2024, Dr Chaudhry suggested that an undertaking from him that *'I will not perform cosmetic procedures during another pandemic/lockdown rules'*[sic] would be appropriate. The Tribunal considered paragraph 71 of the SG which specifies that an undertaking should be agreed between the doctor and the GMC, and no such agreement has been put in place in any event. The Tribunal was of the view that an undertaking would not proportionately address the seriousness of the misconduct. Furthermore, as COVID restrictions are not currently in place, the Tribunal considered that an undertaking was not appropriate, measurable or workable.

### Conditions

261. The Tribunal next considered whether to impose conditions on Dr Chaudhry's registration. The Tribunal took into account that any order of conditions would need to be appropriate, proportionate, workable and measurable.

262. The Tribunal took into account paragraph 81 of SG which detailed when conditions might be appropriate.

*'81 Conditions might be most appropriate in cases:*

*a involving the doctor's health*

*b involving issues around the doctor's performance*

*c where there is evidence of shortcomings in a specific area or areas of the doctor's practice*

*d where a doctor lacks the necessary knowledge of English to practise medicine without direct supervision.'*

263. The Tribunal took the view that none of the above factors were present in this case.

264. In light of Dr Chaudhry's lack of engagement and insight, the Tribunal considered conditions were not appropriate as he has provided no evidence he will comply with them or has the potential to respond positively to remediation. The Tribunal recognised the circumstances of COVID were unique, and so it was not satisfied that workable conditions could be formulated which would address the Overarching Objective.

265. The Tribunal therefore found that imposing conditions on Dr Chaudhry's registration would not be sufficient to mark the seriousness of his misconduct.

### Suspension

266. The Tribunal then went on to consider whether imposing a period of suspension on Dr Chaudhry's registration would be appropriate and proportionate. It bore in mind the SG in relation to suspension, including paragraphs 91 and 92 which state:

*'91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.*

*92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).'*

267. The Tribunal also had regard to paragraph 97 of SG.

*'97. Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*

*a A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.*

*b...e*

*f No evidence of repetition of similar behaviour since incident.*

*g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour'*

268. Whilst the Tribunal recognised Dr Chaudhry's behaviour fell short of the standards of conduct reasonably expected of a doctor, it determined that his actions were not such as to be incompatible with continued registration.

269. No evidence has been forthcoming to demonstrate that misconduct has been repeated. Although the Tribunal found limited insight and considered there to be a risk of repetition, it did not consider the risk to be significant and balanced this against other factors in considering whether suspension is an appropriate sanction in this case.

270. A period of suspension would have a deterrent effect and would send out a signal to Dr Chaudhry, the medical profession and the public about the importance of complying with relevant guidance.

## **Erasure**

271. Having considered the reasons in favour of suspension, the Tribunal went on to consider whether erasure was appropriate and proportionate in this case. Having determined Dr Chaudhry's misconduct is not fundamentally incompatible with continued registration, it reminded itself of paragraphs 108 and 109 of the SG. The Tribunal carefully looked at the factors indicating when erasure may be an appropriate sanction as set out in paragraph 109 of the SG. Having considered this, the Tribunal determined that erasure would not be a proportionate sanction and concluded that a period of suspension would be sufficient to uphold public interest by maintaining professional standards and upholding public confidence in the profession.

## **Duration of Suspension**

272. Having considered the sanctions in ascending order of restrictiveness and having determined to suspend Dr Chaudhry's registration, the Tribunal went on to consider the

length of the period of suspension. It took into account paragraphs 99 and 100 of SG in that regard:

*'99 The length of the suspension may be up to 12 months and is a matter for the tribunal's discretion, depending on the seriousness of the particular case.*

*100 The following factors will be relevant when determining the length of suspension:*

*a ...*

*b the seriousness of the findings and any mitigating or aggravating factors*

*c ...'*

273. The Tribunal considered paragraph 100(b) of SG to be relevant in this case and in view of the seriousness of Dr Chaudhry's misconduct, it concluded that a period of five months suspension would be proportionate. This would send a suitable signal to the public and the profession that breaching medical guidance specifically during a time of COVID was serious.

### **No Review Hearing**

274. The Tribunal considered whether it ought to direct a review of Dr Chaudhry's case. It noted that the GMC submitted that a review was not necessary. The Tribunal agreed with the GMC's submission. It considered a five-month suspension period would adequately mark the gravity of Dr Chaudhry's misconduct and would uphold the aims of the Overarching Objective.

### **Determination on Immediate Order - 25/06/2024**

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

### **Submissions**

276. On behalf of the GMC, Mr Lodge submitted an immediate order is not necessary in this case.

### **The Tribunal's Determination**

277. The Tribunal reminded itself that the decision whether to impose an immediate order will be at the discretion of the Tribunal based on the facts of the case. In making its decision the Tribunal had regard to paragraphs 172, 173 and 178 of the SG which state:

*'172 The tribunal may impose an immediate order if it determines that 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. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*

*173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*

*178 Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.'*

278. The Tribunal found that the substantive suspension order made marks the seriousness of his misconduct and is sufficient to maintain public confidence in the profession and to send a clear message on the need to maintain proper professional standards.

279. The Tribunal therefore determined not to impose an immediate order.

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

281. There is no interim order to revoke.

282. That concludes this case.

## ANNEX A – 24/04/2023

### Application to exclude a member of the public from observing the hearing

1. This determination will be handed down in private as it refers to Dr Chaudhry's personal circumstances. A redacted version will be published at the close of the hearing.
2. On behalf of Dr Chaudhry, Ms Acker, made an application for a particular member of the public who was observing the hearing, to be excluded, pursuant to Rule 42 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'):

*'The Committee or Tribunal may exclude from any hearing any person whose conduct, in their opinion, is likely to disrupt the orderly conduct of the proceedings.'*

3. This application arose following the member of public's name being stated at the commencement of proceedings when being asked whether the member of the public could see and hear the proceedings.

### Submissions

#### On behalf of Dr Chaudhry

4. Ms Acker submitted it was not appropriate for the member of public to be listening to all elements of this case. The member of public observing XXX who is not a witness in these proceedings. She submitted that there was ongoing litigation between Dr Chaudhry and XXX. She added that XXX. Mr B, who is a witness in these proceedings, and exhibits the videos relating to paragraph one of the Allegation, is the XXX. He is funding XXX proceedings against Dr Chaudhry and there is ongoing bitterness between the parties.

5. Ms Acker submitted in these circumstances it would not be appropriate for someone who is linked to other ongoing proceedings to listen to what was being said in these proceedings as information could be disclosed to others. She submitted that a Tribunal may exclude from any hearing any person whose conduct, in their opinion was likely to 'disrupt' the orderly conduct of the proceedings. She stated that, disrupt, in this context could also include passing information to other parties.

#### On behalf of GMC

6. Mr Rankin objected to Ms Acker’s application to exclude a particular member of public from these proceedings. He submitted that this was a public hearing, and the member of public was entitled to be here. He added that it was often the case that family members of parties involved join the hearing to observe and no objections are raised. He submitted that there was no danger here of the member of the public interfering with current proceedings.

### **Tribunal’s determination**

7. This was an application to exclude a particular member of the public on the grounds that this person was connected to XXX, who was not a witness to these proceedings. He was also therefore linked to XXX, Mr B, who was a witness in these proceedings. Ms Acker did not make an application for proceedings to be held in private under Rule 41 of the Rules thereby excluding the public in general from the proceedings.

8. The Tribunal bore in mind that no submissions had been made about the risk of evidence being passed on to Mr B, the first witness who was due to give evidence in these proceedings. In any event, this risk could properly be addressed by the Tribunal giving the appropriate warning to the member of the public about sharing the information with witnesses and the risk that this could jeopardise the proceedings.

9. The matter before the Tribunal to consider whether it was appropriate to exclude the member of public in view of their links to both Dr Chaudhry and with Mr B. The Tribunal considered that it was yet to hear evidence from the witnesses in these proceedings. The Tribunal took into consideration the connection with XXX and the alleged degree of hostility between the parties involved in those proceedings. The Tribunal was of the view that these proceedings are independent to any other ongoing proceedings and this person appears effectively as a member of public.

10. The Tribunal considered the consent form members of the public are obliged to sign before being permitted to observe public hearings at the MPTS. The consent form refers to:

*‘I understand that I should not seek to interact with this hearing in any way, including, but not limited to, posting any communication in the comments box.*

...

*I understand that my failure to comply with the terms set out above could result in my removal from current and future hearings.’*

11. The Tribunal noted that the member of public had signed the consent form confirming he would not interact with the proceedings in any way. The Tribunal determined



that there was no reason to exclude this member of the public simply because of their links to the witness in this hearing.

12. The Tribunal determined that the meaning of disrupt in this context, meant disruption by the observer in the hearing today and this would invoke the power to exclude them from the hearing. It considered that it was normal and regular for family members of either the doctor or those parties who have been impacted by these proceedings, to observe public hearings. The Tribunal was of the view that the observer could not be excluded, unless there were concrete reasons that witness evidence would be impacted by the observer joining the hearing. There was no such evidence before the Tribunal.

13. The Tribunal determined that it would nevertheless address any risk of information being passed on to witnesses by informing the member of public, on record during these proceedings, that it is pertinent that any evidence heard during the hearing is not shared with any witnesses who are yet to give evidence.

14. The Tribunal determined not to exclude a particular member of the public from this hearing. The Tribunal remained mindful, however, that some parts of this hearing may cover matters relating to ongoing XXX proceedings and other XXX matters. In those instances, the Tribunal would hear these matters in private as required by the Rules.

## ANNEX B – 25/04/2023

### Application admissibility of video evidence

1. This determination will be handed down in private as it refers to Dr Chaudhry's personal circumstances. A redacted version will be published at the close of the hearing.
2. On behalf of Dr Chaudhry, Ms Acker made an application for video evidence to be excluded, pursuant to Rule 34 (1) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'):

*'(1) 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.'*

### Submissions

On behalf of Dr Chaudhry

3. Ms Acker submitted that Instagram videos which had been produced by Mr B should not be admitted. She accepted that they are relevant because paragraph 1 of the Allegation was drafted on the basis of the contents of the Instagram videos. However, she argued that it would not be fair to admit the video evidence as there was a real risk of a miscarriage of justice if the GMC is permitted to rely upon them.

4. Ms Acker submitted that the videos were provided to the GMC by a witness who is wholly biased against Dr Chaudhry and is highly motivated to cause him difficulty. Furthermore, it is unclear, from Mr B's witness statement, where the videos originate from. She submitted that there was no evidence of provenance to give any assurance that these videos, from a person unknown, and provided by a biased witness, are genuine.

5. Ms Acker pointed out that Mr B is XXX and there is a history XXX. This, coupled with the current fraught XXX proceedings, makes Mr B highly motivated against Dr Chaudhry.

6. Ms Acker submitted that the GMC relies on this evidence and yet has not established its origin, when it was created, by whom, if it has been edited, or even that it is genuine. She pointed out that it is well established how digital images can be created and manipulated, words photoshopped in and sounds or images overlaid. It is for this reason the criminal and civil courts require the meta-data, or a full device download and often expert evidence. She submitted that the evidence relied upon here does not even meet the most basic standards of continuity of evidence, let alone the proper approach to technical material.

7. Ms Acker submitted that the timing of Mr B's complaint also needed to be considered. She stated that Mr B received the video in November 2019, however he did not send this to the GMC until January 2020 and with this, also sent a plethora of further complaints, some of which involved the police. She argued that other proceedings are therefore relevant as Mr B has referred to XXX proceedings in his witness statement despite being barred by the XXX. She submitted that Mr B's evidence was tainted with bias and therefore any evidence provided by him should cause concern. Furthermore, the evidence he gives about the XXX proceedings cannot be tested or challenged as Dr Chaudhry is unable to respond.

8. For this reason, she submitted it would be unfair to admit the video evidence.

On behalf of GMC

9. Mr Rankin submitted that it would not be unfair to admit the video evidence. It was always the case that Mr B would be called to give evidence and would be cross examined on the issue of the veracity of the video(s). He submitted that this was a matter for the Tribunal to gauge and this depended on the Tribunal's assessment of credibility. If the Tribunal did not find the witness to be credible, it could reject the video.

10. Mr Rankin referred to Dr Chaudry's statement in which he denied ever supplying drugs and denied sending the message. Dr Chaudry then stated that someone sent the videos from his phone whilst it was left in the kitchen at the party, and he is not the person in the video. Mr Rankin pointed out that Dr Chaudry had never denied that the videos were sent from his account and the inference from his witness statement is that they were. He added that there is no suggestion from his statement that the video has been doctored.

11. Mr Rankin submitted that it was unreasonable for the defence to suggest that GMC should go to the expense of obtaining an expert report which was unnecessary until just a few weeks ago when the defence first raised the issue of authenticity. He argued that the defence was reviewing evidence as it unfolded and had taken the opportunity, very late, to raise the issue of authenticity. Nevertheless, Mr Rankin submitted that an expert would not be required, and it would be for the Tribunal to assess reliability of the video and images. Should the video appear to be tampered with then this would undermine the GMC's case. Furthermore, if the Tribunal is not satisfied that Dr Chaudry appears in the video, then this will assist him. Mr Rankin submitted it was a matter for the Tribunal's analysis.

12. Mr Rankin submitted the Tribunal is a professional body and is best placed to consider the material placed before it and assess such things as bias and authenticity.

### **The Tribunal's Approach**

13. The Tribunal bore in mind Rule 34(1) of the Rules as set out above. It reminded itself that the balance of fairness and relevance should be considered in light of the position of all parties, holding the overarching objective as the Tribunal's predominant purpose. Justice demands that determinations are made on the basis of evidence and in general terms, the Tribunal will best be able to deliver justice when it has access to all of the available evidence. Excluding evidence is a step that should only be taken where absolutely necessary.

14. It also took into consideration the guidance provided by Mr Justice Knowles in the 2019 appeal of *Arowodjolu v General Medical Council [2019] EWHC 3155 (Admin)* namely that Tribunals must ensure that they assess the impact of admitting the evidence or otherwise upon the public interest, as well as any prejudice to the practitioner himself.

15. The Tribunal is therefore required to consider the prejudice that may be suffered by a registrant, by including the relevant evidence. Where a Tribunal considers that evidence is crucial to the issues to be determined, it must assess whether there are alternative ways to remedy and mitigate any potential prejudice to the practitioner as part of the exercise of balancing the fairness and relevance to all parties with the overarching objectives.

16. In deciding whether to exclude the evidence, the Tribunal considered the following questions.

- a. Has a party failed to comply with any rule or direction pertaining to the evidence in question?
- b. Does the party have a reasonable excuse for that failing?
- c. Has the party deliberately sought to disrupt proceedings by a manner or timing of production of this evidence?
- d. What issue in this case does the evidence go to?
- e. Will other parties be prevented or significantly be disadvantaged in addressing the material issues raised by the evidence in question?

#### **Tribunal's determination**

17. The Tribunal bore in mind written and oral submissions by both parties. It took into consideration that Ms Acker does not dispute that the videos are relevant. The video evidence related to the entirety of paragraph 1(a) and 1(b) of the Allegation. The Tribunal was therefore satisfied that the evidence is relevant. The issue before the Tribunal was whether it would be fair to admit the video evidence.

18. The Tribunal took into account that both parties accept that the video has been in the possession of each party for a number of months, and it was only recently that Dr Chaudhry's legal team had raised the issue about authenticity and provenance. It bore in mind that Dr Chaudhry maintains that he was not in the video(s).

19. The Tribunal was mindful of the fact that the video evidence was the only evidence which the GMC had put forward to support paragraph 1(a) and 1(b). The Tribunal considered whether Dr Chaudhry would be prejudiced if the video evidence was admissible. The Tribunal was of the view that Dr Chaudhry would not be prejudiced if the video evidence was admitted. Dr Chaudhry has been in possession of these video(s) for some time and his account is that he is not in the videos. It would be a matter for the Tribunal to assess the weight of the evidence. It also considered that if the video evidence was determined to be

inadmissible, the GMC would only be left with a brief description of the video(s) contained within Mr B's witness statement and thereby may not be able to proceed with the Allegation.

20. The Tribunal weighed this against the overarching objective, 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.

21. The Tribunal also took into consideration the case management hearing note dated 26 January 2023. In serving the legal argument on 6 April 2023, the Case Management direction had been complied with in line with the timings set. Although there was no failing on the part of defence in complying with directions, the issue of the video's authenticity was not raised prior to 6 April 2023.

22. The Tribunal did not consider that Ms Acker had deliberately sought to disrupt proceedings by submitting the legal argument raising an issue of authenticity as late as 6 April 2023. However, it noted that at the case management hearing the indication from XXX, Mr D, was that the video was sent from Dr Chaudhry's phone by a XXX, and nothing had been put forward by defence to question the authenticity of the video on 26 January 2023. The Tribunal considered the email from Mr D dated 10 February 2023, he stated, '*XXX was the person who sent the messages and took the video*'.

23. The Tribunal determined therefore that the defence case as on 23 January 2023 was one of mistaken identity. It noted that the GMC then made further enquiries regarding XXX involvement, in view of what Mr D had said.

24. There was no issue raised in the Case Management hearing that an expert was required to determine authenticity of the video evidence and that provenance of the video evidence would be tested.

25. The Tribunal was of the view that the GMC was not put on notice about determining authenticity and provenance of the video evidence when issues were raised and discussed. Mr D's email implied that the video evidence was genuine insofar as it was sent from his phone. In the email there was no assertion from Mr D that it was not genuine.

26. The Tribunal further considered whether either party would be prevented or significantly be disadvantaged in addressing the material issues raised by the evidence in question. The Tribunal was of the view that neither of the parties would be disadvantaged as

they have known for several months that the video evidence existed. Dr Chaudhry had maintained that someone else had used his mobile phone to send the video(s).

27. The Tribunal was of the view that there was a varying account and explanation being put forward as to the nature of the video and determined that the issue of authenticity and provenance of the video had been raised late. Dr Chaudhry stated in his witness statement that he did not send the videos but that it was sent by someone else from his phone. This was the issue as was identified in January 2023 however the issue now is one of authenticity and reliability. There was no expert evidence to determine its authenticity and the GMC have explained why they have not had time to get one.

28. The Tribunal determined that an expert has not been instructed in this case in respect of the videos and in admitting the videos, the Tribunal would not be acting in such a capacity but would apply its own assessment and the reliability placed on it would be a matter for the Tribunal's judgment. The Tribunal made it clear that admitting the video did not equate to accepting its authenticity; this was something only an expert could do. It would be a matter for the Tribunal's own judgment as to what weight to attach to it.

29. In view of the above the Tribunal determined that it was both relevant and fair to admit the video evidence and therefore rejected Ms Acker's application for it to be excluded.

## ANNEX C – 25/04/2023

### Application request for disclosure

1. On behalf of Dr Chaudhry, Ms Acker made an application for the GMC to disclose further evidence.
2. The Tribunal considered this application in accordance with Rule 16 (1)(a) and 16 (6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'):

*'(1) The MPTS shall appoint one or more legally qualified Case Managers for the purposes of this rule.*

*(1A) The power to give directions under the provisions of this rule may also be exercised by—*

*(a) the Chair of a Medical Practitioners Tribunal, where the Chair is appointed as a Case Manager for proceedings before that Tribunal; or*

*(b) the Medical Practitioners Tribunal itself,*

*and references to a Case Manager in these Rules are to be construed accordingly*

...

*(6) Directions issued by the Case Manager may include, but are not limited to, such of the following as he considers appropriate having regard to the nature of the allegation, any representations made by the parties and all other material factors- (a)*

...

*(i) any documentary evidence in their possession or power relating to the allegation'*

## Submissions

### On behalf of Dr Chaudhry

3. Ms Acker asked the Tribunal for a direction that the GMC provide further disclosure as she had requested in her disclosure note. Specifically, she asked for the GMC to provide a statement confirming how many complaints Patient A had made about doctors other than Dr Chaudhry. She also asked that the GMC be required to confirm whether or not it was in possession of any other civil judgment documents, or Letters Before Action, which relate to Patient A's civil actions.

4. Ms Acker stated that Patient A in his email dated 24 March 2023 referred to complaining about three doctors including Dr Chaudhry. However, it seemed that the GMC only had two complaints on their system, Siebel. She submitted that the GMC should provide a statement or an email to confirm that the Siebel record was accurate, and that Patient A had only ever made two GMC complaints.

5. Ms Acker submitted that it was vital for the defence to have this information as she needed to put to Patient A that he lied when he said he had made three complaints to the GMC. In addition, she said that Patient A stated that his previous complaint was not taken further due to the lapse in time, however the GMC outcome letter seemed to indicate a different reason. She submitted that it would be difficult for her to cross examine Patient A without a formal record from the GMC to confirm that there were only two complaints

received from Patient A. Ms Acker added that this was important also to the issue of consent that had been raised in this case.

6. Ms Acker further submitted that confirmation be provided by the GMC that Patient A had only ever provided GMC with the Dr B's judgment relating to costs awarded and no other judgments or Letters Before Action. If there were any further judgments or Letters Before Action, she asked that these should be provided. She submitted that Dr Chaudhry's legal team had been requesting this information since December 2022.

#### On behalf of the GMC

7. Mr Rankin submitted that there was evidence within the existing bundle from the GMC solicitor which had confirmed that there were only two complaints made to the GMC by Patient A. Therefore, a cut and paste from the GMC solicitor's email should be sufficient. He submitted that the GMC do not have any other judgments or Letters Before Action for Patient A and to obtain a statement to this effect would take time.

#### **Tribunal's determination**

8. The Tribunal considered whether a statement was required from the GMC to confirm that only two complaints had been received from Patient A and whether the GMC had any other judgments and Letters Before Action in relation to the complaints Patient A had made.

9. The Tribunal took into consideration Patient A's email dated 24 March 2023 to the GMC which stated:

*'I informed the GMC of all 3 doctors as well as the Harley Street leasing offices they rent from to inform them of what had happened. As the case with [Dr B] was over 3 years old, they could not take action against him. Dr Chaudry's case was surfaced in time therefore I was able to complain.'*

10. It bore in mind the email from the GMC solicitor dated 24 March 2023:

*'I confirm that I have undertaken a search of [Patient A's] name in our case management system, Siebel, and can see that he has made a complaint against two doctors, one of whom being Dr Chaudhry'*

11. The Tribunal directed that a short statement from the GMC be provided to clarify that there are only two records on Siebel of formal complaints made by Patient A. The Tribunal



was of the view that on the evidence before it there was some discrepancy as to whether there were two or three complaints. The Tribunal considered it important to clarify that all the complaints made by Patient A had been recorded on Siebel, or whether a certain threshold had to be reached before any complaints were recorded on Siebel.

12. The Tribunal further directed that any other Letters Before Action that the GMC had in its possession be disclosed to the defence. It noted that certain documents in the current evidence could be construed as being Letters Before Action however further clarity was needed on this so that appropriate questions could be asked of Patient A on this point.

13. The Tribunal bore in mind Patient A's email dated 24 March 2023:

*'Regarding your third paragraph, I attached the letter before court action with [Dr B] that I won. I got the money back prior to hearing (3 days before) from Dr Chaudry. I have made one other civil claim against a doctor, [Dr C], and recently also won that case (am awaiting the judgement letter), but the procedure was not related to what [Dr B] or Dr Chaudry offered.'* (sic)

14. The Tribunal took into account an email from Patient A to the Central London County Court dated 3 March 2018 and an email dated 21 January 2018 from Patient A to Dr B. These appeared to be Letters Before Action from Patient A, although it had not been labelled as such.

15. The Tribunal directed the GMC to provide confirmation as to whether the Letter Before Action referred to in the evidence was before the Tribunal or whether there was a formal Letter Before Action that was attached to the email dated 24 March 2023 by Patient A to the GMC.

16. The Tribunal determined that in respect of the judgment, it would assist if a further sentence could be added into the statement by the GMC as to whether a full judgment was ever received from Patient A. The Tribunal acknowledged there was clear evidence before it of a cost judgment which was in favour of Patient A. However, it was not clear to the Tribunal whether there was a further judgment that was sent by Patient A and therefore directed that the GMC provide confirmation of this.

17. The Tribunal determined to grant Ms Acker's request for further disclosure as the defence had only recently been made aware of other possible complaints which may be relevant to questions that needed to be asked of Patient A.

ANNEX D – 26/04/2023

Application to consider permission to give evidence from abroad

1. Ms Acker, on behalf of Dr Chaudhry, made an application for the Tribunal to direct that the GMC provides confirmation that it had received permission from the United States of America, allowing Patient A to give oral evidence remotely from that jurisdiction in this MPTS hearing.

2. The Tribunal considered this application in accordance with Rule 16 (1) and(1a), 16 (6) (fb) and (j) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'):

*'(1) The MPTS shall appoint one or more legally qualified Case Managers for the purposes of this rule.*

*(1A) The power to give directions under the provisions of this rule may also be exercised by—*

*(a) the Chair of a Medical Practitioners Tribunal, where the Chair is appointed as a Case Manager for proceedings before that Tribunal; or*

*(b) the Medical Practitioners Tribunal itself,*

*and references to a Case Manager in these Rules are to be construed accordingly*

*...*

*(6) Directions issued by the Case Manager may include, but are not limited to, such of the following as he considers appropriate having regard to the nature of the allegation, any representations made by the parties and all other material factors- ...*

*(fb) where the parties agree, that the oral evidence of a witness is to be given by means of a video link or a telephone link;*

*...*

*(j) a direction determining any preliminary legal argument (where the direction is given by the Tribunal itself)'*

3. Mr Rankin, on behalf of the GMC, submitted firstly that Ms Acker's application for such a direction was out of time, because it had not been raised at the Case Management hearing. Secondly, he submitted that permission was not required by the GMC.

## Submissions

### On behalf of Dr Chaudhry

4. Ms Acker submitted that permission from the United States was required by the GMC for Patient A, who was living in the United States, to give oral evidence in this MPTS hearing. She submitted that there is an obligation to seek permission from the party calling the witness, referring the Tribunal to *'Presidential Guidance from the First-tier Tribunal (General Regulatory Chamber): note on taking evidence from abroad'* dated 24 June 2022 (*'Presidential Guidance'*) (*Evidence from Abroad, Nare Guidance*) and the case of *Latif [2012] UKUT 78 (IAC)*

5. Ms Acker submitted that this imposes an obligation, in all jurisdictions, for the party calling the witness from abroad, to seek the relevant permission.

6. She submitted that Dr Chaudhry's legal team had assumed that the permission was in place as per the Presidential Guidance. She stated that this was their understanding at the case management hearing and, at that stage, it was only agreed that the hearing could be conducted remotely.

7. She pointed out that on Monday 24 April 2023 (day one of the hearing), the GMC had confirmed that the permission was in place. However, the GMC position then changed and on 26 April 2023 (day three of the hearing) it stated that permission is not required as the GMC considers itself to be exempt from this requirement.

8. Ms Acker submitted that in the absence of such permission, parties would be limited to relying on written evidence only. Ms Acker acknowledged that further guidance is needed in relation to permission required for MPTS hearings specifically. She later accepted that the decision may still be with the higher courts. Nevertheless, Ms Acker submitted that in absence of such clarity, it was her understanding that the requirement of permission would extend to all regulatory proceedings and therefore, as a checks and balance exercise, wished to ensure that this permission was in place.

### On behalf of the GMC

9. Mr Rankin submitted that this was another issue that Dr Chaudhry's legal team had not raised at the case management stage of this hearing. Therefore, the application for a direction was out of time and ought not to be considered by the Tribunal at this late stage.

10. Mr Rankin further submitted that the GMC's position was that permission is not required and therefore the GMC had fulfilled the necessary requirements placed on it. He explained that this was because the MPTS is not bound by the Civil Procedure Rules and is not a body exercising the function of the State. He therefore argued that the Presidential Guidance referenced by Ms Acker did not apply.

### Tribunal's approach

11. The Tribunal bore in mind the Presidential Guidance which states:

*'This guidance is issued to draw the attention of judges, and the parties, in proceedings in the General Regulatory Chamber ("GRC") to the decision of the Upper Tribunal in Agbabiaka (evidence from abroad; Nare guidance) [2021] UKUT 286 (IAC), concerning the procedure to be followed when a party to a case wishes to rely upon oral evidence given by video or telephone by a person (including the party themselves) who is abroad i.e. in the territory of a Nation State other than the United Kingdom.'*

....

*If a party or any of their witnesses intend to give evidence from somewhere that is not in the United Kingdom, meaning that they are outside the jurisdiction of the Tribunal, case law now provides that they must prove to the Tribunal that there is no legal or diplomatic barrier to the Tribunal taking that evidence from them, from the country or state in which they are located.'*

12. The Presidential guidance makes reference to the case of Agbabiaka, decision of the Upper Tribunal (Immigration and Asylum Chamber) in *Agbabiaka (evidence from abroad; Nare guidance) [2021] UKUT 286 (IAC)* ('Agbabiaka'). In this case it was decided that enquiries must be made of the foreign state, where the person is located. This is to ascertain whether it objects to evidence being given orally to a Tribunal in the United Kingdom from within its territory.

13. In Agbabiaka it was stated:

*'There has long been an understanding among Nation States that one State should not seek to exercise the powers of its courts within the territory of another, without having the permission of that other State to do so. Any breach of that understanding by a court or tribunal in the United Kingdom risks damaging this country's diplomatic relations with other States and is, thus, contrary to the public interest. The potential damage includes harm to the interests of justice since, if a court or tribunal acts in*

*such a way as to damage international relations with another State, this risks permission being refused in subsequent cases, where evidence needs to be taken from within that State.*

*Whenever the issue arises in a tribunal about the taking of evidence from outside the United Kingdom, the question of whether it would be lawful to do so is a question of law for that country ... In all cases, therefore, what the Tribunal needs to know is whether it may take such evidence without damaging the United Kingdom's diplomatic relationship with the other country.*

...

*it is not for this (or any other) tribunal to form its own view of what may, or may not, damage the United Kingdom's relations with a foreign State'*

14. The Tribunal bore in mind the information it had received from the MPTS on the current position, namely that there is currently no definitive guidance about whether it is obliged to seek permission when witnesses give evidence from abroad. The Tribunal noted that a decision on this remains to be made by the higher courts. Until such time that a ruling is made, the approach by MPTS remains that it is a matter of judgment for the Tribunal hearing the case.

#### **Tribunal's determination**

15. The Tribunal considered whether Dr Chaudhry's legal team was out of time in requesting the GMC to seek permission from the United States. The Tribunal bore in mind that Dr Chaudhry's legal team had not expressly mentioned the matter of seeking permission at the case management stage. The Tribunal was satisfied that Dr Chaudhry's legal team had known at the Case Management hearing that Patient A was living abroad and would therefore need to give his evidence from the United States.

16. Nevertheless, the Tribunal was of the view that it could have been assumed by Dr Chaudhry's legal team at the Case Management hearing, that the permission was in place. It therefore acknowledged that this may have been the reason why it was not raised specifically at the Case Management hearing.

17. The Tribunal took into account that on Monday, 24 April 2023, the GMC indicated that the permission was in place. However, on 26 April 2023, the GMC stated that the permissions are not required. Therefore, the Tribunal made no criticism of Dr Chaudhry's legal team raising this matter at this juncture and it did not consider it to be out of time because, until now, it had been presumed that permission was already in place.

18. The Tribunal then considered whether permission was required by the United States in relation to Patient A giving oral evidence from there in this Tribunal. The Tribunal bore in mind the caselaw and guidance on this point which Ms Acker had raised, and the guidance provided by the MPTS. The Tribunal also took into account the GMC's position that as the MPTS does not make decisions on behalf of the State, permission is not required.

19. The Tribunal was of the view that at present there was no definitive answer as to whether permission was required for MPTS hearings. In absence of higher courts resolving the matter, it was a matter for the Tribunal's judgement. The Tribunal looked back at previous cases at the MPTS and how matters had been dealt with when witnesses gave evidence from abroad. It took into account that all three members of this Tribunal had previously dealt with cross jurisdictional issues in other MPTS hearings and had heard from witnesses abroad where no issues of permission had been raised by either party.

20. The Tribunal determined that, at present, the hearing should proceed on the basis that the current status on whether permission was required has not yet been resolved by higher courts. It determined that Patient A could give oral evidence at this MPTS hearing from the United States. The Tribunal made it clear that this does not mean that it was determining that permission was not required or that this MPTS hearing would proceed without such permission. The Tribunal's determination was made on the basis that the issue of whether that permission was necessary had not yet been concluded.

### Conclusion

21. The Tribunal did not determine that Ms Acker's application for a direction that the GMC seeks permission from United States allowing Patient A to give evidence, was out of time.

22. The Tribunal however refused Ms Acker's application directing the GMC to seek permission from the United States as it remains unclear whether this is a legal requirement when conducting MPTS hearings. The Tribunal determined that it would proceed with hearing oral evidence from Patient A from the United States.

## **ANNEX E – 27/04/2023**

### **Application for Tribunal to recuse itself**

1. On behalf of Dr Chaudhry, Ms Acker made two applications. The first application was for the Tribunal to recuse itself due to the appearance of bias and prejudice towards Dr Chaudhry in view of the legal arguments it had heard to date. If unsuccessful, Ms Acker would apply for the Tribunal to consider a newly constituted Tribunal under the *General Medical Council (Constitution of Panels, Tribunals and Investigation Committee) Rules Order of Council 2015* on interest of justice grounds.
2. On behalf of the GMC, Mr Rankin asked the Tribunal to reject the application on both grounds.

### Submissions

#### On behalf of Dr Chaudhry

3. Following a number of preliminary matters, Ms Acker submitted that this Tribunal should recuse itself from this hearing. She submitted that there was potential bias against Dr Chaudhry as a highly prejudicial picture had been created of him over the past few days. She stated that the tenor of legal arguments that had taken place was such that it could impact the Tribunal's ability to fairly consider Dr Chaudhry's case and assess his credibility.
4. Ms Acker maintained that the disclosure she now sought was directly relevant to the paragraphs of the Allegation relating to Patient A. She pointed out that this material was only served on the Friday before the hearing commenced. In view of this, it was not unreasonable for Dr Chaudhry's legal team to seek further disclosure which took some time to resolve. She submitted that the delay caused in the hearing this far may be construed as an attempt by Dr Chaudhry to intentionally delay proceedings. Ms Acker argued that this would prejudice Dr Chaudhry and may preclude him from receiving a fair hearing.
5. Ms Acker further submitted that comments made by the GMC, in relation to Dr Chaudhry being unwilling to assist with the investigation, could also prejudice him. She submitted that Dr Chaudhry had not been unwilling to assist with the investigation. In fact, it was he who had located the online review by Patient A regarding another doctor. This subsequently gave rise to the discovery of further complaints made by Patient A.
6. Ms Acker reminded the Tribunal that it had to intervene to remind both parties about professional courtesy. Ms Acker submitted that a prejudicial picture was being portrayed of Dr Chaudhry. Ms Acker accepted that witnesses had been kept waiting, however she submitted that this should not cause the disclosure issues to be rushed. These issues should

be resolved before witnesses are called. She stated that she was still awaiting the addendum expert report/statement and his updated review was required before the case is opened.

7. Ms Acker asked that the Tribunal to recuse itself on the appearance of bias because the blame of delay may be attributed to Dr Chaudhry, and this may affect the Tribunal's assessment of his credibility when hearing his evidence. If the Tribunal rejected the application, Ms Acker stated that she would make a secondary application under the relevant rules for a new Tribunal to be constituted in the interests of justice.

8. Ms Acker confirmed that she was not making an application to adjourn the case to allow time to consider the further volumes of evidence that had been served on her. However, if a new Tribunal was constituted, Ms Acker stated that she would request some time for her to receive and consider the expert's addendum statement.

#### On behalf of the GMC

9. Mr Rankin submitted that the Tribunal is professional and experienced, is capable of putting material out of its mind, and can exercise its judgement fairly. Mr Rankin submitted that the tenor of the discussions thus far had not been such that it would impact the Tribunal's ability to properly consider the evidence, as the Tribunal was experienced in dealing with such preliminary issues.

10. Mr Rankin submitted that the GMC maintain that disclosure was not late and material was served as soon as Dr Chaudhry's legal team replied to the questions asked by the GMC. Mr Rankin submitted that any criticism of heated discussions could be attributed to lawyers alone and this does not extend to Dr Chaudhry. He submitted therefore that discussions of preliminary matters would not impact any assessment the Tribunal have of the doctor.

11. Mr Rankin submitted that a fair minded and informed observer, taking account of the status of this Tribunal and the nature of the material that has been disclosed, would not conclude there is a real danger of bias in this case

#### **Tribunal's approach**

12. The legally qualified chair (LQC) reminded the Tribunal that Dr Chaudhry has the right to a fair hearing and there should be no bias or perception of bias. She advised that if the Tribunal considers that there is bias, or the appearance of bias, then it must recuse itself.



13. The Tribunal bore in mind Rule 17 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'):

*'The order of proceedings at the hearing shall be as follows—  
(a)the FTP Panel shall hear and consider any preliminary legal arguments'*

14. The Tribunal bore in mind the case of *Locobail (UK) Ltd v (1) Bayfield Properties Ltd (1999)* where the judge held that when considering a recusal application on the grounds of bias a judge would:

*'be as wrong to yield to a tenuous or frivolous objection as he would to ignore an objection of substance.*

...

*It would be dangerous and futile to attempt to define or list the factors which might or might not give rise to a real danger of bias. Everything would depend on the facts, which might include the nature of the issue to be decided'*

15. The Tribunal bore in mind that the assessment of bias was therefore fact specific. Dr Chaudhry has a right to fair hearing before an impartial Tribunal and it needed to determine whether a fair hearing could proceed with the current Tribunal.

16. The Tribunal bore in mind the case of *Porter v Magill [2001] UKHL 67; [2002] 2 AC 357* where it was stated that *'the question is whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Tribunal was biased'*.

17. The LQC also referred the Tribunal to the case of *Gillies v Secretary of State of Work and Pensions [2006] 1WLR 781* where it was held that the:

*'fair minded and informed observer can be assumed to have access to all the facts that are capable of being known by members of the public generally, bearing in mind that it is the appearance that these facts give rise to that matters, not what is in the mind of the particular ... tribunal member who is under scrutiny.'*

18. A further observation of Kirby J in *Johnson v Johnson [2000] 201 CLR 488* also assisted the Tribunal namely that: *'a reasonable member of the public is neither complacent nor unduly sensitive or suspicious.'*

19. In the case of *Beard v General Osteopathic Council [2019] EWHC 1561 (Admin)*. Mr Justice Kerr confirmed the six principles on the fairness of judicial intervention in legal proceedings. The first principle was:

*‘Had excessive interventions or critical comments created a real danger of the proceedings being unfair?’*

20. The Tribunal had regard to *paragraph 8 The General Medical Council (Constitution of Panels, Tribunals and Investigation Committee) Rules Order of Council 2015*, which state that Tribunals may be changed during the hearing, where it is in the interests of justice to convene a freshly constituted Tribunal. This is a wide scope and is a matter for the judgement of the Tribunal.

21. The Tribunal reminded itself that if it considers it is in the interests of justice to constitute a new Tribunal then it must give reasons for doing so. The Tribunal should strike a balance between fairness to the doctor and the public interest. This includes having regard to factors such as the efficient progress of proceedings and use of resources and the history of the case.

### **Tribunal’s determination**

#### Recusal

22. The Tribunal first considered the application for recusal. Several preliminary issues had been raised, preventing the hearing from proceeding as initially scheduled. The Tribunal was of the view that further disclosure was necessary and therefore evidence could not yet be called. The Tribunal accepted that a number of issues remained unresolved and needed to be addressed. At the time this application was made, parties indicated that evidence could be called once the expert witness’s addendum statement was served and the statement from the GMC solicitor was also served (as directed earlier by the Tribunal).

23. The issue for the Tribunal’s consideration is whether discussions between parties, which at times became heated, and where criticisms were made of parties’ compliance with case management directions, were such that would impact on the Tribunal’s ability to deal with the Allegation fairly and impartially.

24. The Tribunal considered the test in *Porter v Magill* and determined that no fair minded observer, having considered the facts and observed the discussions and directions in the hearing, would conclude that there was a real possibility that the Tribunal was biased.

25. The Tribunal had heard lengthy discussions between parties as to disclosure about material that would and would not be served. There were some disagreements and interruptions between counsel, these issues were addressed and dealt with by the Tribunal reminding both parties of the need to show professional etiquette in proceedings. This is not something the Tribunal has not dealt with in the past and is not something that would result in the Tribunal formulating a biased view of Dr Chaudhry.

26. The Tribunal bore in mind that it is an independent, experienced and professional Tribunal, and is at all times capable of disregarding irrelevant material, even of a potentially prejudicial nature, in reaching its decisions. The Tribunal was also conscious of its duty to ensure the fairness of these proceedings.

27. The Tribunal considered that a fair minded and informed observer would be aware that this is a professionally constituted Tribunal with experience of sitting on such cases.

28. The Tribunal determined that issues raised would not impact the evidence which the Tribunal is yet to hear, or its ability to properly assess the evidence. Any discussions and delays caused by any party in relation to disclosure would not translate to a biased view being formed.

29. The Tribunal remained mindful of fairness to Dr Chaudhry but also fairness to witnesses and the wider public interest. It is duty bound to manage proceedings to ensure delay is minimised whilst ensuring proceedings run fairly and properly. Timetabling of witnesses is important, however the Tribunal determined that so too is the need to have proper disclosure in place before the hearing could proceed. For this reason the Tribunal has already granted further time for this to be resolved.

30. The Tribunal was of the view that whether or not Dr Chaudhry assisted in the GMC investigation process was not relevant to the determination of this application.

31. The Tribunal therefore determined that, in all the circumstances, it was fair for the hearing to proceed with the current Tribunal as currently constituted.

#### Interests of justice

32. The Tribunal then considered, under the rules, whether a new Tribunal should be convened in the interests of justice. It bore in mind that no further reasons were put forward by Ms Acker for the Tribunal to consider. The scope of the interest of justice

consideration is wide. The Tribunal would need to be satisfied that it would cause injustice to the parties not to convene a new Tribunal.

33. The Tribunal considered the stage at which the proceedings have reached: no evidence has yet been called. Although the Tribunal has heard submissions on case management and disclosure, it did not determine that this would impact its assessment of evidence. In other jurisdictions, it is often the case that rigorous case management needs to take place before the proceedings can commence and this does not bar the same decision makers from continuing with the proceedings. Similarly, the Tribunal is capable of putting matters out of its mind when it subsequently hears the evidence. Whether a party has been proactive or not at case management stage, does not impact upon the Tribunal's assessment of that party. As a Tribunal conducting case management before opening the hearing, it would be wrong for it to not to investigate whether directions have or have not been complied with to ensure a fair hearing can ensue.

#### Conclusion

34. For the reasons above, the Tribunal refused Ms Acker's application for the Tribunal to recuse itself based on the appearance of bias and prejudice.

35. The Tribunal did not determine that an injustice would be caused by continuing with the current Tribunal and therefore, Ms Acker's application to replace the current Tribunal was also refused.

### **ANNEX F – 05/05/2023**

#### **Further application to exclude a member of the public from observing the hearing**

1. This determination will be handed down in private as it refers to Dr Chaudhry's personal circumstances. A redacted version will be published at the close of the hearing.
2. The Tribunal had previously determined on day one of the hearing (24 April 2023) not to exclude a particular member of the public from this hearing, following an application from Ms Acker on behalf of Dr Chaudhry. Please refer to Annex A for the Tribunal's determination.
3. Ms Acker made two further applications in relation to the same member of the public.

**(1) Member of public to turn on their camera**

4. Ms Acker first applied to the Tribunal to direct that this member of the public be asked to turn on their camera so that their identity could be confirmed.

Submissions

5. Ms Acker submitted that Dr Chaudhry was concerned that the member of public observing the hearing, who had already been identified as Mr I, XXX, was not the person behind the camera. She submitted that it was Dr Chaudhry's belief that it was in fact XXX on the other side of the camera. Ms Acker stated that Mr I had purported to have observed the hearing all week however, as he was a busy individual, it was more likely that it was XXX who had been observing instead.

6. Ms Acker submitted that Mr I is a very busy person, and therefore, it was unlikely that he would be able spare five full days to observe the hearing. However, XXX would have time to observe the hearing. If she was observing the hearing this whole time, Ms Acker submitted she should be excluded on interest of justice grounds in view of ongoing fraught proceedings in the XXX.

7. Ms Acker submitted that, notwithstanding the potential breach of the MPTS terms of access, it was important, in fairness to Dr Chaudhry, that a similar environment of an in-person hearing should be recreated. She submitted that the only real way of recreating the same environment would be for the Tribunal to ask the observer to turn on their camera without notice.

8. Ms Acker submitted that if Dr Chaudhry is able to know who is behind the camera, this would place him in a position he would be in an in-person hearing and would make him less nervous about giving his evidence.

9. Ms Acker stated that she had very recently become aware of a XXX that Dr Chaudhry had successfully applied for against XXX following complaints of XXX. Ms Acker did not, at this stage, disclose the terms of the order. She submitted that if XXX was found to be at the other side of the camera, then by virtue of the XXX in place, she should be excluded from the session, as she would have been prohibited from attending the in-person hearing.

10. Mr Rankin, on behalf of the GMC, did not object to this application and accepted that an online environment should replicate a face-to-face hearing in fairness to Dr Chaudhry.

### Tribunal's approach

11. The Tribunal considered these applications in accordance with Rule 42 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'):

*'The Committee or Tribunal may exclude from any hearing any person whose conduct, in their opinion, is likely to disrupt the orderly conduct of the proceedings.'*

### Tribunal's determination

12. The Tribunal considered whether it should ask the member of public to switch on their camera, without notice, so it could identify whether the person observing the virtual hearing was the person who had signed the terms of access consent form (which members of the public are obliged to sign). If it was not the same person, the Tribunal would then consider, on the grounds of breaching the terms of access, whether the member of public should be excluded from proceedings.

13. The Tribunal bore in mind the terms of access and the specific terms attached to the MPTS Microsoft Teams link sent to all members of the public joining the hearing. This states *'no screen sharing is permitted'*. The terms of access form clearly state *'breach of these requirements may then lead to exclusion and or legal action against them being taken.'*

14. The Tribunal was mindful of the previous application that was made to exclude Mr I which had been refused, notwithstanding the fact that the member of public was known to Dr Chaudhry XXX. At that stage when the Tribunal announced its decision, it was considered that this was a normal member of public who had been observing the hearing and was entitled to observe proceedings, in absence of any breach of the terms of access.

15. It was now assumed by Dr Chaudhry that XXX was using the link to follow proceedings, based on the observer dialling in each day which did not fit in with XXX busy schedule. This would be in breach of the terms of access to which the member of public had signed. Also, the Tribunal had been made aware, on day five of the hearing, that a XXX was in place, the terms of which the Tribunal did not know. The Tribunal also recognised that in a face -to-face hearing, XXX may be precluded from observing the proceedings, however this depended on the nature of the order. It therefore asked Ms Acker for clarification on the terms of the order, should XXX be seen on the other end of the camera.

16. The Tribunal was of the view that, at this stage, it would be proportionate in these circumstances, for the particular member of the public to switch on their camera. They would

be granted one minute to reveal themselves on screen during the hearing, then the Tribunal would consider what action it must take next.

### Conclusion

17. The Tribunal therefore granted Ms Acker's initial application to direct the particular member of public to turn on their camera momentarily to reveal their identity.

### **(2) Application to exclude a member of the public from these proceedings**

18. Upon the Tribunal's request, the member of public eventually appeared on the screen and confirmed he was Mr I, the person who had signed the terms of access. Ms Acker then made a further application for Mr I to be excluded. This was based on the length of time he had taken to switch on his camera and also the XXX that had recently come to light.

### **Submissions**

19. Ms Acker submitted that the Tribunal had granted Mr I one minute to turn on their camera, however it had taken about two and half minutes for him to comply. She submitted that this was deeply concerning and raised a suspicion that XXX may have initially been behind the camera. She stated that it could not be assumed that Mr I had delayed switching on the camera because he was simply absent for that moment, as he had just dialled into the hearing a moment before the Tribunal's request.

20. Ms Acker submitted that the delay in turning on the camera had not given Dr Chaudhry any security or relief in relation to his concerns about who was observing the hearing. She submitted that it was now appropriate to apply to the Tribunal to either direct that Mr I keeps his camera on throughout the proceedings or be excluded from observing the proceedings.

21. Ms Acker submitted Dr Chaudhry had recognised the background behind Mr I. This was a location that Dr Chaudhry had recognised as being a place where XXX had given evidence in other virtual hearings. Ms Acker submitted that the person who may have been observing the hearing would have had more than enough time to ask someone to leave the room and move the camera.

22. Ms Acker provided further information about the XXX. She submitted that she was not permitted to pass on the XXX. She informed the Tribunal that the terms of the XXX prevented XXX from XXX.

23. Mr Rankin submitted that, albeit the XXX had not been seen, he accepted the terms of the order to be as outlined by Ms Acker.

### **Tribunal's approach**

24. The Tribunal considered these applications in accordance with Rule 42 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'):

*'The Committee or Tribunal may exclude from any hearing any person whose conduct, in their opinion, is likely to disrupt the orderly conduct of the proceedings.'*

### **Tribunal's determination**

25. The Tribunal bore in mind the amount of time it took for the member of public to comply with it's request. The Tribunal accepted that it took longer than the one minute permitted; a total time of two and half minutes. The Tribunal therefore was concerned about who was behind the screen at the time when the request was made.

26. The Tribunal took into account the terms of the XXX that Ms Acker stated was currently in place against XXX and which was accepted by Mr Rankin. The Tribunal considered that if this was a face-to-face hearing, then by virtual of the terms the XXX, XXX and Mr I would be precluded from being present. To allow them to be present would potentially place them in breach of the XXX.

27. The Tribunal therefore determined it would be fair, proper and in the interests of justice, for this member of the public to be excluded from these proceedings.

### Conclusion

28. The Tribunal granted Ms Acker's application for Mr I to be excluded from this hearing.

## **ANNEX G – 02/05/2023**

### **Application for admissibility of evidence**

1. This determination will be handed down in private as it refers to Dr Chaudhry's personal circumstances. A redacted version will be published at the close of the hearing.



2. The GMC made an application for the Tribunal to admit evidence of correspondence involving Mr B, GMC and XXX lawyers. This application was pursuant to Rule 34 (1) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'):

*'(1) 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.'*

## Submissions

### On behalf of the GMC

3. Mr Rankin submitted that Ms Acker had referred Mr B, on several occasions during his cross-examination, to correspondence between him and the GMC which was in relation to XXX proceedings. Ms Acker had put to Mr B words that he had used in the exchange such as 'blackmail', 'boil his head' and 'keep up his side of the bargain'. Mr Rankin submitted that as reference had now been made to these emails, he would be entitled to re-examine Mr B on these matters. He stated that as the Tribunal had not previously received the evidence to which Ms Acker had referred Mr B, this should now be admitted as evidence so that words used by Mr B could be seen in their proper context.

### On behalf of Dr Chaudhry

4. Ms Acker submitted that the GMC had produced a bundle of documentation relating to the correspondence Mr B had with the GMC in relation to the XXX proceedings. She submitted that she was concerned about this being shown to the Tribunal as she had only made reference to a few words that Mr B had used in the email exchanges. She stated that this was done to provide a chronology of the withdrawal of Mr B's complaint towards Dr Chaudhry and then his willingness to give evidence within short space of time. She further submitted that there was a lot of material within this bundle that should not go before the Tribunal. She stated that she had referred Mr B to what was necessary during her cross-examination of his motive for making the complaint against Dr Chaudhry.

5. Ms Acker submitted that the whole bundle includes information about how the XXX proceedings had progressed and also allegations that Mr B makes about his interpretation of XXX. She submitted that she did not want the Tribunal to consider Mr B's view of Dr Chaudhry's conduct and XXX.

6. Ms Acker submitted that the circumstances are, that Dr Chaudhry could not respond because of the XXX and what she had asked was limited to Mr B's impression and his conduct in relation to the GMC. She submitted that she did not go into what he had to say about XXX, and the allegations he made about Dr Chaudhry in relation to it, because she could not. Therefore, she submitted that the Tribunal should not have sight of Mr B's communications with the GMC.

### **Tribunal's determination**

7. The Tribunal determined that the correspondence between Mr B and the GMC in relation to the XXX, had become relevant because Ms Acker had referred to the various documents during her cross examination of Mr B. The Tribunal, not having seen these exchanges, was trying to follow the oral evidence given.

8. The Tribunal determined that it was only right that the GMC was able to re-examine Mr B based on the issues that had been raised by Ms Acker from that material.

9. The Tribunal determined that it was both fair and relevant to admit the email exchange referred to by Ms Acker. Whilst the Tribunal did not know what Mr Rankin would ask Mr B following Ms Acker's questions, it determined that it was open for the GMC to rebut the questions that had been asked of Mr B. The Tribunal was of the view that the 11 page document should be considered by the Tribunal before Ms Acker continued with Mr B's cross-examination.

### Conclusion

10. The Tribunal determined to grant its application, following hearing submissions from both parties, for evidence to be made admissible.

## **ANNEX H – 12/05/2023**

### **Case Management Directions**

No.	Direction
1	GMC to confirm with Dr Chaudhry that Patient A is available to give evidence from 2pm UK time, on 5, 6 and 7 February 2024, for three consecutive afternoons, by <b>7 July 2023</b> .

2	GMC to give its decision to Dr Chaudhry as to whether the documented correspondence of discussions between the expert instructed in the Dr B case and GMC is disclosable by <b>2 June 2023</b> .
3	If GMC consider this information to be disclosable, it must serve this evidence on Dr Chaudhry within 14 days of that decision and no later than <b>16 June 2023</b> .
4	If Dr Chaudhry wishes to instruct an expert, to serve on the GMC all reports and the CV of the expert upon whose evidence he intends to rely, by <b>11 August 2023</b> .
5	The GMC to serve any addendum expert report on Dr Chaudhry no later than <b>22 September 2023</b> .
6	If a ruling is required on any other matter arising from the directions that this Tribunal has made, notice of any application must be served on the MPTS by no later than <b>22 December 2023</b> .
7	Should any parties consider the timeframe set aside for this hearing to be inadequate, they should notify the MPTS.

#### Application to I - 05/02/2024

#### Service and proceeding in Dr Chaudhry's absence

##### Service

1. Dr Chaudhry was neither present nor represented at this reconvened Medical Practitioners Tribunal ('MPT') hearing between 5 to 9 February 2024. Dr Chaudhry was present and represented at the previous hearing between 24 April 2023 to 12 May 2023 and was represented at the 15 May 2023 reconvened hearing. The Tribunal therefore considered whether notice of this hearing had been properly served in accordance with Rules 15 and 40 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004 ('the Rules') and paragraph 8 of the Schedule 4 to the Medical Act 1983.

2. The Tribunal was provided with an email from Dr Chaudhry to the MPTS dated 5 February 2024 which was sent and received on day 1 of this reconvened hearing. This email

contained three attachments which included an expert report prepared by Professor E on behalf of Dr Chaudhry, dated 24 October 2023. The Tribunal was also provided with an email sent to Dr Chaudhry and his representatives by the MPTS dated 16 May 2023. This provided Dr Chaudhry and his representative with the dates for the reconvening hearing in February 2024. A letter dated 18 May 2023 was also sent by MPTS to Dr Chaudhry by special delivery post, notifying him of the reconvened dates. However, this letter was returned undelivered on 27 June 2023. A read receipt from Dr Chaudhry's representative was received on 21 July 2023. An email dated 12 December 2023 from Dr Chaudhry to MPTS and GMC, confirmed that he would be attending the hearing.

3. On behalf of GMC, Mr Ciaran Rankin submitted that Dr Chaudhry responded to the MPTS and GMC, confirming his intention to attend the hearing and that he was in the process of exploring the formulation of new legal team. On 15 January 2024, GMC asked Dr Chaudhry whether a new legal team had been put in place. Dr Chaudhry responded by email on 23 January 2024, and stated that he was *'still exploring'*.

4. Mr Rankin submitted that on 23 and 25 January 2024, there was correspondence between Dr Chaudhry and GMC regarding further evidence. Mr Rankin submitted that the contents of Dr Chaudhry's response email, visually displayed Dr Chaudhry's attitude to the hearing. He submitted that Dr Chaudhry knew the time and date of the hearing and has chosen not to attend.

5. Mr Rankin submitted that nothing was to be gained by putting the case off, and Patient A and the expert were waiting in the wings to give evidence. Mr Rankin reminded the Tribunal of the difficulty in trying to obtain a satisfactory time for Patient A to attend to give evidence during the last hearing. He submitted that notice had been properly served and the Tribunal should proceed in Dr Chaudhry's absence.

6. The Tribunal had regard to the documentation as set out above and the submissions by Mr Rankin. The Tribunal bore in mind that the dates of the reconvened hearing were announced in session on 12 May 2023, when Dr Chaudhry was present together with his legal team. An email was sent by the MPTS on 16 May 2023 to Dr Chaudhry and his representative and a read receipt was received from Dr Chaudhry's representatives on 21 July 2023. On 5 February 2024, Dr Chaudhry had served on the Tribunal an expert report that was prepared by Professor E on Dr Chaudhry's behalf, dated 24 October 2023. The Tribunal thus concluded that Dr Chaudhry was aware that the hearing was to continue today and had indeed carried out further preparation since the last date of hearing.

7. Dr Chaudhry confirmed on 12 December 2023 to MPTS and GMC that he would be attending the hearing. In addition, there was subsequent correspondence with the GMC in January 2024, to confirm that Dr Chaudhry was still exploring legal representation. Furthermore, it bore in mind Dr Chaudhry's email dated 5 February 2024, in which he stated he would not be attending the hearing.

8. In the circumstances, the Tribunal was satisfied that all reasonable steps had been made to serve the notice of this hearing in accordance with Rules 15 and 40 and Dr Chaudhry was aware of the hearing today.

### Proceeding in Absence

9. Having determined that notice of this hearing had been properly served, the Tribunal went on to consider whether it would be appropriate to proceed with the hearing in Dr Chaudhry's absence in accordance with Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor and the fairness to the doctor, with the wider public interest, including the need to protect patients.

10. The Tribunal considered Mr Rankin's submissions on proceeding in absence as set out above.

11. The Tribunal noted the relevant case law in determining whether to proceed in the absence of a practitioner, in particular the case of *GMC v Adeogba [2006] EWCA Civ 162* and *R v Jones [2003] 1AC1*. The Tribunal bore in mind that it has a discretion to proceed with the case in the doctor's absence, though this discretion is to be exercised with caution with the overall fairness of the proceedings in mind. The Tribunal had regard to all the circumstances of this case including the following:

- The nature and circumstances of the doctor's behaviour in absenting himself, in particular, whether the behaviour was voluntary and therefore waived the right to be present;
- Whether an adjournment would resolve the matter.
- The likely length of any such adjournment;
- Whether the doctor, although absent, wished to be represented or whether he had waived his right to be represented;
- Whether the doctor's representatives were able to receive instructions from him and the extent to which they could present a defence;

- The extent of any disadvantage to the doctor in not being able to present his account of events;
- The public interest that a hearing should take place within a reasonable time;
- The effect of any delay on the memories of witnesses.

12. The Tribunal considered the extent of any disadvantage to Dr Chaudhry not being able to present his response to the Allegation. In addition, the Tribunal considered the effect that any delay would have on the memories of the witnesses who were still due to give oral evidence. It bore in mind that nearly a year had passed since this case had commenced and the Allegation dated back more than three years.

13. The Tribunal took into consideration Dr Chaudhry's email sent to MPTS on 5 February 2024, which stated,

*'I will not be attending my hearing... I have exhausted well over £50,000 in private legal fees, which has been crippling...I do not have the mental capacity to sit through another 3 weeks of prejudiced subjection'.*

14. This email was the first notification the GMC and MPTS received which indicated Dr Chaudhry would not be attending the hearing. Dr Chaudhry did not request a formal adjournment nor any delay to the commencement of the proceedings. Dr Chaudhry's correspondence made it clear that he would not be attending the hearing at all. The Tribunal concluded that there was no evidence before it that an adjournment would secure Dr Chaudhry's attendance at a later date.

15. The Tribunal took into account whether there would be potential disadvantage to Dr Chaudhry in proceeding in his absence. However this was to be balanced with the wider public interest. It bore in mind the witnesses who were due to give evidence and the potential difficulty the GMC would have in securing the witnesses' attendance for a future date. The Tribunal also took into consideration the difficulties with securing Patient A's availability at the previous hearing.

16. The Tribunal bore in mind that Dr Chaudhry had made some reference to his mental health in his email dated 5 February 2024. However, there was no medical evidence provided by Dr Chaudhry to indicate that his health was a factor. There were no material circumstances known about his health to satisfy the Tribunal that it would be unfair for it to proceed with today's hearing.

17. The Tribunal was satisfied that Dr Chaudhry had voluntarily absented himself from these proceedings. Having regard to the public interest, the Tribunal decided that it was fair and in the interests of justice to proceed. It therefore determined to proceed in Dr Chaudhry's absence in accordance with Rule 31.