PUBLIC RECORD

Dates: 26/09/2023 - 12/10/2023

Medical Practitioner's name:	Dr Muhammad CHAUDHARY
GMC reference number:	7527950
Primary medical qualification:	MB ChB 2016 University of Manchester

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Not Impaired

Summary of outcome

No warning

Tribunal:

Legally Qualified Chair	Mrs Julia Oakford
Lay Tribunal Member:	Dr Nigel Westwood
Medical Tribunal Member:	Mr Ghulzar Mufti

Tribunal Clerk:	Ms Hinna Safdar

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Ghazan Mahmood, Counsel, instructed by the MDU
GMC Representative:	Mr Stephen Grattage, 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 - 09/10/2023

Background

1. Dr Chaudhary qualified in 2016 at the University of Manchester and obtained full registration with the GMC on 2 August 2017. In April 2020, Dr Chaudhary was working as a General Practitioner trainee (ST1) at North Manchester General Hospital (then part of Pennine Acute Hospitals NHS Trust) and was employed by St Helens and Knowsley Teaching Hospitals NHS Trust.

2. The GMC allege that on 25 April 2020, Dr Chaudhary visited Patient A at Wythenshawe Hospital (the Hospital) without prior authorisation and that he knew that he needed prior authorisation because the Hospital visiting was restricted due to the national COVID-19 pandemic lockdown in operation at that time.

3. It is further alleged that during that visit Dr Chaudhary questioned nursing staff about Patient A's care, reviewed Patient A's notes and misled the Hospital staff into thinking that he worked at the Hospital. It is alleged that Dr Chaudhary's actions were dishonest.

4. The matter was initially escalated by the Hospital staff. On 29 April 2020, the incident was raised with Dr Chaudhary by his Medical Director, Dr D when Dr Chaudhary confirmed he had attended Wythenshawe Hospital. The Hospital then referred the matter to the police for investigation. The concerns were raised with the GMC on 1 September 2020 by Dr Chaudhary's Responsible Officer.

The Outcome of Applications Made during the Facts Stage

5. The Tribunal determined an application made on behalf of Dr Chaudhary by his counsel, Mr Ghazan Mahmood, pursuant to Rule 17(2)(g) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), of no case to answer in respect to Paragraphs 1, 2(a)(ii), and 2(a)(iii) of the Allegation. The Tribunal determined that there was no case to answer in relation to Paragraph 2(a)(iii) and there was a case to answer in relation to Paragraph 1 and Paragraph 2(a)(ii). The Tribunal's written decision can be found at Annex A.

The Allegation and the Doctor's Response

6. The Allegation made against Dr Chaudhary is as follows:

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

Hospital visit

1. On 25 April 2020 you failed to follow Wythenshawe Hospital's ('the Hospital') Interim Covid-19 MFT Visiting Policy, in that you visited Patient A on Ward F6 at the Hospital ('the Visit') when you had not been given prior authorisation to do so.
To be determined

2. During the Visit you:

    a. attended the Hospital wearing:

        i. green scrubs; Admitted and found proved

        ii. a stethoscope; To be determined

        iii. ~~your North Manchester General Hospital NHS ID badge;~~ Withdrawn following a successful Rule 17(2)(g) application

    b. attended Patient A's bedside and asked Ms B, a nurse:

        i. whether the vascular team were going to carry out surgery later that day, or words to that effect; Admitted and found proved

        ii. questions about Patient A's care plan; Admitted and found proved

    c. approached Mr C, a nurse, and:

        i. said you were there to review Patient A, or words to that effect;
        To be determined

        ii. asked to see Patient A's blood test results and/or observations ('the Results'), or words to that effect; To be determined

        iii. viewed the Results on the Electronic Patient Record System;
        Admitted and found proved

        iv. wrote down the Results on a piece of paper.
        Admitted and found proved

3. You knew that:

    a. you were not permitted to visit Patient A at the Hospital on 25 April 2020 due to Covid-19 restrictions being in place at the time; To be determined

b. your actions as described at paragraph 2 would mislead the Hospital staff into thinking that you worked at the Hospital. To be determined

4. Your actions as described at paragraph 2 were dishonest by reason of paragraph(s) 3a and 3b. To be determined

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

The Admitted Facts

7. At the outset of these proceedings, through his counsel, Mr Mahmood, Dr Chaudhary made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above. 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

8. The Tribunal received written and oral evidence on behalf of the GMC from the following witnesses via video link:

- Dr E, a Speciality Trainee (ST) in Vascular Surgery;
- Dr F, a Clinical Research Fellow;
- Ms B, a Staff Nurse;
- Mr C, a Practice Nurse;
- Ms G, an interim Ward Manager.

9. Dr Chaudhary provided his own witness statement, dated 8 August 2023 and also gave oral evidence at the hearing.

Documentary Evidence

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

- The Interim visiting policy of Manchester University NHS Foundation Trust, dated 25 March 2020;
- Medical Notes made by Dr E relating to Patient A, dated 24 and 25 April 2020;
- Articles describing the advantages of wearing medical scrubs;
- A picture of Dr Chaudhary's ID badge from The Pennine Acute Hospitals NHS Trust;
- Contemporaneous Trust statements Dr E, Ms B, Mr C and Mr H (a vascular surgeon);
- Police statements made by Ms B, Mr C and Mr H;
- 15 testimonials on behalf of Dr Chaudhary.

The Tribunal's Approach

11. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Chaudhary 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 as alleged occurred.

12. The Tribunal also bore in mind that when exercising its function, it must have particular regard to the statutory overarching objective.

13. The Tribunal had regard to the case of *Byrne v General Medical Council [2021] EWHC 2237 (Admin*) – the standard of proof is the balance of probabilities. Mr Justice Morris stated the position at paragraph 22 of this judgement:

> *(1) There is only one civil standard of proof in all civil cases, and that is proof that the fact in issue more probably occurred than not.*
> *(2) There is no heightened civil standard of proof in particular classes of case. In particular, it is not correct that the more serious the nature of the allegation made, the higher the standard of proof required.*
> *(3) The inherent probability or improbability of an event is a matter which can be taken into account when weighing the probabilities and in deciding whether the event occurred. Where an event is inherently improbable, it may take better evidence to persuade the judge that it has happened. This goes to the quality of evidence.*
> *(4) However it does not follow, as a rule of law, that the more serious the allegation, the less likely it is to have occurred. So whilst the court may take account of inherent probabilities, there is no logical or necessary connection between seriousness and probability. Thus, it is not the case that "the more serious the allegation the more cogent the evidence need to prove it".*

14. The Tribunal reminded itself that it may draw reasonable inferences from the facts and come to common sense conclusions. However, it must not enter into speculation about matters or consider what evidence might or might not have been available in this case.

15. In relation to the allegation of dishonesty, the Tribunal had regard to the case of *Ivey v Genting Casinos (UK) Ltd (t/a Crockfords) [2017] UKSC 67* which sets out a two-limb test as follows:

> *'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.'

16. The Tribunal reminded itself that Dr Chaudhary is of good character. His good character is relevant in two ways. Firstly, he has given evidence and his good character is a positive feature which the Tribunal should take into account when considering whether it accepts his evidence. Secondly, the Tribunal should consider whether his good character makes it less likely that he acted as is now alleged against him.

17. The Tribunal recalled the parties to deal with the issue of whether in relation to Paragraph 3 of the Allegation the Tribunal should be considering *"constructive knowledge"* or *"actual knowledge"*. The legally qualified chair (LQC) stated that "*constructive knowledge is when a person is legally presumed to know something simply because they should have known it. It can be defined as the knowledge a person should have learned after some reasonable level of diligence… actual knowledge differs from constructive knowledge as a person has to have known instead of should have known."* Both parties submitted that the Tribunal had to consider the issue of actual knowledge and that it was not open to the Tribunal to make findings that relied on constructive knowledge.

The Tribunal's Analysis of the Evidence and Findings

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

Paragraph 1

19. The Tribunal considered whether or not, on 25 April 2020, Dr Chaudhary failed to follow Wythenshawe Hospital's ('the Hospital') Interim COVID-19 MFT Visiting Policy, by visiting Patient A on Ward F6 at the Hospital ('the Visit') when he had not been given prior authorisation to do so.

20. The Tribunal had sight of the Hospital's policy dated 25 March 2020. The policy itself was titled "*MFT COVID-19 Interim Visiting Policy Version: 2".* This policy stated, *'additional restrictions in response to Government instructions announced on 23 March 2020*'.

21. The Tribunal received evidence from Dr F who produced the policy. In his statement he said, *"I enclose a copy of the interim visiting police guidance sent to all staff members on 25 March 2020 …I do not know whether this policy was in place on 24-25 April 2020 and cannot find any updates closer to the dates covering this statement."*

22. The Tribunal received evidence from witnesses that this was the policy in force at that time. Ms G, who was the interim ward manager on Ward F6 at the time, was adamant and

stated "*there was no visitation allowed during that period, even for end of life and critically ill patients as we were at the peak of covid-19*". Other witnesses including Ms B and Mr C corroborated this evidence and stated that, whilst they were not as aware of the specifics of the policy, they were operating according to what their managers stated, that no visiting was allowed on Ward F6.

23. Dr Chaudhary had telephoned the Hospital by his own admission late in the night on 24 April 2020 or in the early hours of 25 April 2020, and contacted the ward by telephone on 25 April 2020 at 8:30am. In her evidence, Ms G stated that there was an automated message on the telephone system informing callers about visiting restrictions. Ms G also provided evidence that there had been signage around the Hospital referring to visiting restrictions. However, the Tribunal was not provided with any evidence as to what the telephone message stated nor any evidence as to what the signage stated.

24. The Tribunal found as a matter of fact that Dr Chaudhary had visited Patient A on Ward F6 while this policy was in place when he had not had authorisation, as required by the policy, to do so.

25. The Tribunal determined that Dr Chaudhary had a duty to follow the Hospital's COVID-19 Interim Visiting Policy and, that if he was not aware of what this visiting policy was, to make appropriate enquires. Therefore, it found Paragraph 1 of the Allegation proved.

Paragraph 2(a)(ii)

26. The Tribunal considered whether or not, during his visit to the Hospital, Dr Chaudhary had attended the Hospital wearing a stethoscope.

27. The Tribunal had sight of the statement made by Mr C two days after the events as set out in the Allegation, in which he specifically mentioned a stethoscope. He stated, *"At 11am I was sat at the nursing station on epr when I was approached by a gentleman in green scrubs wearing a stethoscope, to which he said to me 'I am an intensivist, I'm here to review Mr Chaudhury'."*

28. Mr C later corrected his statement, explaining that his recollection that Dr Chaudhary had said that he was 'an intensivist' was 'false recall'. He said in his statement to the GMC,

> "*When Dr Chaudhary approached me at the nursing station, he said he was there to review Patient A. At that time, I was already aware that Patient A was waiting input from another speciality hence why … I falsely recalled that Dr Chaudhary said 'I'm an intensivist.' Dr Chaudhary's arrival was timely in that I knew Patient A had become unwell, he was in suitable attire wearing light green scrubs, a stethoscope around his neck and to me he seemed to have situational awareness when he said, 'I'm here to review (Patient A).' For these reasons, I presumed that the gentleman in green scrubs was a doctor at the Hospital, specifically an ICU intensivist, and I thought I would be acting in Patient A's best interest in letting Dr Chaudhary look at Patient A's vital*

observations and bloods when he asked me. At that time, I did not suspect that any wrongdoing was taking place. I had no reason to suspect disingenuity."

29. In his oral evidence, Mr C accepted that if asked now, three years after the incident, he would not necessarily specifically recall the stethoscope.

30. Dr Chaudhary in his evidence did not specifically deny that he was wearing a stethoscope and said, that he could have been in such a state that he automatically picked it up when leaving his car. He further said in his oral evidence, "*it could have been possible, but it was unlikely".*

31. The Tribunal determined that whilst there were no other witnesses who gave written or oral evidence that Dr Chaudhary was wearing a stethoscope, Dr Chaudhary himself conceding to the fact that "*it could have been possible"* enhanced the likelihood of him having done so.

32. The Tribunal found that Mr C's statement to the Trust was the closest evidence of being a contemporaneous record that it had sight of. It determined that Mr C's willingness to amend his statement in order to provide the most accurate account of the events added to his credibility. The Tribunal further determined that Mr C's capacity for false recall did not render him a thoroughly unreliable witness; Mr C had been expecting an intensivist and a doctor wearing green scrubs appeared and was asking about Patient A. The Tribunal determined it would have been a natural assumption for Mr C to have thought that Dr Chaudhary was the intensivist.

33. The Tribunal determined that if Mr C was willing to correct his false recall regarding Dr Chaudhary calling himself an intensivist, he would most likely have done so if he considered that he may have inaccurately remembered Dr Chaudhary wearing a stethoscope. He had not done so and instead had been consistent in his evidence that he had seen Dr Chaudhary wearing a stethoscope.

34. The Tribunal therefore, taking into account all of the above evidence on the balance of probabilities, found that Dr Chaudhary was wearing a stethoscope. It therefore found Paragraph 2(a)(ii) of the Allegation proved.

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

35. The Tribunal considered whether or not, during his visit to the Hospital, Dr Chaudhary approached Mr C and said that he was there to review Patient A, or words to that effect.

36. The Tribunal considered Mr C's Trust witness statement, in which he stated, *"At 11am I was sat at the nursing station on epr when I was approached by a gentleman in green scrubs wearing a stethoscope, to which he said to me 'I am an intensivist, I'm here to review Mr Chaudhury'."*

37. In his statement to the GMC, Mr C confirmed the account he gave to the Trust at the time and stated, *"When Dr Chaudhary approached me at the nursing station, he said he was there to review Patient A. At that time, I was already aware that Patient A was waiting input from another speciality hence why… I falsely recalled that Dr Chaudhary said 'I'm an intensivist.' Dr Chaudhary's arrival was timely in that I knew Patient A had become unwell, he was in suitable attire wearing light green scrubs, a stethoscope around his neck and to me he seemed to have situational awareness when he said, 'I'm here to review Mr Chaudhary (Patient A).'"*

38. The Tribunal referred to Dr Chaudhary's written statement in which he stated, *"I recall telling Mr C that I was there to visit Patient A and that I was …* [a relative]. *I would not have used the word review. Unfortunately in his initial statement, Mr C incorrectly stated I had said I was an intensivist. He subsequently accepted that this was a false recall on his part…".*

39. Dr Chaudhary explained to the Tribunal in his oral evidence that he had asked Mr C for an update on Patient A's condition but stated that he was certain he had not used the word 'review'.

40. The Tribunal reminded itself that Mr C had explained that he had incorrectly described Dr Chaudhary as an intensivist initially as he was anticipating an intensivist to come to Ward F6 and review Patient A. Although the Tribunal did not find the mistake, which he corrected, to impact his evidence regarding the stethoscope, Mr C had falsely recalled Dr Chaudhary as declaring himself to be an intensivist. The Tribunal found this false recall may have carried on to include Dr Chaudhary using the phrase "*to review Patient A*" or words to that effect, as that is what the expected intensivist may have said on arrival.

41. The Tribunal had regard to the above evidence and determined on the balance of probabilities that it had not been persuaded by the GMC's evidence that Dr Chaudhary had stated that he was there to 'review' Patient A. It therefore found Paragraph 2(c)(i) of the Allegation not proved.

<u>Paragraph 2(c)(ii)</u>

42. The Tribunal considered whether or not, during his visit to the Hospital, Dr Chaudhary asked to see Patient A's blood test results and/or observations ('the Results') or words to that effect.

43. The Tribunal referred to Mr C's statement to the GMC, in which he said *"… I presumed that the gentleman in green scrubs was a doctor at the Hospital, specifically an ICU intensivist, and I thought I would be acting in Patient A's best interest in letting Dr Chaudhary look at Patient A's vital observations and bloods when he asked me. At that time, I did not suspect that any wrongdoing was taking place. I had no reason to suspect disingenuity."*

44. In his earlier statement to the Trust, Mr C had said, *"He* [Dr Chaudhary] *then asked me to see his* [Patient A's] *vital observations to which I showed him as I was convinced he was part of the ICU team. When reviewing the observations, he then asked to take my place at the computer in order to look at them sitting down instead of standing above me, so I let him take my seat. He then started to review Mr Chaudhury's blood results also. Lastly he then asked to borrow my pen to write down the blood results which he was looking at."*

45. In cross-examination, it was put to Mr C by Dr Chaudhary's counsel, Mr Mahmood, that Dr Chaudhary had not asked to see the results, but Mr C had offered to show them to him. Mr C response was that he *"gave him the information I thought would be helpful"*.

46. The Tribunal compared this with the account from Dr Chaudhary in his statement. He said, *"*[Patient A] *was then taken for a scan and I returned to the nurses' station to ask Mr C if* [Patient A's] *blood test results had improved, having reviewed* [Patient A's] *blood test results at Stepping Hill with the consultant the previous day. I did not ask Mr C for* [Patient A's] *notes, vital observations or to take his seat. Mr C opened the results on the computer and moved out of the way for me to view the screen."*

47. Dr Chaudhary also stated*, "I did not ask to see or view any results or documentation or observations. I asked for an update in respect of* [Patient A's] *condition and whether his latest blood results indicated any signs of improvement, as I had been shown these the day before by the consultant. There was no need for me to see them as if he had told me the results I would have understood them as a doctor."*

48. The Tribunal received evidence that, when Dr Chaudhary asked for an update, Mr C, by his own words in his oral evidence, "*gave him any information"* that he thought would be helpful. The Tribunal determined that it would have been natural for Mr C, under the presumption that Dr Chaudhary was a doctor working at the Hospital, to have invited Dr Chaudhary to view Patient A's test results.

49. The Tribunal determined that Dr Chaudhary asking for an update on Patient A's results were not words to the effect of asking to be shown any of the results.

50. The Tribunal therefore found Paragraph 2(c)(ii) of the Allegation not proved.

Paragraph 3(a)

51. The Tribunal considered whether or not Dr Chaudhary knew that he was not permitted to visit Patient A at the Hospital on 25 April 2020 due to COVID-19 restrictions being in place at the time.

52. The Tribunal considered the public generally would have been aware of COVID-19 restrictions being in place for a little over a month at the time. Dr Chaudhary accepted that he had called the switchboard during the early hours of 25 April 2020 prior to being put through to Dr E and later contacted the ward at 8:30am.

53. Ms G said in her witness statement that *"the switchboards automated message made reference to the visitation policy..."* however, the Tribunal was not provided with evidence as to what the message on the switchboard actually stated at the time when Dr Chaudhary called. Ms G further explained that *"The Hospital also had signs on the doors as you came in…".* Again however, the Tribunal had not been provided any evidence of what those signs actually stated.

54. The Tribunal considered Dr Chaudhary's witness statement, in which he said, *"I did not know that I was not permitted to visit Patient A. I accept that there were restrictions on visiting at the time due to COVID-19, but I also understood at the time that there were exceptions for those who were nearing end of life or critically unwell. That morning I had been informed by the consultant surgeon that [Patient A] was to undergo lifesaving surgery without which he would not survive. Having permission to see [Patient A] at Stepping Hill the day before, his transfer and continuity of care, and in the belief that [Patient A] was critically unwell, I thought that I had permission to visit [Patient A]. Furthermore, my thinking was also influenced by the fact that I had been invited to attend Stepping Hill the day before, without there being any suggestion from Dr Bell or anyone else that I needed authorisation to visit, and similarly with my conversations with Dr [E]. I genuinely thought that I was allowed to visit [Patient A] who was critically unwell and I certainly did not realise I was not permitted to visit on 25 April due to any restrictions in place."*

55. During his oral evidence, it was put to Dr Chaudhary by Mr Grattage, counsel on behalf of the GMC, that he knew that he did not have permission to visit Patient A. Dr Chaudhary's response was *"my head space was muddled, but I strongly thought I would be permitted".* He added *"in my mind, Patient A was in the unwell category, and I am allowed visitation… at no point did I think I would not be allowed."*

56. In re-examination, Mr Mahmood put to Dr Chaudhary that he was not told that Patient A was in a critical condition. Dr Chaudhary responded by stating that a discussion had taken place with Mr H about Patient A's clinical condition including the DNR (Do Not Resuscitate) status after Patient A was blue lighted from one hospital to another. The Tribunal accepted that this could be indicative that Patient A's condition was critical, and Dr Chaudhary had been made aware of that.

57. The Tribunal bore in mind that there had been no evidence that Dr Chaudhary was challenged during his visit to Stepping Hill or A&E at the Hospital when visiting or accompanying Patient A.

58. The Tribunal accepted Dr Chaudhary's evidence that he had been permitted to visit Patient A in Stepping Hill Hospital and to wait in A&E while Patient A was being reviewed. It determined therefore that the COVID-19 policy for various hospitals was likely to have allowed visiting in some circumstances. Dr Chaudhary, therefore, had reason to believe that he might be allowed to visit in exceptional circumstances, such as having a relative who was critically ill or receiving end of life care, as was the case in Stepping Hill hospital. The Tribunal

determined that Dr Chaudhary had visited Patient A at Stepping Hill hospital and was not apprised of the fact that he would not be permitted to do likewise at the Hospital (Wythenshawe).

59. The Tribunal has already found Paragraph 1 of the Allegation proved. However, in Paragraph 3 of the Allegation it had to determine the actual knowledge of Dr Chaudhary. It asked itself the question what he actually knew about the restrictions on visiting the Hospital. The Tribunal had not been provided with the details of the phone message on the Hospital switchboard phone nor the signs relating to visiting. The Tribunal found that Dr Chaudhary knew that there were restrictions at the Hospital because he would have heard the telephone message. Moreover, he was a doctor and accepted himself that, at the hospital he worked at, only seriously ill patients were allowed to have visitors; it was a month into the national COVID-19 lockdown and the public in general were aware of restrictions on visiting hospitals. From Dr Chaudhary's perspective on the morning of 25 April 2020, he had been told by Mr H that Patient A was second on the theatre list to have surgery on his foot in order to avoid his condition deteriorating such that his life was in danger. Dr Chaudhary received a distressed telephone call from Patient A who claimed that he was dying. He knew that seriously ill patients could be visited at his own hospital; Dr Chaudhary had been allowed to visit Patient A at Stepping Hill Hospital because of his critical condition at that time; he had been able to wait in the Accident and Emergency department at the Hospital following Patient A's transfer by 'blue light'. At that time no one at the Hospital had specially told him he could not visit or that he had to obtain prior authorization to visit. The switchboard message may have stated this, but this was not produced in evidence. Furthermore, Dr E had not mentioned visiting restrictions to Dr Chaudhary. After receiving a phone call from Patient A, Dr Chaudhary thought Patient A was dying and decided to visit the Hospital.

60. The GMC case was that Dr Chaudhary did not ask Dr E whether he would be allowed to visit Patient A once Patient A had been admitted and the reason Dr Chaudhary did not ask that question was because he knew the answer would be 'no'. The Tribunal accepted that Dr Chaudhary may have anticipated that visiting would be restricted, but it received no evidence that he knew he would not be allowed to visit Patient A on the ward. It was common ground that Patient A was seriously unwell with multiple life-threatening conditions on his admission to the Hospital. He had been "blue-lighted" from Stepping Hill to the Hospital and there was the prospect of Patient A undergoing emergency amputation of a gangrenous foot and/or life-threatening critical limb ischaemia. The Tribunal found, on the balance of probabilities, that Dr Chaudhary was focused on the immediate care plan for Patient A and that questions about visiting rights would likely have been subordinate in his mind at that time.

61. The Tribunal found having regard the evidence it has been provided with, taking into account the absence of specific details of the telephone message and the Hospital visiting notices, that Dr Chaudhary did not know he could not visit Patient A.

62. The Tribunal determined that the GMC had not discharged the burden on it to adduce evidence that Dr Chaudhary would have had sufficient information to know that he was not

allowed to visit Patient A. The Tribunal therefore found Paragraph 3(a) of the Allegation not proved.

Paragraph 3(b)

63. The Tribunal first considered whether Dr Chaudhary knew he was misleading staff into thinking he worked at the Hospital by coming to the Hospital wearing green scrubs and a stethoscope.

64. Dr F, in his witness statement, said, *"… whilst I was attending another patient, a gentleman wearing dark green scrubs arrived at the ward. He was wearing dark green scrubs, which would have included trousers, but I do not remember if he was wearing a facemask at this attendance. I did not know who he was at that time. …I do not remember anything further about what he was wearing or his appearance. I did not interact with this gentleman in green scrubs at this time."*.

65. Ms B stated in her witness statement, *"I looked after Patient A who was situated in a side room. I remember going into that room to prepare Patient A for a CT scan. I opened the door and saw a gentleman in green scrubs talking to Patient A. I may have gone into the side room with either one or two doctors, but I cannot remember for certain or who they were. I think at some point a doctor did come inside the side room to assist me with Patient A but I do not know when they came in or whether the gentleman in green scrubs was there at that time."*

66. Mr C stated in his witness statement, "*When Dr Chaudhary approached me at the nursing station, he said he was there to review Patient A. At that time, I was already aware that Patient A was waiting input from another speciality hence why … I falsely recalled that Dr Chaudhary said 'I'm an intensivist.' Dr Chaudhary's arrival was timely in that I knew Patient A had become unwell, he was in suitable attire wearing light green scrubs, a stethoscope around his neck and to me he seemed to have situational awareness when he said, 'I'm here to review Mr Chaudhary (Patient A).' For these reasons, I presumed that the gentleman in green scrubs was a doctor at the Hospital, specifically an ICU intensivist, and I thought I would be acting in Patient A's best interest in letting Dr Chaudhary look at Patient A's vital observations and bloods when he asked me. At that time, I did not suspect that any wrongdoing was taking place. I had no reason to suspect disingenuity."*

67. Ms B and Mr C interacted with Dr Chaudhary and both gave evidence that they had been under the impression by his appearance, the green scrubs in particular, that he was a doctor on duty.

68. The Tribunal accepted Dr Chaudhary's oral evidence that these had been his travel scrubs and he was "*on autopilot"* when he was leaving his home and driving to the hospital and could have picked up his stethoscope.

69. The Tribunal found that Ms B and Mr C had been misled by Dr Chaudhary because, by being in scrubs, they would have presumed that he was working at the Hospital. It is inconceivable that Dr Chaudhary did not know that by wearing green scrubs he would be mistaken for a doctor working at the Hospital or at the very least a medical professional.

70. The Tribunal then considered whether Dr Chaudhary had known that by asking whether Patient A was going to have surgery or what Patient A's care plan was, he was misleading staff at the Hospital into thinking he worked at the Hospital.

71. The Tribunal determined that asking whether a family member needed surgery or what the next steps would be are not the type of questions that only a doctor would ask. It considered that any person who was a relative of a patient in a Hospital could have enquired about their family member's care plan or whether a surgical procedure was necessary.

72. The Tribunal went on to consider whether by viewing Patient A's results on the Electronic Patient Record system and writing these down on a piece of paper, Dr Chaudhary knew that he was misleading Mr C into thinking that he worked at the Hospital.

73. The Tribunal considered Mr C's evidence that he *"gave him* [Dr Chaudhary] *the information I thought would be helpful".* The Tribunal concluded that Dr Chaudhary had not asked to see the results but instead had the results offered to him by Mr C, as Mr C had already formed the view that Dr Chaudhary was the intensivist who was there to review Patient A.

74. The Tribunal determined that the green scrubs and stethoscope had already put Mr C under the impression that Dr Chaudhary was a doctor working at the Hospital and it accepted that Dr Chaudhary sitting down in front of the computer to view the results and writing them down may have had the effect of reinforcing the misconception Mr C had about Dr Chaudhary. However, on the evidence before the Tribunal it could not determine that Dr Chaudhary had known that by viewing the results on the computer and writing them down, he was misleading Mr C further.

75. The Tribunal therefore found Paragraph 3(b) of the Allegation proved in relation to Paragraph 2(a) of the Allegation, and not proved in relation to Paragraph 2(b) and Paragraph 2(c) of the Allegation.

Paragraph 4

76. The Tribunal considered whether by attending the Hospital wearing green scrubs and a stethoscope and misleading hospital staff into thinking he was a doctor working at the Hospital Dr Chaudhary had been dishonest.

77. The Tribunal accepted the evidence from Dr Chaudhary that he wore scrubs as a standard practice when leaving home. He said in his evidence that he wore scrubs even going to the supermarket. In his oral evidence, Dr Chaudhary explained that he had left home after

receiving a distressing call from Patient A, and stated, "*my head was muddled"* and he later stated that he left the house *"on autopilot".*

78. Dr Chaudhary stated that he wore the same green scrubs to A&E. He had interacted with Dr E and in relation to this, Dr E stated: *"I have been asked by the GMC to describe Dr Chaudhary. He was an Asian male in his late 20's, medium build and smartly dressed. He was approximately similar height to me and was wearing trousers and from recollection a coat over the top. I do not remember the colouring of his clothes, including the coat. He also had his badge clipped to his trousers which was a standard NHS ID badge. I did not see the name of the hospital where he worked on the badge, but I knew he did not work at the Hospital (Wythenshawe). He was probably wearing a face mask at that time but I do not remember and neither do I remember his facial appearance."*

79. When it was put to Dr E by Mr Mahmood during cross-examination that Dr Chaudhary was in fact wearing green scrubs in A&E, she stated *"I don't think he was wearing scrubs".* The Tribunal determined that the evidence of Dr Chaudhary and that of Dr E were equally plausible and that it was therefore not possible for the Tribunal to prefer one account over the other.

80. In his oral evidence, Dr Chaudhary had stated *"I did not intentionally mislead…it was never my intention to mislead"* When put to him by GMC counsel that he had in fact misled hospital staff, Dr Chaudhary said *"I accept that staff were misled. I am sorry for that".*

81. The Tribunal found that Dr Chaudhary wearing green scrubs and a stethoscope to the Hospital had in fact misled hospital staff into thinking that he was a member of staff as opposed to a visitor. However, Dr Chaudhary had not done so with the intent to mislead. The Tribunal accepted Dr Chaudhary's evidence that he had been in a distressed state and very anxious. It concluded that whilst wearing the green scrubs may have facilitated his access to the Hospital and visiting his relative, this had not been at the forefront of Dr Chaudhary's mind. The Tribunal found Dr Chaudhary had not set out with the intention to deceive; he simply was carrying out his normal practice of wearing scrubs when travelling. It follows, applying *Ivey*, that ordinary decent people would not consider this to be dishonest.

82. It therefore found Paragraph 4 of the Allegation not proved in relation to Paragraph 2(a) of the Allegation.

The Tribunal's Overall Determination on the Facts

83. The Tribunal has determined the facts as follows:

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

<u>Hospital visit</u>

1. On 25 April 2020 you failed to follow Wythenshawe Hospital's ('the Hospital') Interim Covid-19 MFT Visiting Policy, in that you visited Patient A on Ward F6 at the Hospital ('the Visit') when you had not been given prior authorisation to do so.
Determined and found proved

2. During the Visit you:

   a. attended the Hospital wearing:

      i. green scrubs; **Admitted and found proved**

      ii. a stethoscope; **Determined and found proved**

      iii. ~~your North Manchester General Hospital NHS ID badge;~~
      Withdrawn following a successful Rule 17(2)(g) application

   b. attended Patient A's bedside and asked Ms B, a nurse:

      i. whether the vascular team were going to carry out surgery later that day, or words to that effect; **Admitted and found proved**

      ii. questions about Patient A's care plan; **Admitted and found proved**

   c. approached Mr C, a nurse, and:

      i. said you were there to review Patient A, or words to that effect;
      Determined and found not proved

      ii. asked to see Patient A's blood test results and/or observations ('the Results'), or words to that effect; **Determined and found not proved**

      iii. viewed the Results on the Electronic Patient Record System;
      Admitted and found proved

      iv. wrote down the Results on a piece of paper.
      Admitted and found proved

3. You knew that:

   a. you were not permitted to visit Patient A at the Hospital on 25 April 2020 due to Covid-19 restrictions being in place at the time;
   Determined and found not proved

   b. your actions as described at paragraph 2 would mislead the Hospital staff into thinking that you worked at the Hospital.
   Determined and found proved only in relation to Paragraph 2(a) of the Allegation

4. Your actions as described at paragraph 2 were dishonest by reason of paragraph(s) 3a and 3b. **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. **To be determined**

Determination on Impairment - 12/10/2023

84. 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 Chaudhary's fitness to practise is impaired by reason of misconduct.

The Evidence

85. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.

86. Dr Chaudhary provided his own witness statement and also gave further oral evidence at this stage of the hearing.

87. The Tribunal also received a bundle of documents on Dr Chaudhary's behalf, including:

- Dr Chaudhary Stage 2 statement, dated 9 October 2023;
- Reflection on Returning to Training … , dated 5 October 2022;
- Supported Return to Training course certificate, dated 16 September 2022;
- CPD Data Security Awareness course certificate, dated 27 September 2022;
- Hot Topics GP Update Course certificate, dated 29 September 2022;
- Meeting with Paediatric Lead notes, dated 7 October 2022;
- Conflict Resolution course certificate, dated 28 November 2022;
- CPD Ethics and Ethical Standards for Doctors, dated 31 August 2023;
- CPD Professionalism and the Professional Standards for Doctors, dated 31 August 2023
- CPD Probity and Ethics- Insight and Remediation, dated 11 September 2023
- Good Medical Practice Reflections, dated 15 September 2023;
- 10k run for charity screenshot;
- Appraisal, dated December 2022.

Submissions

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

88. On behalf of the GMC, Mr Stephen Grattage submitted that Paragraph 1 and Paragraph 3 of the Allegation were particularly serious and demonstrated misconduct.

89. Mr Grattage submitted that the following paragraphs of Good Medical Practice (2013) ("GMP") were engaged in this case:

> *'36 You must treat colleagues fairly and with respect.*
>
> *37 You must be aware of how your behaviour may influence others within and outside the team.'*

90. Mr Grattage submitted that Dr Chaudhary had failed to ensure that he was acting within the policy set by the Hospital he was visiting during the national lockdown. Mr Grattage submitted that Dr Chaudhary had a duty to act according to the Hospital policy and his behaviour was such that he failed his professional colleagues who were working within the Hospital at the time, and he ignored how his actions might impact the staff on Ward F6 of the Hospital. Dr Chaudhary articulated the seriousness of his failures himself in his oral evidence to the Tribunal and the Tribunal had also heard the evidence of other witnesses who were shocked at this failure.

91. Mr Grattage submitted that the Tribunal had determined that Ms B and Mr C had been knowingly misled by Dr Chaudhary. Whilst he may not have acted with dishonest intent, being distressed and anxious and acting on 'autopilot', this was still a serious failure. Mr Grattage submitted that many people at the time were experiencing high levels of stress and anxiety but this was not an excuse for ignoring a strict policy at the Hospital during a national lockdown.

92. Mr Grattage submitted that the Tribunal can draw the conclusion that Dr Chaudhary's fitness to practise is impaired by his misconduct. Dr Chaudhary allowed his actions to fall below the level expected of a doctor during a national medical emergency. Mr Grattage submitted that the Tribunal should consider whether, in a future emergency situation, Dr Chaudhary would allow his actions to fall below the threshold again.

93. Mr Grattage further submitted that with the weight of this investigation lifting, Dr Chaudhary would no longer feel the pressure to comply with rules and guidelines expected of doctors and if the Tribunal has any concern about Dr Chaudhary's ability to act professionally under stress, it should find his fitness to practise currently impaired.

<u>On behalf of Dr Chaudhary</u>

94. Mr Mahmood, on behalf of Dr Chaudhary, submitted that the Tribunal should focus on current impairment rather than Dr Chaudhary's past misdeeds. He submitted that in relation to Paragraph 1 of the Allegation, Dr Chaudhary has never denied that he visited the Hospital without authorisation; the argument was about whether the evidence was there to determine that a policy had been in place. In relation to Paragraph 2 of the Allegation, Mr Mahmood submitted that Dr Chaudhary had at an early stage admitted that he had worn green scrubs and he did not deny that there was a possibility he may have been wearing a

stethoscope. Mr Mahmood submitted that in relation to Paragraph 3 of the Allegation, Dr Chaudhary had admitted that his actions may have misled the staff at the Hospital into thinking he was a doctor working there.

95. Mr Mahmood referred the Tribunal to its findings in its determination on the facts. He added that Dr Chaudhary had admitted that he entered Ward F6 at the Hospital without authorisation, but this had been *"a genuine mistake in very horrible circumstances."*

96. Mr Mahmood submitted that the paragraphs of GMP highlighted by GMC Counsel may have been breached but Dr Chaudhary's own conduct was not such that it would be found deplorable by any member of the public nor another member of the medical profession.

97. Mr Mahmood submitted that the events set out in the Allegation had taken place over three years ago and there is no evidence that anything has happened before or since. He added that GMC counsel's argument, that after the investigation is lifted and the hearing process ends, Dr Chaudhary may be tempted to *"misbehave"* again was simply not true. Mr Mahmood submitted that the Tribunal had found that Dr Chaudhary's behaviour was influenced by the stress he was under at the time and once the investigations have ended, this would be a relief from further stress.

98. Mr Mahmood submitted that Dr Chaudhary is a a man of good character; he made early and timely admissions, he has provided a witness statement detailing significant insight and remediation, he has explained the journey he has been on and the discussions he has had with his mentors. Dr Chaudhary has undertaken probity and ethics courses, data privacy courses, and has set out the lessons he has learnt, and the changes he has made to his practice.

99. Mr Mahmood submitted that Dr Chaudhary's fitness to practise is not currently impaired and that the Tribunal has the power to issue a warning.

The Relevant Legal Principles

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

101. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct and whether that misconduct was sufficiently serious, and then whether the finding of that misconduct which was sufficiently serious could lead to a finding of impairment of fitness to practise.

102. The Tribunal must determine whether Dr Chaudhary's fitness to practise is impaired today, considering Dr Chaudhary'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.

103. 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

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

Paragraph 1

105. The Tribunal was of the view that Dr Chaudhary's stress or anxiety was not a relevant factor in whether or not his behaviour amounted to misconduct. Dr Chaudhary had a duty to acquaint himself with the policy; he was a doctor, working in a hospital himself where there were restrictions in place and this was during a highly publicised national lockdown. Dr Chaudhary had a professional obligation to enquire as to what the policy was prior to visiting Patient A in the Hospital.

106. The Tribunal accepted that there were no specific paragraphs of GMP which were engaged in relation to Paragraph 1 of the Allegation. However, it found that a medical practitioner visiting his relative during a national lockdown, when a normal member of the public could not, would undermine the public's confidence in the profession. Dr Chaudhary had not sought to obtain authorisation to visit Patient A and had done so regardless of the strict policy that had been in place at the time.

107. The Tribunal therefore determined that this was sufficiently serious to amount to misconduct.

Paragraph 2 and Paragraph 3

108. The Tribunal considered Paragraph 2 and 3 of the Allegation together as these were linked. Paragraph 3 was the result of the action of Dr Chaudhary visiting the Hospital, as set out in Paragraph 2.

109. The Tribunal determined that paragraph 36 and 37 of GMP were engaged:

> *'36 You must treat colleagues fairly and with respect.*
>
> *37 You must be aware of how your behaviour may influence others within and outside the team.'*

110. The Tribunal had determined that Dr Chaudhary had worn his green scrubs and stethoscope to the Hospital and by doing so, he knew that he would mislead staff into thinking that he was doctor working at the Hospital.

111. The Tribunal considered that the findings of facts in relation to Paragraph 2 and 3 of the Allegation were sufficiently serious to amount to misconduct as Dr Chaudhary breahed GMP (as set out above) and, by his own admission, caused anxiety to other staff involved with them also facing potential disciplinary action.

112. The Tribunal therefore determined that Dr Chaudhary's actions amounted to misconduct.

Impairment

113. 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 Chaudhary's fitness to practise is currently impaired.

114. In determining whether a finding of current impairment of fitness to practise is necessary, the Tribunal looked for evidence of remediation and insight, and the likelihood of repetition, bearing in mind at all times the need to uphold the three strands of the overarching statutory objective, namely to:

(a) protect, promote and maintain the health, safety and well-being of the public;
(b) to promote and maintain public confidence in the medical profession; and,
(c) to promote and maintain proper professional standards and conduct for members of that profession.

115. The Tribunal considered there to be two elements to Dr Chaudhary's misconduct. The first related to his failure to enquire into what the COVID-19 visiting policy at the Hospital was and the second related to him misleading staff into assuming that he was a doctor who worked at the Hospital. The Tribunal concluded that both examples of misconduct were remediable. The Tribunal considered the case of *Cohen vs GMC (2008) EWHC 581 (Admin)*. The Tribunal then went on to consider whether the misconduct had been remedied and whether it was likely to be repeated.

116. The Tribunal considered all of the documentation in relation Dr Chaudhary's practice, including the 15 testimonials containing many positive comments. It noted his statement which included detailed reflections, and his appraisal document which showed his openness in discussing his situation in that he has discussed his case and the GMC proceedings with the appraiser.

117. The Tribunal was satisfied that Dr Chaudhary has demonstrated a full understanding of the gravity of his behaviour, taken ownership of his actions, accepted the findings of the Tribunal and accepted that his conduct fell seriously below the standards expected of him. He began to reflect upon what had happened very shortly after the events.

118. The Tribunal considered the testimonial evidence of Dr I:

> *"I am a consultant paediatrician and RCPCH postgraduate tutor at the Royal Oldham Hospital (ROH). I was the clinical supervisor for Dr Choudhury for his paediatric placement at ROH as part of the general practice training scheme from August 2022 to February 2023.*
>
> *I was made aware of the GMC proceedings by Dr Choudhury himself prior to commencing the post. He was honest and open about what was happening and kept myself and the department up to date with proceedings. I found him open, insightful and reflective about the incident that led to the investigation and at no point have I had any reason to question Dr Choudhury's professionalism or integrity. I am certainly not aware of any instance where Dr Choudhury has acted dishonestly in any way."*

119. The Tribunal found that Dr Chaudhary had been open and honest about the situation and expressed remorse for his actions, articulating in his oral evidence that he was aware of the ramificaitons of his actions on the staff at the Hospital, who had to endure the Trust and the police investigations, as well as potential disciplinary action. Dr Chaudhary expressed a desire to apologise to those staff if he were permitted to do so. In relation to the targeted courses taken to remediate his shortcomings, Dr Chaudhary provided reflections upon the courses, exploring what he has learnt, and detailing his journey of remediation. He has developed strategies to cope with stressful situations. The Tribunal was informed that there were no incidents of a similar nature before, nor had there been any since this incident. The Tribunal concluded that Dr Chaudhary had shown good insight into his misconduct.

120. The Tribunal gave careful consideration to Dr Chaudhary's oral evidence that he now ensured in his communications that he was explicit about not introducing himself as a doctor in non-work settings. The Tribunal also bore in mind that Patient A had since been back in hospital for another medical procedure a year after the events set out in the Allegation, and Dr Chaudhary took great care to declare himself as a relative so as to not be involved in a similar situation.

121. The Tribunal had regard to Dr Chaudhary's reflective statement, the numerous training certificates and many positive testimonials. The Tribunal was therefore satisfied that Dr Chaudhary's insight, remorse and remediation are such that the risk of him repeating the same misconduct is highly unlikely.

122. The Tribunal concluded, in acccordance with the *Grant* approach, that Dr Chaudhary had previously undermined the public confidence in the medical profession through his misconduct at the time of the events. It concluded that due to his extensive remediation in relation to probity and managing stressful situations, he is highly unlikely to undermine the public confidence in the profession in the future.

123. The Tribunal had regard to the three strands of the overarching objective which are 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. The Tribunal considered that, given its findings that the risk of repetition of the misconduct is unlikely, a finding of impairment is not required in order to protect, promote and maintain the health, safety and well-being of the public. With regard to promoting and maintaining both confidence in the profession and proper professional standards, the Tribunal considered that, given it found that Dr Chaudhary's conduct amounted to misconduct, the gravity of his actions and the consequence of his actions had been openly recorded for members of the profession and public to see. Members of the public will understand the high level of scrutiny that Dr Chaudhary has been under and that a finding of serious misconduct will weigh heavily on him. The Tribunal determined that a finding of impairment of fitness to practise is not necessary in order to promote and maintain public confidence in the medical profession, or to promote and maintain proper professional standards and conduct for members of the profession.

124. The Tribunal determined that Dr Chaudhary's misconduct has now been remediated, that his insight is complete, and that the repetition of the misconduct was highly unlikely. The Tribunal has determined, after careful consideration of the overarching objective, that Dr Chaudhary's fitness to practise is not currently impaired.

Determination on Warning - 12/10/2023

125. As the Tribunal determined that Dr Chaudhary's fitness to practise is not currently impaired it considered whether, in accordance with s35D(3) of the 1983 Act and Rule 17(2)(n) of the Rules, a warning was required.

Submissions

On behalf of the GMC

126. Mr Grattage submitted that it was appropriate to impose a warning in Dr Chaudhary's case.

127. Mr Grattage invited the Tribunal to consider paragraphs of the GMC Guidance on Warnings (March 2021) ('the Guidance'), specifically paragraph 20:

> *'20 The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.*
>
> *a) There has been a clear and specific breach of Good medical practice or our supplementary guidance.*
> *b) The particular conduct, behaviour or performance approaches, but falls short of, the threshold for the realistic prospect test or in a case before a tribunal, that the doctor's fitness to practise has not been found to be impaired.*
> *c) A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise. Warnings may be an appropriate response to any type of allegation…the decision makers will need to consider the degree to which the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear the potential impact of the conduct, behaviour or performance in question, accordingly.*
> *d) There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).*

128. Mr Grattage referred to the Tribunal's conclusion that Dr Chaudhary's previous conduct undermined public confidence in the profession and would be considered by fellow members of the profession as a serious falling short of standards, so as to amount to misconduct. He further reminded the Tribunal of its finding that Dr Chaudhary's actions had been a significant departure from GMP.

129. Mr Grattage submitted that a warning was necessary to send a signal to the public and members of the profession as well as to protect public confidence and maintain and uphold proper professional standards.

On behalf of Dr Chaudhary

130. On behalf of Dr Chaudhary, Mr Mahmood submitted that a warning is not necessary, and he invited the Tribunal to conclude the case with no action.

131. Mr Mahmood invited the Tribunal to consider certain relevant paragraphs of the Guidance. He referred to paragraph 20, as set out above, as well as paragraphs 16, 19, and 32:

> *16 A warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:*
>
> - *there has been a significant departure from Good medical practice, or*
>
> …
> *19 Once the decision makers are satisfied that the doctor's fitness to practise is not impaired, they will need to consider whether the concerns raised are sufficiently serious to require a formal response from the GMC or MPTS tribunals, by way of a warning. When doing so the decision makers must have regard to the public interest*
> …
> *32 If the decision makers are satisfied that the doctor's fitness to practise is not impaired…, they can take account of a range of factors to determine whether a warning is appropriate. These might include:*
>
> *a) the level of insight into the failings*
> *b) a genuine expression of regret/apology*
> *c) previous good history*
> *d) whether the incident was isolated or whether there has been any repetition*
> *e) any indicators as to the likelihood of the concerns being repeated*
> *f) any rehabilitative/corrective steps taken*
> *g) relevant and appropriate references and testimonials.'*

132. Mr Mahmood submitted that none of the relevant factors in the Guidance was engaged to justify a warning in this case.

133. Mr Mahmood submitted that, given Dr Chaudhary has taken considerable steps to remediate his failures, a warning was not necessary or proportionate. Mr Mahmood submitted that a warning was not necessary to serve as a deterrent as Dr Chaudhary has sincerely apologised, remediated his misconduct and there was no risk of repetition. Mr Mahmood submitted that a warning was not necessary to uphold the overarching objective which he submitted is satisfied by the existence of these proceedings and the finding of serious misconduct will weigh heavily on Dr Chaudhary. He submitted that as the Tribunal had not found it necessary to make a finding of impaired fitness to practise to uphold public confidence, a warning is also not necessary.

The Tribunal's Determination on Warning

134. The Tribunal took into account the evidence already adduced and the submissions made by both counsel. It also had regard to its findings at previous stages and to GMP. It reminded itself of the detail within the Guidance, which sets out, in particular, the purpose of warnings, the test for issuing a warning, factors to consider and a reminder of the principle of proportionality.

135. The Tribunal was mindful that it must have regard to the statutory overarching objective in making its decision. In particular, in Dr Chaudhary's case, the Tribunal considered the need to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for the members of the profession in making its decision.

136. The Tribunal also took careful account of the principle of proportionality, and the need to balance Dr Chaudhary's interests with the interests of the public and the profession. The Tribunal had particular regard to paragraph 32, as set out above, and the paragraphs of the Guidance set out below:

> *10 The power to issue warnings, together with other powers available to the GMC and to MPTS tribunals, is central to their role of protecting the public which includes protecting patients, maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour.*
>
> *14 Warnings should be viewed as a deterrent. They are intended to remind the doctor that their conduct or behaviour fell significantly below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise. Warnings may also have the effect of highlighting to the wider profession that certain conduct or behaviour is unacceptable.*
>
> *26 In deciding whether to issue a warning the decision maker should apply the principle of proportionality, weighing the interests of the public with those of the practitioner. It is important to bear in mind, of course, that warnings do not restrict the practitioner's practice and should only be considered once the decision maker is satisfied that the doctor's fitness to practise is not impaired.'*

137. The Tribunal took into account the passage of time since the events found proved and the fact that there had not been any repetition. Whilst the Tribunal considered that Dr Chaudhary's fitness to practise is currently not impaired by reason of his misconduct, due to the extent of his insight and the remediation undertaken, it nevertheless considered that any repetition would very likely warrant a finding of impairment.

138. The Tribunal then went on to consider the factors indicating that a warning may be appropriate and whether a warning was required in order to satisfy the overarching objective. It found in its determination on impairment that the first limb of the overarching objective was not applicable in the circumstances, and also that a finding of impairment was not necessary in order to uphold the second and third limbs of the overarching objective.

139. The Tribunal referred to the Guidance on Warnings and found that Dr Chaudhary's actions were a significant departure from GMP so as to amount to misconduct. The Tribunal determined however, that the misconduct occurred on a single occasion where, in an unusual set of circumstances (the COVID-19 lockdown) and while under considerable personal stress, Dr Chaudhary made errors of judgment and formed a misapprehension that he was allowed to visit Patient A in the Hospital. Further, it determined that having these regulatory proceedings on Dr Chaudhary's record, as well as the Tribunal having made a finding that his actions amounted to misconduct, was a regulatory response in itself.

140. Given its finding that the risk of repetition was low, and that Dr Chaudhary has developed full and appropriate insight into his misconduct and undertook comprehensive remediation, which had been put to the test as he has had relatives in hospital since the event set out in the Allegation and proved he could conduct himself differently, a warning was not necessary in order to remind him or deter him from such behaviour in future. The Tribunal was satisfied that the events, the subsequent investigations into these events and these regulatory proceedings have had a significant salutary effect on Dr Chaudhary.

141. The Tribunal determined that, given the level of insight and commitment to remediation Dr Chaudhary has demonstrated, it would be disproportionate to impose a warning in these circumstances. It was satisfied that these regulatory proceedings and the finding of misconduct would sufficiently mark the seriousness of events and uphold the confidence of the public in the profession.

142. The Tribunal was satisfied that a member of the public in full possession of the facts would not have their confidence in the medical profession undermined and would, in fact, consider the imposition of a warning disproportionate and unnecessarily punitive.

143. Therefore, the Tribunal determined not to impose a warning in this case.

144. The Tribunal determined to revoke the interim order that is currently in place.

145. This concludes the case.

ANNEX A – 02/10/2023

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

1. At the conclusion of the GMC's case, Mr Ghazan Mahmood, counsel on behalf of Dr Muhammad Chaudhary, made an application pursuant to Rule 17(2)(g) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), of no case to answer in respect of the following paragraphs of the Allegation.

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

1. On 25 April 2020 you failed to follow Wythenshawe Hospital's ('the Hospital') Interim Covid-19 MFT Visiting Policy, in that you visited Patient A on Ward F6 at the Hospital ('the Visit') when you had not been given prior authorisation to do so.

2. During the Visit you:

a. attended the Hospital wearing:
…

ii. a stethoscope;

iii. your North Manchester General Hospital NHS ID badge;

Submissions

<u>On behalf of Dr Chaudhary</u>

2. In respect of Paragraph 1 of the Allegation, Mr Mahmood submitted that *"the nature of the allegation presupposes that the "Interim Covid 10 [sic] MFT Visiting Policy" exists as a document evidenced by its description in the allegation and the fact that the GMC has since sought to introduce a policy document via Dr [F] w/s [witness statement] … In fact, none of the witnesses were able to confirm which (if any) written policy applied during the relevant period, and most of the witnesses gave conflicting accounts of the obligations imposed therein."*

3. Mr Mahmood submitted that the Tribunal has had evidence that Dr Chaudhary accessed the ward at Stepping Hill Hospital, without any issue, and also entered Wythenshawe's emergency department without being questioned. He submitted that this alone undermined the GMC's case as to the terms of any applicable policy.

4. Mr Mahmood submitted that, in the circumstances, there had been no relevant evidence in relation to the content of the relevant Visiting Policy on 25 April 2020 and there was at best, speculation and conjecture of what various individuals guessed might have been the policy. Mr Mahmood submitted, there was no possible basis for the Tribunal to find that

any of the witnesses' evidence to be reliable, given the sheer range of different answers provided by the various witnesses during cross-examination.

5. In regard to Paragraph 2(a)(ii) of the Allegation, Mr Mahmood submitted that the only evidence on this issue stems from Mr C's account of events and that none of the other witnesses supported Mr C's account on this specific issue.

6. Mr Mahmood submitted that Mr C's evidence was wholly and demonstrably unreliable and tenuous on this issue considering he produced a statement to the Trust in which he stated that Dr Chaudhary described himself as "an intensivist" yet six months later, Mr C retracted this from his police statement this explaining that he had a *"false recall".*

7. Mr Mahmood submitted that, when pressed in cross-examination, Mr C conceded the possibility that his recollection of seeing a stethoscope could also be wrong. Mr Mahmood submitted that, in the circumstances, the Tribunal can conclude that Mr C displayed a tendency to conflate speculation with facts which has caused his memory to create at least one "false recall" on a fundamental issue and therefore his memory is plainly unreliable. Further, three other witnesses saw Dr Chaudhary on the same day and yet nobody else recorded seeing a stethoscope.

8. Mr Mahmood submitted that, for the aforementioned reasons, there was no case to answer in relation to Paragraph 2(a)(ii) of the Allegation.

9. In relation to Paragraph 2(a)(iii) of the Allegation, Mr Mahmood submitted that the evidence shows that nobody at all saw, nor is able to recall ever seeing Dr AC wearing a badge on 25 April 2020; Mr C confirmed that he could not recall seeing a badge, Ms B makes no mention of seeing a badge, Nurse G confirmed that she did not recall seeing a badge on the man in green, and Dr F did not recall seeing a badge on the man in green.

10. As such, Mr Mahmood submitted, there is no evidence on the issue at all and accordingly the application for no case ought to be granted in respect of Paragraph 2(a)(iii) of the Allegation.

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

11. Mr Stephen Grattage, counsel on behalf of the GMC submitted that, in regard to Paragraph 1 of the Allegation, the Tribunal has had evidence from various witnesses that the policy on Ward F6 at Wythenshawe Hospital on that day was that there were no visitors permitted. He submitted that their evidence had been clear and unequivocal and, in relation to Patient A, no authorisation had been given for a visit by Dr Chaudhary.

12. Mr Grattage submitted that the policy document, which was adduced by Dr F, was ratified on 25 March 2020, which was prior to the date of the Allegation. This document was due to be reviewed on 30 June 2020, which was after the alleged incident. He submitted that there had been no evidence adduced at all to show, in relation to Patient A, that Ward F6 of

Wythenshawe hospital was operating contrary to that stated policy and each witness gave evidence which was consistent with that policy being in place at the material time.

13. In regard to Paragraph 2(a)(ii) of the Allegation, Mr Grattage submitted that the Tribunal heard the evidence of Mr C who, in each of his statements, recalled that the man in green was wearing a stethoscope. The dates of the first two statements were extremely close to the events as set out in the Allegation. Mr Grattage submitted that Dr Chaudhary's Counsel sought to undermine Mr C's evidence by suggesting that as he had corrected an element of his statement, nothing else provided in these statements could be relied upon. Mr Grattage submitted that Mr C had of his own volition corrected the mistake he made. Ultimately, while Mr C had agreed and accepted the limitations of his memory over three years from the incident during cross-examination, Mr C's evidence was clear that, whatever those limitations, he recalled a stethoscope.

14. Further, Mr Grattage submitted that the other witnesses not mentioning a stethoscope is not evidence that Dr Chaudhary was not wearing a stethoscope. This could simply be a matter which the other witnesses had not noticed at the time. It may also conclude that the stethoscope was worn at the time of interaction with Mr C. Irrespective of this, in the circumstances, the Tribunal can properly conclude that sufficient evidence has been adduced by the witness (Mr C).

15. Mr Grattage further submitted that the GMC conceded that no evidence has been adduced that on 25 April 2020 during the alleged visit, Dr Chaudhary was wearing his ID badge as alleged. Therefore, he accepted that the Tribunal may find there was no case to answer in relation to Paragraph 2(a)(iii) of the Allegation.

The Tribunal's Approach

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

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

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

19. In respect of each allegation, if there is no evidence that the doctor behaved in the manner alleged by the GMC then the Tribunal will stop the case. If the Tribunal determines that there is some evidence, but it is of a weak and tenuous character, for example, because of inherent weaknesses or because it is inconsistent with other evidence, then the Tribunal

should consider whether the GMC's case at its highest is such that a properly directed tribunal could not properly find the allegation proved. If the Tribunal finds that a properly directed tribunal could not properly find the allegation proved, the Tribunal will stop the case. Where the GMC's evidence is such that the strength or weakness of it depends on the view the Tribunal takes of a witness' reliability, or other matters which are within the province of the Tribunal as finders of fact, and where there is evidence on which the Tribunal could properly come to the conclusion that the doctor behaved as alleged, then the Tribunal should allow the case to proceed.

The Tribunal's Decision

20. Throughout its deliberation, the Tribunal had regard to the actual wording of the relevant stem of the Allegation.

Paragraph 1

21. The Tribunal received evidence from Dr F who produced the policy in his statement and said, *"I enclose a copy of the interim visiting police guidance sent to all staff members on 25 March 2020 …I do not know whether this policy was in place on 24-25 April 2020 and cannot find any updates closer to the dates covering this statement."*

22. The Tribunal had sight of the Hospital's policy from Manchester University NHS Foundation Trust and dated 25 March 2020. The policy itself is titled *"MFT COVID-19 Interim Visiting Policy"* and it is set out that it was *"Version 2"*. The Tribunal noted that the policy stated that the *"Review Date"* was the 30 June 2020 *"or sooner if required"*.

23. The Tribunal also noted that the policy stated in the front sheet *"additional restrictions in response to the government instruction announced on 23 March 2020."*

24. The Tribunal noted that under the heading "*All adult wards"*, it was set out that *"No visiting is permitted to any adult clinical area, with a very limited number of exceptions…"*.

25. In Dr F's statement dated 7 May 2020, he said *"We informed him that unfortunately due to the ongoing COVID-19 pandemic that no visiting of the ward was permitted to reduce transmission."*

26. Ms G was the ward manager at the time and was adamant *"there was no visitation allowed during that period, even for end of life and critically ill patients as we were at the peak of covid-19"*. Other witnesses including Ms B and Mr C also corroborated this evidence and stated that they were not as aware of the specifics of the policy and were operating according to what their managers stated that no visiting was allowed on Ward F6.

27. The Tribunal considered that this was the policy in force at that time. The argument from Mr Mahmood that the ward staff gave inconsistent evidence regarding the policy, and that the policy was everchanging, was not accepted by the Tribunal. It had to consider

whether there was a policy and whether this was in force at the time. The understanding by all witnesses was that visiting was prohibited; it was the first month of the COVID-19 lockdown. Ms G, the ward manager, was unequivocal that there had been a blanket ban on visiting.

28. The Tribunal concluded that GMC Counsel adduced sufficient evidence that the policy was in place and there was nothing to suggest that this was undermined by the evidence of the GMC witnesses.

29. The Tribunal concluded that there was sufficient evidence before it to determine that there was a case to answer in relation to Paragraph 1 of the Allegation.

Paragraph 2(a)(ii)

30. The Tribunal received evidence from Mr C and considered whether his evidence was so unreliable that it was incapable of belief.

31. The Tribunal determined that there were three pieces of evidence in which Mr C had stated that Dr Chaudhary had been wearing a stethoscope:

1. The Trust statement that Mr C wrote two days after the events as alleged, dated 27 April 2020, in which he wrote *"At 11am, I was sat at the nursing station at epr when I was approached by a gentleman in green scrubs wearing a stethoscope."*

2. Mr C's statement to the police, dated 6 November 2020, also stated *"He [Dr Chaudhary] was dressed in green surgical scrubs and wearing a stethoscope."*

3. In the statement to the GMC, Mr C stated, *"he was in suitable attire wearing light green scrubs, a stethoscope around his neck…".*

32. The Tribunal noted that Mr C had retracted part of his original statement to the Trust dated 27 April 2020 in a hospital governance meeting a couple of weeks/months later. Mr C had originally stated that Dr Chaudhary had told him 'I'm an intensivist'. Mr C gave an account in his GMC witness statement as to why he retracted that part of his original Trust statement:

> *"When Dr Chaudhary approached me at the nursing station, he said he was there to review Patient A. At that time, I was already aware that Patient A was waiting input from another speciality hence why… I falsely recalled that Dr Chaudhary said 'I'm an intensivist.' Dr Chaudhary's arrival was timely in that I knew Patient A had become unwell, he was in suitable attire wearing light green scrubs, a stethoscope around his neck and to me he seemed to have situational awareness when he said, 'I'm here to review Mr Chaudhary (Patient A).' For these reasons, I presumed that the gentleman in green scrubs was a doctor at the Hospital, specifically an ICU intensivist…"*

The Tribunal determined that Mr C's retraction of a specific part of his original Trust statement did not render all of his evidence unreliable as the explanation applied only to the reference to "intensivist" and not to any other part of Mr C's evidence.

33. During cross-examination Mr C had conceded the possibility that Dr Chaudhary wearing a stethoscope could have been a false memory. However, the Tribunal considered that suggesting that three years after the events, his recollection may be inaccurate did not make Mr C so unreliable that his evidence was incapable of belief. The Tribunal also determined that, while other witnesses had not positively identified that Dr Chaudhary had been wearing a stethoscope, they had not contradicted Mr C's evidence directly, and therefore Mr C's evidence had not been rendered tenuous.

34. The Tribunal concluded that Mr C's evidence was not so unreliable that it was incapable of belief. Therefore, the Tribunal refused the application of no case to answer in relation to Paragraph 2(a)(ii) of the Allegation.

Paragraph 2(a)(iii)

35. The Tribunal considered that due to the lack of evidence adduced by the GMC of Dr Chaudhary wearing an NHS ID name badge and GMC counsel's acceptance that there was no evidence adduced, it was satisfied that there was no case to answer in relation to Paragraph 2(a)(iii) of the Allegation.