PUBLIC RECORD

**Dates**: 07/05/2024 - 10/05/2024

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| **Medical Practitioner's name:** | Dr Paul Desmond DUNNE |
| **GMC reference number:** | 6079074 |
| **Primary medical qualification:** | MB ChB 2003 University of Manchester |

| Type of case | Outcome on facts | Outcome on impairment |
|---|---|---|
| XXX | XXX | XXX |
| New - Conviction / Caution | Facts relevant to impairment found proved | Impaired |
| New - Misconduct | Facts relevant to impairment found proved | Impaired |

**Summary of outcome**

Conditions, 18 months
Review hearing directed
Immediate order imposed

**Tribunal:**

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| Legally Qualified Chair | Mr Angus Macpherson |
| Lay Tribunal Member: | Mr Mark O'Brien |
| Medical Tribunal Member: | Dr Stephen Duxbury |

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| Tribunal Clerk: | Miss Keely Crabtree |

**Attendance and Representation:**

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| Medical Practitioner: | Present, represented |
| Medical Practitioner's Representative: | Mr Philip Stott, Counsel, instructed by MDU |
| GMC Representative: | Ms Rina Marie Hill, 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 and Impairment - 08/05/2024

1. The Tribunal agreed, in accordance with Rule 41 of the General Medical Council (GMC) (Fitness to Practise Rules) 2004 as amended ('the Rules'), that parts of this hearing should be heard in private where the matters under consideration involve XXX. As such, this determination will be read in private but a redacted version will be published following the conclusion of this hearing, with those matters relating to XXX removed.

## Background

2. Dr Dunne qualified in 2003 with a Bachelor of Medicine and Bachelor of Surgery (MB ChB) from the University of Manchester and has held full registration with the GMC since August 2004. In 2008 Dr Dunne became a Member of the Royal College of Physicians (MRCP) and then went on to complete his specialist cardiology training at various hospitals in the Northeast of England between 2008 to 2014. In July 2014 he completed his training.

3. Dr Dunne initially worked as a locum Cardiologist at Hillingdon Hospital NHS Foundation Trust before taking up a substantive position as a consultant cardiologist at Bolton NHS Foundation Trust (the Trust) in 2015 where he worked until his dismissal in August 2022.

4. Since his dismissal from the Trust Dr Dunne has been shadowing a General Practitioner (GP) from September 2023 on a voluntary basis. He has also undertaken and passed the GP entry training exam and is considering applying for the GP training programme.

<u>Misconduct</u>

5. The initial concerns were raised with the GMC on 5 September 2022 by Dr D, Medical Director at the Trust. The referral followed a formal Trust investigation into allegations that Dr Dunne had misappropriated medication from drugs cupboards on various wards and had lied to Nurse A about the circumstances of him needing XXX on 17 August 2021. Mr E, an independent HR Consultant, led the investigation which began on 31 January 2022, and reported his findings in a report dated 31 March 2022. Mr E concluded that Dr Dunne had misappropriated both XXX and XXX between January 2020 and August 2021 for his own personal use. He also noted that there was some evidence of XXX.

6. The Trust held a conduct hearing under its disciplinary policy on 8 August 2022. The findings from Mr E's independent investigation were upheld, and Dr Dunne was dismissed with immediate effect. During the hearing, Dr Dunne had admitted the allegations in broad terms.

Conviction

7. On 11 October 2022, the GMC contacted Dr Dunne by telephone in relation to his upcoming Interim Orders Tribunal hearing. During that telephone conversation, Dr Dunne disclosed that he had been convicted at Chester Magistrates' Court on 30 September 2022 for drink driving. The offence was dated 13 August 2022, and on that date, Dr Dunne had driven his Volvo on the A56 Chester Road, after consuming alcohol. Dr Dunne provided a positive roadside breath test and the formal drink/drive procedure was subsequently completed at the police station. His breath contained 115 microgrammes in 100ml of breath.

8. Dr Dunne was sentenced to a Community Order XXX Ancillary orders were made, including the imposition of a 26-month disqualification from driving. He was also fined £120.

9. Dr Dunne completed the Drink Drive Offenders course on 1 February 2023, meaning that the length of his disqualification from driving was reduced by 26 weeks.

10. Dr Dunne engaged with the Community Order that was imposed on him. He completed XXX. The Community Order was terminated on 29 September 2023.

XXX

11. XXX

12. XXX

13. XXX

14. XXX

## The Outcome of Applications Made during the Facts Stage

15. The Tribunal granted Ms Hill's application, on behalf of the GMC, made pursuant to Rule 34(13) and (14) of the Rules to hear evidence from Dr B by video link. Mr Stott, on behalf of Dr Dunne, did not object to the application. The Tribunal considered that it was in the interests of fairness and justice for the witness to give evidence via video link.

## The Allegation and the Doctor's Response

16. The Allegation made against Dr Dunne is as follows:

Conviction

1. On 02 September 2022 at Chester Magistrates' Court you were convicted of driving a motor vehicle, namely a Volvo registration number XXX on a road, namely A56 Chester Road near Helsby, after consuming so much alcohol that the proportion of it in your breath, namely 115 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit contrary to section 5(1)(a) of the Road Traffic Act 1988. Admitted and found proved

2. On 30 September 2022 at Chester Magistrates' Court you were sentenced to:
   a. a fine of £120; Admitted and found proved
   b. rehabilitation activity which required you to comply with any instructions of the responsible officer to attend appointments (with the responsible officer or someone else nominated by them), or to participate in any activity as required by the responsible officer up to a maximum of 25 Days; Admitted and found proved
   c. XXX; Admitted and found proved
   d. a driving disqualification of 26 months. Admitted and found proved

Misconduct

3. You failed to notify the GMC without delay that you had been charged with the criminal offence detailed in paragraph 1. Admitted and found proved

4. During the course of your employment:

a. between January 2020 and August 2021 you misappropriated one or more tablets of XXX from the CCU/C1 medicine cabinet for your own personal use, including but not limited to:

i. on a date on or around 03 June 2021; Admitted and found proved

ii. on a date on or around 06 August 2021; Admitted and found proved

b. between January 2020 and August 2021 you misappropriated one or more tablets of XXX from Ward D2 for your own personal use, including but not limited to:

i. on a date on or around 07 August 2021; Admitted and found proved

c. on 17 August 2021 you:

i. approached Nurse A and enquired as to whether any XXX (XXX) was available, or words to that effect; Admitted and found proved

ii. told Nurse A that the XXX was for a patient coming in for an echocardiogram later on that day, or words to that effect; Admitted and found proved

iii. removed a tub containing XXX from the CCU/C1 medicine cabinet when Nurse A opened the medicine cabinet; Admitted and found proved

iv. misappropriated one or more tablets of XXX for your own personal use; Admitted and found proved

v. failed to return the tub of XXX to the CCU/C1 medicine cabinet on 17 August 2021; Admitted and found proved

vi. stored the tub of XXX in the drugs cabinet in the echo clinic treatment room, which was not a controlled drugs cabinet, until 18 August 2021. Admitted and found proved

5. The information provided by you to Nurse A at paragraph 4cii was:

a. untrue; Admitted and found proved

b. known by you to be untrue. Admitted and found proved

6. Your conduct as described at paragraph 4cii was dishonest by reason of paragraph 5.

XXX

7. XXX
8.
9. XXX

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

a. conviction in respect of paragraphs 1 to 2; To be determined
b. misconduct in respect of paragraphs 3 to 6; and To be determined
c. XXX

## The Admitted Facts

17. At the outset of these proceedings, through his counsel, Dr Dunne made admissions to the entirety 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.

18. On the basis that Dr Dunne admitted to the Allegation in its entirety, the Tribunal moved straight to stage 2 of the proceedings, and went on to consider the issues of misconduct and impairment.

## Impairment

19. The Tribunal now had 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 Dunne's fitness to practise is impaired by reason of misconduct, conviction XXX.

### Witness Evidence

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

- Nurse A, Staff Nurse on the Coronary Care Unit (CCU) at the Trust;
- Miss F, acting ward manager of CCU (between January 2021 to October 2021) at, the Trust;
- Mr G, Clinical Director of Pharmacy at East Lancashire Hospitals NHS Trust and Controlled Drugs Accountable Officer (CDAO);
- Ms H, Ward Manager of C1 (Cardiology Ward) at the Trust;
- Ms I, divisional governance lead in 2021 at the Trust;
- Ms J, Sister on the CCU at the Trust;
- Dr D, Medical Director at the Trust and Dr Dunne's Responsible Officer (RO);

21. Dr Dunne provided a witness statement dated 1 March 2024 and a supplemental witness statement dated 16 April 2024.

### XXX

22. XXX

23. XXX

### Documentary Evidence

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

- Referral from the Trust dated 5 September 2022;
- Independent Investigation Report and appendices from the Trust dated 31 March 2022
- Letter from the Trust to Dr Dunne dated 14 October 2021
- Annotated Confidential File Note 11 October 2021
- XXX;
- Note of telephone call between Dr Dunne and the GMC dated 11 October 2022;
- E mail from the Trust to the GMC dated 13 October 2022;
- E mail from Dr Dunne to the GMC dated 24 October 2022;
- Letters from the Trust to Dr Dunne dated 19 November 2020 to 13 June 2022;
- Statement on Dr Dunne asking for medication (XXX) dated 19 August 2021;
- The Trust's interview records dated 23 February 2022, 25 February 2022, 1 March 2022
- The Trust's statement of Ms F undated;
- The Trust's statement of Ms J dated 22 August 2021;
- The Trust's interview record dated 23 February 2022;
- Road Traffic Offenders Act 1988 Courses for Drink-Drive Offenders Certificate of Completion dated 1 February 2023;
- XXX;
- Letters from Probation Officer to the MDU dated 7 July 2023 and 22 February 2024;
- Letter from The Forward Trust to the MDU dated 13 July 2023;
- Probity & Ethics In Practice course Certificate of Completion dated 20 February 2024;
- Certificate of Conviction dated 30 September 2022;
- XXX;
- XXX;
- XXX;
- Letter to MDU from Dr K, Principal GP dated 27 March 2024;
- Letter from XXX dated 1 April 2024;
- Reflections of Dr Dunne dated April 2024;
- IOT Determinations dated 27 October 2022, 5 April 2023, 19 September 2023 and 7 March2024.

Submissions on behalf of the GMC

25. On behalf of the GMC, Ms Hill submitted that by reason of his admissions and by reason of the findings of the Tribunal under Rule 17(2)(e), Dr Dunne's fitness to practise is impaired by reason of conviction, misconduct, XXX.

26. Ms Hill referred the Tribunal to the case of *Roylance v GMC (No 2) [2000] A.C.311* and *Nandi v GMC [2004] EWHC 2317 (Admin).*

27. Ms Hill also referred the Tribunal to Good Medical Practice (GMP), in particular paragraphs 1, 16(g), 28, 35, 36, 37, 65, 68, 73 and 75(b).

28. Ms Hill submitted that, given the admissions by Dr Dunne to allegations 3 to 6 and given the numerous breaches of GMP identified, a finding of misconduct can properly be made in his case. Dr Dunne's misconduct was wide-ranging, repeated and it involved dishonesty. She submitted that Dr Dunne's conduct amounts to serious professional misconduct and such conduct undermines public confidence in the profession and brings the profession into disrepute. Ms Hill stated that Dr Dunne accepts that his conduct in relation to allegations 3 to 6 amounts to misconduct and the Tribunal is invited to make that finding.

29. Ms Hill stated that Dr Dunne has no relevant fitness to practise history. He is currently subject to an interim order of conditions which expires on 26 July 2024.

30. Ms Hill referred the Tribunal to the approach set out by Dame Janet Smith in the Fifth Shipman Report, as referred to in the case of *CHRE v NMC & Grant (2011) EWHC 927.*

31. Ms Hill submitted that Dr Dunne's fitness to practise was impaired with reference to each of the paragraphs of the Allegation and when taken together. She submitted that the allegations are such that a finding of impairment is necessary in Dr Dunne's case and appropriate to promote and maintain public confidence in the profession, and to promote and maintain proper professional standards.

32. Ms Hill stated that Dr Dunne's misconduct in relation to paragraphs 4 to 6 of the Allegation involved multiple breaches of GMP, over a prolonged period from January 2020 to August 2021. His misappropriation of XXX, XXX was not an isolated incident but rather, it was conduct that was repeated time and time again. Ms Hill stated that it was conduct that was calculated and manipulative and involved him lying to his colleagues, exploiting opportunities to take medicines from the pharmacy box before they were put away by nursing staff and taking keys to the drugs cupboard which was in breach of the Trust's medicines policy.

33. Ms Hill submitted that Dr Dunne's conduct in relation to the misappropriation of XXX was deliberately deceptive and dishonest. Dr Dunne breached the trust that Nurse A had in him and compromised her position by deliberately lying to her about the reason for needing

XXX. Ms Hill stated that by failing to return the XXX, Dr Dunne further compromised her position. She submitted that Dr Dunne's actions demonstrated a lack of respect for Nurse A and can properly be characterised as a failure to work collaboratively with her.

34. Ms Hill submitted that Dr Dunne's actions in misappropriating medications were planned and intentional; they were in breach not only of the Trust's policies and values but also in breach of GMP. Ms Hill stated that Dr Dunne put his own needs above those of his patients and colleagues. He failed to act with integrity, and within the law. Furthermore, even after precautionary measures were put in place in June 2021, Dr Dunne's misappropriation of medications continued.

35. Ms Hill submitted that the ramifications of Dr Dunne's actions went beyond simply impacting directly on him and his practise, they had a tangible and negative impact on those around him. Ms Hill stated that Dr Dunne's actions created an environment of anxiety and distress among colleagues and caused them to question themselves and to be wary and suspicious of each other.

36. Ms Hill reminded the Tribunal of Ms F's witness statement in which she states that when she approached Dr Dunne in relation to the XXX, she brought to his attention the fact that *"emotions were heightened in the workplace"* and that the *"behaviours of staff were being monitored".* Ms Hill submitted that exchange presented an opportunity for Dr Dunne to be honest and tell the truth both in relation to taking medication and in relation to XXX. However, he declined to take that opportunity. Ms Hill stated that as well as the direct impact his conduct had on his professional colleagues, Dr Dunne's actions also placed an unnecessary and weighty burden on the resources of the Trust who were under an obligation to investigate matters.

37. Ms Hill stated that following the fact-finding exercise in November 2020, Dr Dunne agreed that he would not in future ask for the keys to the drugs cupboard in any areas unless it was the drawer which is linked to stress echocardiography. Ms Hill stated that Dr Dunne breached the terms of that agreement. Furthermore, Dr Dunne also failed to engage in any meaningful way with the fact-finding exercise that took place in August 2021 and in doing so, he missed another opportunity to be truthful XXX. He allowed his colleagues and their practises to remain under scrutiny.

38. Ms Hill submitted that Dr Dunne's conduct in repeatedly stealing medication and in knowingly providing false information to Nurse A represents a serious departure from GMP and has brought the profession into disrepute. She submitted that the dishonesty was wilful

and persistent and, at a high level of seriousness. Ms Hill stated that the GMC accepts that not all acts of dishonesty are equally serious but that the dishonesty in this case represents far more than a harmless, spur of the moment lie that was quickly corrected. Ms Hill stated that Dr Dunne's conduct in relation to paragraphs 4 to 6 of the Allegation fell far short of the standards of conduct to be expected of a doctor and amount to serious misconduct.

39. XXX

40. Ms Hill stated that Dr Dunne had been unable to obtain a cardiology post since his dismissal from the Trust. He states that he is thinking about becoming a GP instead and had been shadowing a GP since September 2023 on a voluntary basis. He has also undertaken and passed the GP entry training exam and is currently considering applying for the GP training programme.

41. XXX

42. Ms Hill stated that the Tribunal may form the view that Dr Dunne has a good degree of insight and that he has worked hard to remedy the deficiencies demonstrated by the facts of this case. However, Ms Hill reminded the Tribunal that dishonesty was inherently more difficult to remedy than other forms of misconduct.

43. Ms Hill stated that it was clear that Dr Dunne had reflected long and hard on his actions and behaviour. He accepted that he was intentionally dishonest; had committed theft from his employer; and was wholeheartedly and deeply embarrassed and ashamed of his behaviour. XXX.

44. XXX

45. Ms Hill submitted that, taking the evidence in the case as a whole, including the content of Dr Dunne's witness statement and the documents submitted by him, that the likelihood of repetition may be relatively low, XXX.

46. Ms Hill stated that having considered all of the evidence, the Tribunal may form the view that the consequences of Dr Dunne's actions had been a salutary lesson for him and that, XXX, he was far less likely to repeat his misconduct. Notwithstanding that, Ms Hill submitted that a reasonable and well-informed member of the public would expect a finding of impairment to be made, both to mark the seriousness of the misconduct and to uphold proper standards across the medical profession.

47. Ms Hill stated that this was a case where the seriousness of the allegations is such that the insight and remediation demonstrated by Dr Dunne to his immense credit can only take him so far. This was particularly so in circumstances where his dishonesty was wide-ranging and sustained and where it damaged the relationship of trust and respect among colleagues. Ms Hill submitted that public confidence would be undermined if a finding of impairment were not made in his case.

48. Ms Hill submitted that all three limbs of the overarching objective were engaged in this case and that a finding of impairment is necessary to promote and maintain the health, safety and wellbeing of the public; promote and maintain public confidence in the medical profession; and promote and maintain proper professional standards and conduct for members of the medical profession.

Submissions on behalf of Dr Dunne

49. On behalf of Dr Dunne, Mr Stott stated that he would not be producing any evidence at this stage. Mr Stott said that it was accepted that the relevant factors were present, such as to lead to a finding of misconduct and impairment at this stage. He stated that Dr Dunne takes full responsibility for his actions.

## The Tribunal's Approach

50. The Tribunal accepted the Legally Qualified Chair's advice. The decision on impairment is a matter for the Tribunal's judgment alone. The Tribunal has given careful consideration to all of the evidence that has been adduced during the course of these proceedings.

51. The Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct and whether any misconduct found was serious and then, whether the finding of serious misconduct led to a finding of impairment.

52. The Tribunal must determine whether Dr Dunne's fitness to practise is impaired today, taking into account his conduct at the time of the events in question and any relevant factors since then such as whether he has shown insight, whether the matters are remediable and have been remedied and the likelihood and risk of repetition.

53. In considering impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the Fifth Shipman Report, as adopted by the High Court in *CHRE v NMC & Grant*

*(2011) EWHC 927*. In particular, the Tribunal considered whether its findings of fact showed that Dr Dunne's fitness to practise is impaired in the sense that 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.'*

54. The Tribunal has borne in mind all three limbs of the statutory overarching objective: to protect and promote the health, safety and wellbeing 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 the medical profession.

## The Tribunal's Determination on Impairment

55. The Tribunal first considered whether the facts found proved by Dr Dunne's admissions to Paragraphs 3 to 6 amounted to misconduct.

Paragraph 3

56. The obligation upon a member of the medical profession at the material time to disclose to the GMC that he has been charged with a criminal office is to be found at paragraph 75(b) of GMP, as follows:

*'You must tell us without delay if, anywhere in the world:*
*a …*
*b you have been charged with or found guilty of a criminal offence*
*c …'*

57. Although Dr Dunne initially stated that he did not know he was under such an obligation, he admitted the charge. The Tribunal considered that that admission was correct. Dr Dunne is bound to follow GMP and ought at all times to have been aware of its principles. The obligation found in paragraph 75 would be well known to members of the profession. A

failure to disclose to the GMC that a doctor had been charged could wrest from the GMC the opportunity to regulate the profession and the doctor concerned.

58. Dr Dunne was charged on 14 August 2022 with the offence in question, namely upon 13 August 2022 driving a motor vehicle on a public road after consuming alcohol in excess of the prescribed limit. Dr Dunne had driven the motor vehicle on the day after he was informed that he had been dismissed from his position at the Trust. The prescribed limit was 35 microgrammes of alcohol in 100 millilitres of breath. He was recorded as having 115 microgrammes of alcohol in 100 millilitres of breath.

59. That is a serious matter. The Tribunal finds that Dr Dunne's failure in this regard amounts to misconduct which is serious.

Paragraphs 4(a) and (b)

60. The charges concern the misappropriation of tablets of XXX from 2 units at the Trust where he was employed as a Consultant Cardiologist, namely the Coronary Care Unit ("the CCU") and Ward D2. The medication was stored in the medication cupboard in the shared treatment room between Wards C1 and the CCU. Ward D2 was an emergency medical ward. He had obtained a code for the treatment room from nurses. He either took the medication from boxes which had not yet been put away in the cupboard, or he opened the cupboard with keys which were left lying on the side where the Ward Managers would sit. He would have picked them up when no one was looking.

61. The charges span the period "between January 2020 to August 2021", although they refer but are not limited to specific occasions, namely on or around 3 June, 6 August and 7 August 2021. Dr Dunne's admissions in respect of these charges indicate that the misappropriations occurred at other times, although it is not clear that they embrace any period before November 2020 or between November 2020 and June 2021. The November 2020 date has significance because on 12 November 2020, he had a formal meeting with Dr D, his Responsible Officer, in relation to allegations that he had inappropriately taken drugs from a drugs cupboard. In that meeting he acknowledged that he had taken medications from the drug cupboard and had asked nurses for the keys to the cupboard to get medications, but he said it was for patients. There was no formal investigation in respect of Dr Dunne's behaviour, but he agreed that he would not in the future ask for keys for the drugs cupboard unless it was the drawer linked to stress echocardiology. XXX. A letter was sent to him setting out his agreement on 19 November 2020.

62. The charges set out that Dr Dunne took the medication for his own personal use. His explanation is that at the time of the events (in 2021) XXX. The misappropriation was over a long period of time.

63. The medication taken by Dr Dunne was obtained by the Trust for the use of patients. Although XXX was rarely prescribed in the CCU and Ward D2, it should have been available if prescribed. When tablets of XXX were not there, it was necessary for further supplies to be ordered. The fact that tablets went missing caused distress among members of staff during the period that the Trust was seeking an explanation for this happening. They felt that they were under suspicion. They were concerned if they happened to go to the drugs cupboard by themselves since that might draw suspicion that they were responsible for any missing medication. In fact, Dr Dunne had no business administering medication to patients in any event. That was the role of the nursing staff.

64. XXX

65. XXX

66. Although Dr Dunne may not have been in breach of the letter of the November 2020 agreement – in that he does not appear to have asked Nurses for the keys to the drugs cupboard, his behaviour in misappropriating the medication is really worse; it certainly broke the spirit of the agreement.

67. The Tribunal accepts that Dr Dunne failed to comply with the paragraphs of GMP to which GMC counsel alluded in opening the case. These were serious breaches of his obligations as a doctor, especially a senior doctor who had been afforded an opportunity to put his habit of misappropriating medication behind him. The Tribunal finds that his conduct in paragraphs 4(a) and (b) of the Allegation amounts to misconduct which is serious.

Paragraphs 4(c), 5 and 6

68. These paragraphs of the Allegation concern Dr Dunne's misappropriation of XXX on 17 August 2021. XXX is a fast-acting short-term treatment for XXX. On this occasion, Dr Dunne obtained the XXX by telling Nurse A a lie as to the purpose for which he needed the medication. His approach to Nurse A was from a position of considerable seniority. It caused Nurse A anxiety both as to whether she should have enabled him to remove the XXX and as to whether he would or had returned it. She felt obliged to tell her shift leader. He was acting in direct breach of the November 2020 agreement. The XXX was for his own personal use.

69. The Tribunal repeat the analysis which it provided for its finding that charges 4(a) and (b) amounted to misconduct. In this case, there was the added ingredient of overt and direct dishonesty as he told Nurse A that it was for a patient, when he knew that not to be the case.

70. The Tribunal noted also that when Dr Dunne did not return the tub of XXX to the CCU / C1 medicine cupboard, he stored it in the echo clinic treatment room. This was reflected in paragraph 4(c)(vi) of the Allegation. The medicine cupboard in the CCU / C1 was not a controlled drugs cupboard; XXX was not at the material time a controlled drug. The Tribunal did not consider that by storing in XXX in the echo clinic treatment room rather than in a controlled drug cabinet, Dr Dunne was guilty of misconduct which was serious.

71. The Tribunal finds that Dr Dunne's actions as set out in paragraph 4(c), save for paragraph 4(c)(vi), which included his dishonest approach to Nurse A amounted to misconduct which was serious.

Impairment

72. Having determined that the facts found proved amounted to serious misconduct, the Tribunal went on to consider whether, as a result of this, Dr Dunne's fitness to practise is currently impaired by reason of his conviction, misconduct XXX.

Conviction

73. The Tribunal considered that Dr Dunne's conviction will have damaged public confidence in the medical profession. The public expects members of the profession to acquit themselves responsibly. Dr Dunne had over three times the prescribed limit of alcohol in his breath when he was driving. Driving a motor vehicle in those circumstances would have been dangerous. Dr Dunne would not have been protecting, promoting and maintaining the health, safety and well-being of the public. The sentence which was imposed on Dr Dunne which included a driving disqualification of 26 months reflected the seriousness of his behaviour which led to his conviction.

74. The Tribunal did consider the fact that Dr Dunne may well have been disturbed by his dismissal by the Trust on the preceding day, and that he may have found solace in consuming a significant amount of alcohol. However, it did not consider that was a context which constituted any diminution of the gravity of his behaviour. The Tribunal considered that Dr

Dunne breached proper professional standards and conduct by behaving in the way which led to his conviction.

75. The Tribunal therefore found that Dr Dunne's fitness to practise is impaired by reason of his conviction on all three grounds of the overarching objective.

Misconduct – paragraph 3

76. The Tribunal found that Dr Dunne's fitness to practise is impaired by reason of this misconduct. As mentioned, Dr Dunne's failure to disclose to the GMC that he had been charged, contrary to paragraph 75(b) of GMP, meant that there was a risk that the GMC would not be able to regulate the profession. Had that happened, public confidence in the medical profession could have been impugned. In the view of the Tribunal, a finding of impairment is needed to preserve the reputation of the profession and to declare and maintain proper professional standards.

Misconduct – paragraphs 4 to 6

77. The Tribunal acknowledged that Dr Dunne has sought to address the root cause of his behaviour in misappropriating medication. XXX. Dr Dunne has expressed remorse and shame for his actions. XXX.

78. The Tribunal consider that a finding of impairment of fitness to practise is warranted on all three grounds of the overarching objective to protect public safety and in the wider public interest.

XXX

79. XXX

80. XXX

81. XXX

82. XXX

83. XXX

84. XXX

85. XXX

## Determination on Sanction - 10/05/2024

86. Having determined that Dr Dunne's fitness to practise is impaired by reason of conviction, misconduct XXX, 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

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

88. Dr Dunne gave oral evidence at this stage of the hearing.

## Submissions

89. On behalf of the GMC, Ms Hill submitted that the appropriate sanction in this case was one of suspension.

90. Ms Hill reminded the Tribunal of the overarching objective and referred the Tribunal to the paragraphs in the Sanctions Guidance (SG) that she submitted were relevant for its consideration.

91. In regard to mitigating factors, Ms Hill stated that Dr Dunne has admitted all of the allegations, including the fact that his conduct in allegations 3 to 6 amounted to misconduct and further that his fitness to practise was impaired XXX.

92. In terms of insight, Ms Hill referred the Tribunal to paragraphs 45 and 46 of the SG. She stated that Dr Dunne accepted that he was intentionally dishonest and that by committing theft from his employer he abused his power and the trust that his colleagues had placed in him. He also acknowledged the distress his behaviour caused and although he was not aware of any significant impact on patients, he acknowledged that '*the potential for harm was most certainly evident and completely unacceptable*'.

93. In terms of insight, Ms Hill referred the Tribunal to paragraphs 31 and 32 of the SG. XXX.

94. Ms Hill detailed the lapse of time since the incidents occurred:

- Allegations 1 & 2: conviction on 2 September 2022, sentence on 30 September 2022. Approximately 20 months has lapsed since the conviction. The Community Order imposed on Dr Dunne was terminated on 29 September 2023.
- Allegation 3: Dr Dunne notified the GMC on 11 October 2022 of his conviction. Approximately 19 months has lapsed since then.
- Allegations 4-6: conduct between January 2020 and August 2021. Approximately 45 months has lapsed.
- XXX

95. In regard to aggravating factors, Ms Hill referred the Tribunal to paragraphs 50 to 60, 160 and 162 (a) and (d) of the SG. In terms of the circumstances surrounding the events, she submitted that the following subparagraphs of paragraph XXX are engaged, and are likely to lead the Tribunal to consider taking more serious action:

*(b) a failure to work collaboratively with colleagues …*

*XXX*

96. Ms Hill stated that Dr Dunne had been convicted of the offence of driving with excess alcohol. In addition, his misconduct in relation to allegations 4 to 6 were criminal in nature and amounted to theft from his employer. Both of which were serious matters.

97. Ms Hill submitted that there are no exceptional circumstances in this case which would justify taking no action against Dr Dunne and that a sanction was necessary to protect the public and public confidence in the medical profession. She also reminded the Tribunal of its finding that there have been significant departures from GMP in this case.

98. Ms Hill submitted that undertakings would not be appropriate in this case, nor would they be sufficient either to protect the public or maintain confidence in the profession. She stated that whilst XXX features in the allegations, there was also serious misconduct which was criminal in nature and a conviction for driving with excess alcohol which led to the imposition of a Community Order and a lengthy disqualification from driving.

99. Ms Hill submitted that conditions are not appropriate in Dr Dunne's case because of the nature and type of allegations proved, which include a conviction, serious misconduct and repeated dishonesty. Furthermore, she submitted that it would not be possible to formulate a set of conditions that would be appropriate, proportionate, workable, and measurable. In addition, conditions would not reflect the gravity of Dr Dunne's conduct and would be insufficient to maintain public confidence in the profession and to promote proper standards of conduct.

100. In regard to suspension, Ms Hill stated that paragraphs 91, 92, 93 and 97 (a), (c), (e), (f) and (g) of the SG were relevant considerations in this case. She submitted that Dr Dunne's actions, which were admitted, constitute behaviour unbefitting of a registered doctor.

101. In terms of the length of suspension, Ms Hill stated that the Tribunal's primary consideration should be public protection and the seriousness of the findings. She said that aggravating factors that are relevant to the length of suspension depend on the nature of the case but may include, in this case: the extent to which Dr Dunne departed from the principles of GMP; the extent to which his actions risked patient safety or public confidence; and the extent of his significant or sustained acts of dishonesty or misconduct.

102. Ms Hill stated that the GMC accepted that Dr Dunne had developed insight into his behaviour, and that he has evidenced and continues to evidence remediation. Furthermore and overall, although the allegations in this case are serious, it was not considered that his behaviour was fundamentally incompatible with being a doctor, such that his name should be erased from the register.

103. On behalf of Dr Dunne, Mr Stott stated that this was a very sad case. He said that all XXX categories of impairment of Dr Dunne's fitness to practice were serious and that his submissions were not an attempt to belittle, minimise or undermine Dr Dunne's acceptance of that seriousness.

104. Mr Stott invited the Tribunal to assess what sanction was appropriate to impose by looking at what Dr Dunne's position is 'now' considering what the Tribunal knows about him, not only the positive material it has heard but also the misconduct. Mr Stott said that it was fundamentally a forward-looking process because the sanction the Tribunal imposes must address risk to the public from Dr Dunne and also the public interest and confidence in the profession itself.

105. In terms of history, Mr Stott stated that Dr Dunne XXX and had difficulties while a student at university. However, there was a clear indication that he was someone who was highly intelligent, did very well at school and in his exams XXX. He graduated from the University of Manchester in 2003 and joined the medical rotation and reached the level of cardiology specialist Registrar in 2008. He then became a locum consultant cardiologist and a consultant cardiologist in July 2015. Mr Stott stated that, although XXX, he was somebody who was intelligent, hardworking, driven and fundamentally clinically speaking, a good doctor and promoted accordingly.

106. XXX

107. Mr Stott stated that in around 2020 there were another two significant events. First, the COVID 19 pandemic which was difficult and stressful for everyone but particularly difficult and stressful for those in the medical profession working in hospitals. Secondly, also in 2020, Dr Dunne's personal relationship became particularly difficult and ended. Mr Stott said that this was highly relevant to the time frame because the charges related to 2021; from late 2020 to 2021 XXX. This then led to the theft of the XXX and XXX as set out in the dates in June to August 2021. There were then meetings with the Trust and Dr Dunne was excluded on the 27 September 2021.

108. Mr Stott referred to a further interview which Dr Dunne had with the Trust on 11 October 2021; XXX. Mr Stott stated that although Dr Dunne had ceased misappropriating XXX and XXX at that time following his exclusion from the hospital, XXX.

109. XXX

110. XXX

111. Mr Stott stated that the Tribunal could XXX. He stated that this could satisfy the Tribunal that there has been a timely development of insight. In terms of progression, Dr Dunne continued to be excluded; he was interviewed on 8 March 2022, XXX. There were no concerns about his ability to interact. It is submitted that, at that point, he took a brave and difficult step by admitting to lying. Mr Stott stated that Dr Dunne now fully accepts the nature of his conduct, even where he does not have any XXX, and the dishonesty.

112. Mr Stott stated that things then progressed further, the investigation was completed in March by Mr E. There was a further interview with the Trust in June; then on 1 August 2022 XXX.

113. Mr Stott stated that the last hearing with the Trust was held on 8 August 2022. Dr Dunne accepted that he had made some bad decisions and had stolen drugs. This led to his dismissal on the 12 August, the day before the drink driving that led to the conviction. Mr Stott stated that Dr Dunne's position at that time, XXX and he did not know at the time that he needed to inform the GMC of his conviction without delay for which he apologises. Mr Stott reminded the Tribunal of the court proceedings and outcome.

114. XXX

115. Mr Stott stated that on 11 October the GMC made contact with Dr Dunne after Dr D's complaint had been made in September. Mr Stott said that at this point Dr Dunne disclosed his conviction straight away. Mr Stott said therefore the failure to disclose conviction and charge was limited to that period.

116. Mr Stott reminded the Tribunal of the first interim order Tribunal on the 27 October 2022. He stated that his submissions at that point were that he had agreed with GMC Counsel there was a need for an interim order; the reasons why the order was necessary and proportionate; and the length of order suggested. Mr Stott stated that XXX.

117. Mr Stott stated that it was not until the 22 November when the real step change happened. XXX.

118. Mr Stott referred the Tribunal to paragraphs 25 and 42 of the SG, he said that Dr Dunne had admitted the facts and had insight into his serious professional misconduct and to his current impairment. Mr Stott said that Dr Dunne's apology was absolutely clear and undeniable from his witness statement. XXX.

119. XXX

120. XXX

121. Mr Stott stated that Dr Dunne had no previous history with his regulator. He reminded the Tribunal of the very positive voluntary work done by Dr Dunne at the GP surgery and referred the Tribunal to Dr K's report.

122. Mr Stott referred the Tribunal to paragraphs 120 and 128 of the SG dealing with dishonesty. Mr Stott urged care when considering whether Dr Dunne's dishonesty may be

said to be persistent and covered up. Mr Stott stated that Dr Dunne recognised that his misappropriation of drugs, although not charged as dishonesty, engaged the same issues such as lack of probity. He said that the period of time concerned was relatively limited and certainly did not last for years but some months in terms of taking the drugs. Mr Stott acknowledged that Dr Dunne's actions were deliberately deceptive and dishonest, and their effects went beyond him and his practice. They had had a tangible and negative impact on those around him and created an environment of anxiety and distress.

123. However, Mr Stott stated the dishonesty was opportunistic and improvised on the spur of the moment. XXX. Mr Stott reminded the Tribunal of Dr Dunne's oral evidence in that regard, particularly concerning Nurse A.

124. Mr Stott referred the Tribunal to paragraph 160 of the SG and acknowledged that action needed to be taken.

125. Mr Stott stated that there was no evidence of his actions having had an impact on his clinical performance.

126. Mr Stott urged the Tribunal to take an holistic view of all the impairing matters and there should be no double counting in respect of the conviction.

127. Mr Stott reminded the Tribunal that Dr Dunne had completed his sentence on the 29 September 2023. It was completed entirely successfully, and he also completed the appropriate drink driving course, resulting in a reduction to the length of his driving disqualification.

128. Mr Stott stated that outside of this issue, Dr Dunne was well liked and respected by his colleagues and friends and reminded the Tribunal of Mr E's report. Mr Stott said that there were also many other statements that attested to how respected Dr Dunne was. Mr Stott said that those characteristics chime with what Dr Dunne had said about engaging in general practice. He responded to the opportunity to have direct communication, contact and rapport with patients in primary care, which was not present in secondary care.

129. Mr Stott reminded the Tribunal of Dr Dunne's evidence that he wished to go into GP work.

130. Mr Stott referred the Tribunal to paragraphs 45 and 46 of the SG. Mr Stott reminded the Tribunal of Dr Dunne's apologies in his witness statement to his colleagues, his previous

employer, the GMC and the public for letting them down. He also took full responsibility for his actions.

131. Mr Stott stated that although there was not an immediate development of insight and not immediate remediation, Dr Dunne says himself that if there had been it was unlikely that he would be before the Tribunal. Mr Stott reiterated that there had been a timely development of insight and an acceptance of what he had done.

132. Mr Stott referred the Tribunal to paragraph 51 of the SG. Mr Stott stated that it could be considered that Dr Dunne had been brutally honest and has taken the appropriate steps XXX.

133. Mr Stott stated that in May 2023, Dr Dunne undertook a CPD course in intuitive thinking skills. He had been in communication with his probation officer between February and July 2023 XXX.

134. Mr Stott reminded the Tribunal that Dr Dunne has had to deal with XXX, that he coped with it, XXX and was able to support other members of his family at that difficult time. In addition, he has undertaken probity courses.

135. In respect of sanction Mt Stott acknowledged that action needed to be taken on Dr Dunne's registration. He reminded the Tribunal that it should only impose the least restrictive sanction to meet the risks which were identified in this case and it should exercise the principle of proportionality.

136. Mr Stott contended that an order of conditional registration would be a sufficient sanction and would send out an appropriate signal to the public and the profession on top of the findings which it had made in this case in relation to misconduct and impairment. He referred to the relevant paragraphs of the SG on conditions and submitted that this was a case in which they should be imposed. XXX. He submitted that conditions were likely to be workable because Dr Dunne had insight, a period of retraining is likely to be the most appropriate way to address the findings, the Tribunal can be satisfied that Dr Dunne will comply with them and he has the potential to respond positively. He submitted that all the sub-paragraphs of paragraph 84 of the SG applied, and that the Tribunal can be confident that conditions were appropriate as they have worked successfully since the interim order was imposed in October 2023. Further, he argued that conditions would meet the issues in the case XXX. He contended that conditions were not only in the interests of Dr Dunne himself but in the public interest as they would enable an able doctor to return to practise.

137. XXX. Mr Stott said that a period of suspension or erasure would not be proportionate.

138. In answer to Tribunal questions, Mr Stott informed the Tribunal that Dr Dunne intended to apply for GPST training in June with a view to commencing the training in August. He was not seeking any reduction in the period of training. He had to postpone the training for a year in order to seek necessary experience which he had now done.

## The Tribunal's Determination on Sanction

139. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal alone, exercising its own judgement. In reaching its decision, the Tribunal has taken GMP and the SG into account and has, at all times, borne in mind the overarching objective.

140. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Dunne's interests with the public interest.

141. The Tribunal now addresses the task of determining the sanction it should impose in this case, if any, in respect of its finding that Dr Dunne's fitness to practise is impaired. That impairment was in respect of his conviction and sentence in September 2022, his misconduct in failing to notify the GMC that he had been charged with a criminal offence, his misconduct between January 2020 and August 2021 XXX.

142. The Tribunal reached the view that Dr Dunne's case can only be properly understood by reference to XXX. XXX. This manifested itself in conduct which was of serious public concern. He misappropriated XXX from the Bolton Hospital for his own use, something which amounted to theft. He lied to Nurse A in order to obtain a tub of XXX. He drove a motor vehicle on a public road having consumed three times the prescribed limit of alcohol and was convicted for so doing. He did not tell the GMC that he has been charged in respect of that offence. However, the Tribunal considered that all these matters were consequent upon XXX.

143. It is worth the Tribunal recording that Dr Dunne had been a consultant cardiologist from July 2015. Judging from the observations of his colleagues in the hospital, he had been a well-respected member of the team. The independent Investigation Report regarding him dated 31 March 2022 records the following:

'[Dr Dunne] *has been described by many nursing colleagues as a kind, compassionate and competent doctor. Some said he would always treat patients with great care and respect and that, in an emergency, they would want him by their side and that he would always respond.'*

144. XXX

145. XXX

146. XXX

147. Dr Dunne informed the Tribunal that he was very unhappy at work in the Hospital at this time. He had a meeting with Dr D his Responsible Officer in October 2021. Dr D was most concerned by his behaviour. He stated:

*'XXX'*

148. This was after Dr Dunne had been excluded from the Hospital. Upon that exclusion, XXX.

149. Broadly Dr Dunne's lack of cooperation continued until late 2022 although there were occasions when he did reveal truths about what he was doing and was happening to him, or he attempted to do so. When he met with Mr E, the Trust Investigator, on 8 March 2022, he admitted that persons in his position lie. XXX. And then, after his contract was terminated by the Trust on 12 August 2022 and he was convicted and sentenced for drink driving in September 2022, he disclosed that matter to the GMC on 11 October 2022. Dr Dunne explained his position in his witness statement:

*'At the time of my conviction and sentencing, I was XXX, and I had very recently been found guilty of misconduct and dismissed from my employment. XXX.'*

150. XXX

151. XXX

152. Dr Dunne in his oral evidence recognised that XXX. He has shown significant insight and he has, XXX. The GMC accept this. His avowed intention is to retrain as a general

practitioner where he can use his skills with people and care for them holistically. He has set his face against returning to cardiology.

153. As mentioned, the Tribunal's approach to this case has been to understand his misconduct in the context of XXX. It acknowledged that, had he XXX, the matters which warranted his referral to the GMC may very well not have occurred. It accepted that he was XXX, and that it took a jolt for him to recognise the need for him to extricate himself from the predicament in which he found himself, XXX. The Tribunal considered that he has achieved a great deal in that regard.

Aggravating factors

154. The Tribunal considered whether there were aggravating factors in the case. It does not repeat the serious misconduct which has been found, but seeks to assess whether there were aggravating factors about it. The GMC relies upon the following:

- Dr Dunne's failure to work collaboratively with colleagues;
    - XXX

155. The Tribunal accept that these matters are present in this case. It observes, however, so far as both matters are concerned, that XXX did not enable him to recognise that he was compromising colleagues, nor how it was leading him to serious misconduct. He considered that by taking XXX. In fact, there is no allegation that his own care for patients was compromised by his misconduct.

156. Mr Stott for Dr Dunne also addressed the Tribunal on aggravating factors. He urged upon it that the dishonesty was over months rather than years, ceasing in August 2021 and it was not 'covered up'. In addition, he argued that it was opportunistic and improvised. Dr Dunne found opportunities to misappropriate XXX and he never intended to involve Nurse A in his taking of XXX. So far as the conviction is concerned, he reminded the Tribunal that there was no custodial sentence and that Dr Dunne completed the sentence satisfactorily by 29 September 2023 and reduced the disqualification to nineteen and a half months, which disqualification is now just past. The Tribunal accepted these points.

Mitigating factors

157. So far as mitigating factors are concerned, both the GMC and Mr Stott drew to the attention of the Tribunal the efforts which Dr Dunne has made and the success which he has

achieved in addressing XXX. He has shown insight and remorse. XXX. He has apologised for his behaviour. XXX.

158. Mr Stott contends that all subparagraphs of paragraph 46 of the Sanctions Guidance are engaged:

> *'A doctor is likely to have insight if they:*
>
> *a accept they should have behaved differently (showing empathy and understanding)*
>
> *b take timely steps to remediate and apologise at an early stage before the hearing*
>
> *c demonstrate the timely development of insight during the investigation and hearing.'*

159. The GMC accepts Mr Stott's argument, although it observes, pursuant to paragraph 24 of the SG, that:

> *'The tribunal is less able to take mitigating factors into account when the concern is about patient safety, or is of a more serious nature, than if the concern is about public confidence in the profession.'*

160. The Tribunal recognised that limitation, but observed that the impairment findings concerning patient and public safety specifically relate to the drink driving offence and to the dishonesty and risk associated with the misappropriation of medication. The drink driving and the misappropriation of medication were XXX.

161. The Tribunal recognise that there is a need to act proportionately in this case. It certainly accepts paragraph XXX of the Sanctions Guidance which reads:

> *'XXX'*

<u>The Sanction</u>

162. Taking no action is not an option for the Tribunal.

163. The GMC submitted that a period of suspension was appropriate in this case, on account of the fact that Dr Dunne's conduct was unbefitting of a doctor, and although serious, it fell short of being fundamentally incompatible with continued registration. Mr

Stott submitted that this was a case in which conditions would be appropriate, reminding the Tribunal that interim conditions were imposed on 27 October 2022.

164. The Tribunal must first consider conditions.

165. The Sanctions Guidance includes the following paragraphs about conditions:

*'In which cases can conditions be imposed?*

*XXX*

*82 Conditions are likely to be workable where:*

*a the doctor has insight*
*b a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings*
*c the tribunal is satisfied the doctor will comply with them*
*d the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.*

*83 …*

*84 Depending on the type of case (eg health, language, performance or misconduct), some or all of the following factors being present (this list is not exhaustive) would indicate that conditions may be appropriate:*

*a no evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage*
*b identifiable areas of their practice are in need of assessment or retraining*
*c willing to respond positively to retraining, with evidence that they are committed to keeping their knowledge and skills up to date throughout their working life, improving the quality of their work and promoting patient safety (Good medical practice, paragraphs 1-5 (Being Competent) and 11-13 (Maintaining, developing and improving your performance)*
*d willing to be open and honest with patients if things go wrong (Good medical practice, paragraphs 45-46)*
*XXX*

166. The Tribunal accepts that all of these paragraphs apply in this case. The interim order of conditions has been in position for some 18 months. Since September 2023, Dr Dunne has been observing the GP practice of Dr K in Middleton in Manchester to enable him to have appropriate experience to apply for GPST training. That period with Dr K has been successful. Dr K writes on 27 March 2024:

> *'During his time in practice, he has observed me carrying out patient consultations. He has actively participated in monthly practice meetings sharing his opinion and knowledge of secondary care where appropriate, clinical tutorials with myself and other trainees such as FY2 and ST2 Drs he's also worked closely with the Management team helping with the upcoming QOF (Quality outcome framework) deadline which has helped hm gain further insight into how long-term conditions are managed and what ongoing care looks like in Primary care and participate in practice Audits.*
> *It is my opinion that Dr Dunne has always conducted himself in a positive and professional manner and has shown respect and appreciation to all members of staff. Over the last 6 months Dr Dunne has shown he has the intelligence, drive and compassion needed to excel in the challenging yet rewarding field of general practice as his devotion to helping others is evident in his work.'*

167. Although in an observing role, Dr Dunne has shown himself capable of performing in the workplace. His intention is to apply for the training in June of this year for a course which will start in August. He will receive supervision if he is successful in enrolling on the course. He was not successful last year, hence his period of observation with Dr K. The Tribunal considered that a period of conditions is the appropriate sanction in this case, if it is not obliged to impose a more serious sanction to meet the public interest.

168. The GMC argued that conditions would not be appropriate given the nature and type of the allegations, the conviction, the serious misconduct which includes dishonesty. Ms Hill for the GMC recognised that conditions would help Dr Dunne. But she was concerned that they were not appropriate, proportionate, workable and measurable, nor reflect the gravity of the case, meet the need to uphold confidence in the profession and to promote proper conduct.

169. The Tribunal has carefully considered her arguments. It reminded itself that it has indicated that the appropriate understanding of this case is that it is about XXX. The incidents of misconduct and the conviction were occasioned on account of XXX. Conditions can be appropriate XXX. It is really common ground that Dr Dunne could not have achieved more than he has XXX. Conditions have been shown to work satisfactorily. Moreover, the GMC are

not arguing that a strike off order is appropriate here. If a period of suspension were imposed, it would only serve to delay Dr Dunne's retraining as a GP. He has XXX and has held down a period of engagement in a GP's surgery. The Tribunal consider that he is ready to embark upon retraining and that a period of suspension would really be counter-productive. It did not consider that the public would be dismayed by the imposition of a period of conditions if it knew the circumstances which pertained XXX. Further, the imposition of an order for conditions with a review would enable the MPTS to keep a watch on Dr Dunne's progress in training XXX. If an order of suspension were imposed, a reviewing Tribunal would not have an opportunity to see how Dr Dunne was faring in his new role.

170. The Tribunal therefore determined to impose an order of conditions with a review. It will be for 18 months, which period will be sufficient to enable a reviewing tribunal to receive information as to how Dr Dunne is faring.

171. The Tribunal therefore determined to impose the following conditions upon Dr Dunne's registration:

1 He must personally ensure the GMC is notified of the following information within seven calendar days of the date these conditions become effective:
- a the details of his current post, including:
  - i his job title
  - ii his job location
  - iii his responsible officer (or their nominated deputy)
- b the contact details of his employer and any contracting body, including his direct line manager
- c any organisation where he has practising privileges and/or admitting rights
- d any training programmes he is in
- e of the contact details of any locum agency or out of hours service he is registered with.

2 He must personally ensure the GMC is notified:
- a of any post he accepts, before starting it
- b that all relevant people have been notified of his conditions, in accordance with condition 9
- c if any formal disciplinary proceedings against him are started by his employer and/or contracting body, within seven calendar days of being formally notified of such proceedings

d if any of his posts, practising privileges or admitting rights have been suspended or terminated by his employer before the agreed date within seven calendar days of being notified of the termination

e if he applies for a post outside the UK

3 He must allow the GMC to exchange information with any person involved in monitoring his compliance with his conditions.

4 a He must have a workplace reporter appointed by his responsible officer (or their nominated deputy).

b He must not work until:

i his responsible officer (or their nominated deputy) has appointed his workplace reporter

ii he has personally ensured that the GMC has been notified of the name and contact details of his workplace reporter.

5 a He must get the approval of his GMC Adviser before accepting any post.

b He must keep his professional commitments under review and limit his work if his GMC Adviser tells him to.

c He must stop work immediately if his GMC Adviser tells him to and must get the approval of his GMC Adviser before returning to work.

6 a He must only prescribe, administer, and have primary responsibility for drugs under arrangements which have been agreed by his GMC adviser and approved by his responsible officer (or their nominated deputy)

b He must not work until:

i his GMC adviser has agreed these arrangements

ii His responsible officer (or their nominated deputy) has approved these arrangements

iii He has personally ensured that the GMC has been notified of these arrangements.

7 He must not prescribe any drugs for himself, or anyone with whom he has a close personal relationship

8 a He must get the approval of his responsible officer (or their nominated deputy) and the GMC Adviser, before working as:

i a locum / in a fixed term contract

ii out-of-hours

iii on-call.

b He must not work until:

i his responsible officer (or their nominated deputy) and the GMC Adviser has confirmed approval

ii he has personally ensured that the GMC has been notified of the approval of his responsible officer (or their nominated deputy) and the GMC Adviser.

9 He must personally ensure the following persons are notified of the conditions listed at 1 to 8:

a his responsible officer (or their nominated deputy)

b the responsible officer of the following organisations:

i his place(s) of work, and any prospective place of work (at the time of application)

ii all his contracting bodies and any prospective contracting body (prior to entering a contract)

iii any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application)

iv any locum agency or out of hours service he is registered with.

v If any of the organisations listed at (i to iv) does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within that organisation. If he is unable to identify this person, he must contact the GMC for advice before working for that organisation.

c his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts).

172. XXX

Review

173. The Tribunal determined to direct a review of Dr Dunne's case. A review hearing will convene shortly before the end of the period of conditional registration. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Dunne to demonstrate how he has complied with the conditions imposed. It therefore may assist the reviewing Tribunal if Dr Dunne attends the review hearing and provides to it an account of the progress that he has made since this hearing.

Determination on Immediate Order - 10/05/2024

174. Having determined to impose conditions on Dr Dunne's registration for a period of 18 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Dunne's registration should be subject to an immediate order.

## Submissions

175. On behalf of the GMC, Ms Hill submitted that it was necessary for an immediate order to be imposed for the protection of the public, otherwise in the public interest and in Dr Dunne's own interest. She relied upon the determination which the Tribunal has handed down in respect of impairment and sanction and referred the Tribunal to paragraphs 172 and 173 of the SG.

176. On behalf of Dr Dunne, Mr Stott submitted that there was no objection to an immediate order being imposed.

## The Tribunal's Determination

177. In reaching its decision, the Tribunal has exercised its own judgement and has taken account of the principle of proportionality. The Tribunal has borne in mind that it may impose an immediate order where it is satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest or is in the best interests of the practitioner. It has also considered the guidance given in paragraphs 172, 173, and 178 of the SG relating to immediate orders:

> *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.*

178. The Tribunal had regard to its previous determinations and the submissions made by Ms Hill and Mr Stott.

179. The Tribunal noted that the GPST training contemplated by Dr Dunne may take place rather later than the Tribunal understood when it reached its decision in relation to sanction. Instead of the application needing to be made in June of this year, it should be made by the end of August 2024 and, if successful, the training would not start until February 2025. That means that if no immediate order is made and Dr Dunne appeals the sanction imposed he would be in a position to practise without conditions before his GP training commenced. The Tribunal did not consider that this would be in the interests of himself, nor sufficiently safeguard the public.

180. The Tribunal has balanced the interests of Dr Dunne against those of the public and determined that imposing an immediate order of conditions was necessary to protect the public and was otherwise in the public interest given its previous findings in its earlier determination.

181. This means that Dr Dunne's registration will be made subject to the immediate conditions from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

182. The interim order is hereby revoked.

183. Case concluded.