PUBLIC RECORD

Dates: 30/09/2024 - 18/10/2024

Medical Practitioner's name: Dr Raisah SAWATI

GMC reference number: 7266794

Primary medical qualification: MB ChB 2012 University of Manchester

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

Summary of outcome

Conditions, 12 months.
Review hearing directed
Immediate order imposed

Tribunal:

Legally Qualified Chair	Ms Morag Rea
Lay Tribunal Member:	Ms Karen Naya
Medical Tribunal Member:	Dr Sarah Woodford

Tribunal Clerk:	Mrs Jennifer Ireland

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Martin Forde, KC, instructed by CMS Cameron McKenna Nabarro Olswang LLP
GMC Representative:	Ms Laura Barbour, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 14/10/2024

1. This determination will be handed down in private. However, as this case concerns Dr Sawati's misconduct, a redacted version will be published at the close of the hearing.

Background

2. Dr Sawati qualified in 2012 from the University of Manchester. Prior to the events which are the subject of the hearing Dr Sawati completed her Foundation Year One between August 2012 and August 2013. She commenced her Foundation Year Two in August 2013, which she completed in August 2019. At the time of the events, Dr Sawati was practising as an Internal Medicine Trainee for Wirral University Teaching Hospital NHS Foundation Trust ('the Trust').

3. The allegation that has led to Dr Sawati's hearing can be summarised as follows: At the time of events, Dr Sawati was subject to an Interim Order of Conditions ('IOT Conditions'), placed on her by an MPTS Interim Orders Tribunal. On 11 March 2020, Dr Sawati's Interim Order was varied to include a requirement for direct supervision. She was directly supervised in her role at Arrowe Park Hospital ('the Hospital') by Professor A, where she worked from August 2019 until April 2020.

4. On 5 April 2020, Dr Sawati was informed by Professor A that, due to the Covid-19 pandemic, she would be moving to work at Clatterbridge Hospital ('Clatterbridge'), with effect from 6 April 2020. She was told that she would be supervised by Professor B while working at Clatterbridge, and that this would mean that she would only be able to work two mornings per week in line with Professor B's work schedule.

5. On 6 April 2020, Dr Sawati attended work at Clatterbridge as expected. After completing her session, she then returned to the Hospital and attended the bereavement

office ('the Office'). While in the Office, Dr Sawati is alleged to have completed a Cremation Form 4, Medical Certificate ('Cremation Form') for Patients C and D. She is also alleged to have added '*hypertension*' as a cause of death into part 1(b) of Patient C's Death Certificate.

6. On 7 April 2020, Professor A attended the Office to complete death certification paperwork in relation to several patients that he had not been able to fully complete the previous day. He noted that Dr Sawati had completed the Cremation Forms (in relation to some of those patients) the previous day. Due to potential errors and discrepancies of information in the Cremation Forms and on the death certificate of Patient C, he proceeded to reissue the paperwork himself. Dr Sawati was suspended from work on 7 April 2020, pending an investigation.

7. It is alleged that at the time of completing these forms, Dr Sawati had breached her IOT Conditions as she was not under the direct supervision of her clinical supervisor or a suitable named deputy. Further, Dr Sawati is alleged to have acted dishonestly by completing the forms as she knew that she was required to be directly supervised. Dr Sawati is also alleged to have acted dishonestly as she knew that she had been sent away from the Hospital to work at Clatterbridge, and that she was entitled to claim a fee for the work she had completed of approximately £80 per completed Cremation Form.

8. The initial concerns were raised with the GMC shortly after the incident. The matter was also reported to the Police and Dr Sawati attended an interview on 4 June 2020. It is alleged that during this interview Dr Sawati was dishonest about how she came to be in the Office on 6 April 2020 and that she had been asked to attend the Office to complete paperwork.

The Outcome of Applications Made during the Facts Stage

9. The Tribunal granted an application made on behalf of Dr Sawati, made pursuant to Rule 41 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), for the entire hearing to be held in private. The Tribunal's full decision on the application is included at Annex A.

10. The Tribunal refused Ms Barbour's application, on behalf of the GMC, made pursuant to Rule 34(1) of the Rules, to admit the witness statement of Ms E as hearsay evidence. The Tribunal's full decision on the application is included at Annex B.

The Allegation and the Doctor's Response

11. The Allegation made against Dr Sawati is as follows:

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

1. On 11 March 2020 the Interim Orders Tribunal ('IOT') imposed a condition upon your registration which stated 'she must be directly supervised in all of her posts by a clinical supervisor, as defined in Glossary for Undertakings and Conditions. Her clinical supervisor must be appointed by her responsible officer (or their nominated deputy)'. **Admitted and found proved**

2. On/around 3 April 2020 your clinical supervisor Professor A told you that you were moving from Arrowe Park Hospital ('the Hospital') to Clatterbridge Hospital ('Clatterbridge') where you would be directly supervised by Professor B. **Admitted and found proved**

3. On 6 April 2020 you were working at Clatterbridge under the clinical supervision of Professor B, when you left Clatterbridge and attended at the bereavement office of the Hospital and you:

    a. added 'hypertension' as a cause of death into part Ib of Patient C's Death Certificate; **To be determined**

    b. completed a Cremation Form 4, Medical Certificate ('Cremation Form') for Patient C; **Admitted and found proved**

    c. completed a Cremation Form for Patient D; **Admitted and found proved**

    d. ~~asked Ms E to destroy a Cremation Form which had been completed by Dr F~~. **Withdrawn**

4. On 6 April 2020 you were not working under the direct supervision of your clinical supervisor or by a suitable named deputy/deputies, under established arrangements made and overseen by the clinical supervisor in breach of your IOT conditions set out in paragraph 1 when you:

    a. amended the Death Certificate detailed in paragraph 3a; **To be determined**

b. completed the Cremation Form detailed in paragraph 3b; **Admitted and found proved**

c. completed the Cremation Form detailed in paragraph 3c. **Admitted and found proved**

5. You knew that you must be directly supervised by your clinical supervisor or by a suitable named deputy/deputies, under established arrangements made and overseen by the clinical supervisor in all of your posts following the IOT hearing which took place on 11 March 2020. **Admitted and found proved**

6. You had no reasonable cause to depart from your IOT conditions as detailed in paragraph 1 when you:

a. amended the Death Certificate detailed in paragraph 3a; **To be determined**

b. completed the Cremation Form detailed in paragraph 3b; **Admitted and found proved**

c. completed the Cremation Form detailed in paragraph 3c. **Admitted and found proved**

7. You knew that your clinical supervisor had sent you away from the Hospital and that you were expected to work at Clatterbridge on 6 April 2020. **To be determined**

8. You knew that the person completing Cremation Forms detailed in paragraphs 3b-c could be entitled to claim a fee for that work. **Admitted and found proved**

9. Your actions as described at paragraphs 3a, 4a and 6a were dishonest by reason of paragraphs 5 and 7. **To be determined**

10. Your actions as described at paragraphs 3b-c, 4b-c and 6b-c were dishonest by reason of paragraphs 5-8. **To be determined**

Police interview on 4 June 2020

11. At an interview with the Police which took place on 4 June 2020, you stated that:

a. 'I received a message that bereavement were looking for me urgently and to attend the office' or words to that effect; **Admitted and found proved**

b. 'I had a call from- I was called to bereavement that afternoon' or words to that effect; **Admitted and found proved**

c. 'Dr F pushed paperwork towards me and said "paperwork for your consultant" implying to carry on with certificates' or words to that effect; **Admitted and found proved**

d. 'Dr F put paperwork in front of me and asked me to carry on with paperwork associated with patients' or words to that effect. **Admitted and found proved**

12. You were not:

a. contacted by the bereavement office on 6 April 2020; **To be determined**

b. asked by the bereavement office to attend the bereavement office on 6 April 2020. **To be determined**

13. Dr F did not:

a. push paperwork towards you and say 'paperwork for your consultant' or words to that effect; **To be determined**

b. ask you to carry on with paperwork associated with patients or words to that effect. **To be determined**

14. Your statements to the Police on 4 June 2020 as detailed in paragraph 11 were not true. **To be determined**

15. You knew that your statements to the Police on 4 June 2020 as detailed in paragraph 11 were not true. **To be determined**

16. Your actions as described in paragraph 11a-b were dishonest by reason of paragraphs 12, 14 and 15. **To be determined**

17. Your actions as described in paragraph 11c-d were dishonest by reason of paragraphs 13-15. **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

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

The Facts to be Determined

13. In light of Dr Sawati's response to the Allegation made against her, the Tribunal is required to determine whether Dr Sawati had added *'hypertension'* as a cause of death into part 1(b) of Patient C's Death Certificate, and whether her actions as set out above were dishonest.

Witness Evidence

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

- Dr G, ST5 level trainee in intensive care medicine (now consultant), by video-link;
- Dr F, Consultant Physician in stroke and geriatric medicine, by video-link;
- Mr H, Bereavement Services Officer at the Hospital, in person;
- Professor B, Honorary Consultant Stroke Physician at Clatterbridge, by video-link;
- Professor A, Director of Medical Education at the Trust, by video-link; and
- Ms I, Bereavement Services Manager at the Hospital, by video-link.

15. The Tribunal also 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:

- Dr J, Consultant Paediatrician at the Hospital and Case Investigator for the Trust investigation.

16. Dr Sawati provided her own witness statements, dated 2 June 2023 and 14 June 2023. She also gave oral evidence at the hearing.

Documentary Evidence

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

- Patient C's death certificate (voided), dated 6 April 2020;
- Patient C's Cremation Form, dated 6 April 2020;
- Patient D's Cremation Form, dated 6 April 2020;
- Various emails between Professor B and Professor A, regarding Dr Sawati's move to Clatterbridge; and
- Transcript of Dr Sawati's Police interview, dated 4 June 2020.

The Tribunal's Approach

18. 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 Sawati does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e., whether it is more likely than not that the events occurred.

19. There is no heightened civil standard of proof where an allegation is serious in nature. The inherent probability or improbability of an event is a matter which can be taken into account when deciding if an event occurred. Where an event is inherently improbable it may take better evidence to persuade a Tribunal that it happened. However, it does not follow as a rule of law that the more serious the allegation the less likely it is to have occurred.

Dishonesty

20. Dishonesty is a state of mind which, unless admitted, can only be inferred from conduct. The Tribunal should consider the test in *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67.

(i) To ascertain (subjectively) the state of Dr Sawati's knowledge or belief as to the facts.

(ii) The reasonableness of the belief is a matter of evidence going to whether she genuinely held the belief, but it is not a requirement that the belief must be reasonable; and

(iii) To then consider whether that conduct was dishonest by the (objective) standards of ordinary decent people.

21. There is no requirement that Dr Sawati must appreciate that what she has done was, by those standards, dishonest.

Memory

22. The Tribunal was reminded of the cases of *Byrne v GMC* [2021] EWHC 2237 (Admin) per Morris J: The credibility of witnesses must take account of the unreliability of memory and should be considered and tested by reference to objective facts, in particular contemporaneous documents; and *Dutta, R (On the Application Of) v General Medical Council (GMC)* [2020] EWHC 1974 (Admin) (22 July 2020): The process of civil litigation itself subjects the memories of witnesses to powerful biases. Considerable interference with memory is introduced in civil litigation by the procedure of preparing for trial. Statements are often taken a long time after relevant events and drafted by a lawyer who is conscious of the significance for the issues in the case of what the witness does or does not say.

23. The best approach from a judge is to base factual findings on inferences drawn from documentary evidence and known or probable facts. *'This does not mean that oral testimony serves no useful purpose… But its value lies largely… in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.'*

Inferences

24. The Tribunal was taken to the important principles in *Malhar Soni v GMC* [2015] EWHC 364 admin by Ms Barbour. The Tribunal must be mindful when drawing inferences, that it has been able to safely exclude as less than probable any other possible explanations given by Dr Sawati. It should only draw an inference if it can safely exclude other possibilities.

25. The Tribunal reminded itself that it must form its own judgement about the evidence. It noted that it must decide whether to accept or reject such evidence, and where it is accepted, what weight to attach to it.

26. The Tribunal also bore in mind that it should assess and determine each paragraph and sub-paragraph of the Allegation separately. It noted that while it can draw inferences

from the evidence, it must not speculate as to any further evidence that has not come before it.

The Tribunal's Analysis of the Evidence and Findings

The impact of the Covid-19 pandemic

27. The Tribunal acknowledged that the index events took place during the early weeks of the Covid-19 pandemic and that this understandably had a significant impact on staff at the Hospital. Professor A's evidence in his written statement about the impact of Covid-19 was powerful:

> *'From January 2020 onwards, the Hospital started to deal with a significant number of patients suffering from Covid-19 …. It was very difficult for me to properly supervise Dr Sawati from January 2020 onwards as a result of the additional pressure on the Hospital as a result of Covid-19. I also had to consider the inadvertent spread of Covid-19 between infected patients, staff, and vulnerable patients.*
>
> *…*
>
> *I did a Covid-19 ward round when there were two deaths during the ward round and then five deaths during the weekend. Patients were very sick, and it was very hard to work at the Hospital during that time. Junior doctors working at the Hospital were put onto a Covid-19 rota in early April 2020.'*

28. The Tribunal also noted that the Hospital had moved to accelerated discharge of patients on 6 April 2020, as was notified to staff on the 3 April 2020. The legislation had also changed in respect of death certification. The Tribunal acknowledged that this was a rapidly changing and distressing landscape fraught with uncertainty.

Memory

29. The event which forms the basis of this allegation took place over four years ago, which impacts the accuracy of the oral evidence that was given during the hearing. Even closer to the event, those providing statements to the internal investigation and the GMC could not always recall details of conversations, for example, Professor A remembers talking to Dr F but cannot remember what they discussed. Further, he remembers being told by staff

at the Office that Dr Sawati had attended mid-afternoon on the 6 April 2020 but cannot recall by whom.

30. In the context of the unprecedented times and the stress that the Covid-19 pandemic was putting on Medical Practitioners, this is entirely understandable.

31. 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 3(a)

32. The Tribunal first took into account that it has not seen the original document, as the original was no longer available, and the counterfoils were not produced. In the absence of these documents, a meaningful assessment of the handwriting, including pen pressure, stroke direction, etc. could not be completed. There has been no report from a handwriting expert. Therefore, the Tribunal was not able to make an objective assessment of the handwriting.

33. This allegation arose out of a statement made by Professor A to the GMC on 12 March 2021, in which he states that Dr Sawati added '*hypertension*' into Patient C's death certificate. In his statement he does not explain why he thinks that she did, he does not say that it is not his handwriting and nor does he identify Dr Sawati's handwriting.

34. More detail is found in the Section 9 statement Professor A provided for the police investigation on 20 May 2020, in which he states that he was told that Dr Sawati had completed one death certificate and altered one. He does not say by whom. Further, on 9 September 2020, in his telephone interview for the internal investigation, he told Dr J that he did not write '*hypertension*' and it is not his writing. In oral evidence he maintained that position, that he had not written it.

35. Dr Sawati also denies that it is her handwriting. In cross examination, she said that she could not readily identify Professor A's handwriting and signature as medical notes were electronic. There was no evidence from Professor A as to why he had identified the writing as Dr Sawati's and in oral evidence he only went as far as to say that it was not his writing.

36. The GMC has asked the Tribunal to draw an inference that it was Dr Sawati who added the word '*hypertension*' because of the short period of time between when Professor

A says he completed the forms at the Office in the morning and mid-afternoon, when the Office staff say that Dr Sawati attended. However, the Tribunal has heard evidence that the Office was very busy - Professor A said it had been the worst weekend in his career. Ms I said it was as busy as it would be after a bank holiday weekend. The Tribunal has no evidence about the number of people who had attended the office throughout the intervening hours.

37. The Tribunal considered Dr Sawati's written and oral evidence and noted that she has been consistent throughout her evidence that she did not add '*hypertension*' to Patient C's death certificate. The Tribunal noted that Dr Sawati admitted to the Police in June 2020 that she had added '*Covid-19*' to another patient's death certificate:

> *'… I said, "What's the problem?" and then she pointed to 1(b) part of the death certificate and she said, "That's supposed to say Covid-19", so in the gesture of trying to complete the paperwork that was already on my desk I tried to be helpful, so I put "Covid-19" into 1(b)…'*

38. The Tribunal had regard to an email circulated by the Hospital on 3 April 2020, which stated that Covid-19 could be added to death certificates retrospectively as either a cause of death or a contributing factor. Further, it also considered the evidence of Professor A, who acknowledged that the death certificate to which Dr Sawati had added Covid-19 as a contributing factor, had been acceptable and was not a subject of this hearing as a result.

39. The rationale for adding '*hypertension'* could be to ensure that there was no delay in registering death, so there would be a good reason for doing so, if that was accurate. It is not safe to exclude Dr Sawati's explanation that she had not written it, in the context that she volunteered to the police that she added *'Covid-19'* to the death certificate for another of Professor A's patients. The Tribunal could not see any plausible reason for why Dr Sawati would seek to deny adding '*hypertension*' to Patient C's death certificate whilst admitting to making other additions on the same day. Further, in the absence of any evidence to objectively prove Dr Sawati had made that addition, the Tribunal was not satisfied on the balance of probabilities that Dr Sawati had added '*hypertension*' to Patient C's death certificate.

40. Accordingly, the Tribunal found paragraph 3(a) of the Allegation not proved.

<u>Paragraphs 4(a), 6(a) and 9</u>

41. As the Tribunal did not find paragraph 3(a) of the Allegation proved, paragraphs 4(a), 6(a) and 9 could not be found proved.

Paragraph 7

42. In determining this paragraph, the Tribunal considered the date on which Dr Sawati was informed that she would be moving to Clatterbridge. It noted that there are two emails sent to Professor B by Professor A in which he confirms that he told her on 5 April 2020, the first sent on 5 April 2020, in which he states '*I have spoke to Raisah today so she will join you on Stroke Rehab Unit*' and the second sent on 8 April 2020 forwarding an email to the Dean in which he stated *'I phoned her on Sunday evening to inform her of the new arrangement for her supervision.*' The Tribunal therefore accepted that Dr Sawati was informed of her move on 5 April 2020.

43. On all of the evidence, Dr Sawati did work at Clatterbridge as expected on 6 April 2020. The Tribunal noted that Dr Sawati had informed Professor B that she was going back to the Hospital at the end of the session and that Professor B had not objected or told her that she could not go. It had regard to Professor B's written statement, in which she stated:

> *'Dr Sawati then told me she would be going to Arrowe Park. She did not explain what she would be doing there. As her half day with us had finished, I had no objections to her going to Arrowe Park.'*

44. The Tribunal had regard to the words '*sent away*' in the Allegation. It considered that this wording implied that Dr Sawati was prohibited from entering the Hospital. However, it noted that Dr Sawati, at the time, lived in accommodation at the Hospital; was expected to revise for exams using the library at the Hospital; and to engage with health and wellbeing services at the Hospital. There is no suggestion in any of the evidence before the Tribunal that Dr Sawati was prohibited from entering the Hospital.

45. Further, there is no evidence that suggests that Dr Sawati was '*sent away'* from the Hospital. There is no evidence of the discussion that took place between Dr Sawati and Professor A. There is also no evidence in the emails between Professor A and Professor B prior to her move that suggests she was being '*sent away'.* Dr G, who was also moved to Clatterbridge at the same time because of a vulnerability, told the Tribunal that there was no suggestion that he was being '*sent away'* and could not return to the Hospital.

46. Accordingly, the Tribunal found paragraph 7 of the Allegation not proved.

Paragraph 10

47. The Tribunal has not been provided with the GMC Glossary for Undertakings and Conditions definition of '*direct supervision'* as it applied to Interim Orders in March 2020, when Dr Sawati's IOT Conditions were imposed. Therefore, it could not assess exactly what was required of Dr Sawati.

48. The Tribunal noted that Dr Sawati accepted that she had breached her IOT Conditions but maintained that this was unintentional. The Tribunal took into account the evidence before it, which was clear that she was immediately regretful when challenged by Professor A the next day. The Tribunal could see no attempt to cover up or conceal her actions either in the moment or when challenged.

49. While Professor Barratt understood that his role was to ensure that Dr Sawati was adequately supervised and to provide extra supervision and support, the circumstances of the Covid-19 pandemic meant that the formal arrangements for this were less practicable with the increase in red zone wards and his duty to keep staff and patients safe. Professor A did appear to speak to others about Dr Sawati's supervision and what that meant, including to Dr G and Professor B. Dr G, in his written statement to the GMC, stated that:

> *'Professor [A] … spoke with me privately and disclosed that Dr Sawati had had problems during her training (although did not disclose the details of these problems to me) and that I would need to pay close attention to her work as she might need further support. They told me that she was subject to special measures from the GMC at that time.'*

50. The Tribunal noted that Dr Sawati and Dr G both agree that she had told him that she was going to the Office when she had finished her shift. The Tribunal noted that, despite his knowledge, Dr G did not advise her that she should not go to the Office.

51. Dr Sawati's understanding of what direct supervision meant is the same as set out in Professor A's statement in respect of the internal supervision:

> *'Dr Sawati was advised that she must be directly supervised in her practice, this meant that any activity that involved patient contact, such as consultations, examinations*

and procedures must be supervised in person at all times. It also meant that all other aspects of Dr Sawati's work had to be subject to oversight and approval. This could either be by me as her clinical supervisor or by a suitable named deputy under the same established arrangements made and overseen by me.'

52. The Tribunal is unable to safely exclude the explanation that Dr Sawati believed the cremation forms that she completed would be reviewed by Professor A. The forms were in fact still in the Office when he attended the following day.

53. The Tribunal took into account Dr Sawati's written statement, dated 2 June 2023, in which she stated:

'I had expressly told the staff in the Bereavement Office that they needed to ensure that Professor [A] checked all of the paperwork that I had worked on before it was approved'

54. The Tribunal also noted that she had said similar in her interview with the Police in June 2020. It was clear to the Tribunal that someone had held the forms and raised them to Professor A, although no reason was given for this, possibly due to the passage of time. The Tribunal, on balance, was satisfied that Dr Sawati had asked for the forms to be shown to Professor A, and that this was why the Office staff had told him that she had attended the Office when he contacted them on 7 April 2020.

55. Dr Sawati has been consistent throughout both the investigation and hearing process that she '*just wanted to help*'. This was a common theme throughout her written and oral evidence, as well as more contemporaneous accounts such as during the Trust investigation and the Police interview in June 2020. The Tribunal was satisfied that Dr Sawati's state of mind at the time had been to help in any way she could.

56. Further, it is clear to the Tribunal that Professor A had misunderstood the new legislation at the time he contacted the Office, and that this added to his concerns when he was told Dr Sawati had completed the forms.

57. On all accounts, Dr Sawati had been permitted to complete administrative paperwork, and this included tasks such as MRI requests and discharge paperwork. In her oral evidence, Dr Sawati told the Tribunal that she believed that completion of Cremation Forms would

require Professor A's oversight and approval. She had not discussed whether she was permitted to complete Cremation Forms with Professor A prior to 6 April 2020, and stated that she '*wished they had'.*

58. Without clear evidence to the contrary, the Tribunal did not see that there was a financial motivation in this case. Whilst it accepted that there was an associated fee, there was no guarantee that Dr Sawati would receive that money, as there was no guarantee that any of the patients would be cremated.

59. The Tribunal was satisfied that there was a lack of clear expectations set for Dr Sawati, given the lack of a proper meeting and discussion prior to her move to Clatterbridge. In all of the circumstances, the Tribunal was satisfied that whilst Dr Sawati had breached her IOT Conditions, she had not done so intentionally.

60. After considering all of the evidence, the Tribunal could not see a dishonest motive in the manner alleged but could see the lack of understanding and an error of judgement on Dr Sawati's part.

61. Accordingly, the Tribunal found paragraph 10 of the Allegation not proved.

<u>Paragraph 12</u>

62. The Tribunal had regard to the evidence given by Ms I and Mr H. Both agreed in the oral and written evidence that it was the standard practice in the Office to call the ward of the deceased or '*bleep*' the doctor when paperwork was outstanding. They also agreed that it was unusual for a junior doctor to present themselves unless they knew that a patient had died.

63. The Tribunal noted that Dr Sawati was not working over the weekend when Patients C and D had died, and that there was therefore no reason that she would have known that there was paperwork outstanding.

64. Dr Sawati has been consistent in her evidence that she was called to the Office. It noted that from her June 2020 interview with the Police, which is the most contemporaneous account of the events from any of those present, she has maintained that she was contacted:

'I received a message that Bereavement were looking for me urgently and to attend the Bereavement Office.'

65. The Tribunal could not be certain that Dr Sawati was not contacted. Of the two witnesses called by the GMC who worked in the Office, only one was present on the day. Furthermore, the Tribunal noted that the position of Ms I is that no one had contacted Dr Sawati *'directly'* while acknowledging that the common practice was to call the ward. The Tribunal was therefore satisfied that both positions could be true simultaneously, that Dr Sawati was not contacted '*directly*' but also that she received a message.

66. The Tribunal was not satisfied on the balance of probabilities that Dr Sawati had not been contacted by the Office. It was not satisfied that the GMC had proved that she was not contacted.

67. Accordingly, the Tribunal found paragraph 12(a) and (b) of the Allegation not proved.

Paragraph 13

68. The Tribunal considered the evidence before it from both Dr Sawati and Dr F, as well as others who worked in the Office.

69. Ms I told the Tribunal that death certificates were detached from the book and kept in a tray or basket on her desk, and that it would be '*really unusual'* to leave them in the book. It was also noted by the Tribunal that Dr Sawati would have needed the certificates to complete the Cremation Forms.

70. The Tribunal therefore accepted that someone in the Office had given Dr Sawati paperwork on that day in order for her to complete the Cremation Forms. It was not clear exactly who had done this. In the most contemporaneous account of events, which was the Police interview in June 2020, Dr Sawati had first said:

'There was a number of paperwork around Professor [A]'s patients that needed to be completed and since the Bereavement Office staff knew that I'm Professor [A]'s understudy and another consultant who was also present there, Dr [F], also knew that I was Prof's trainee they directed me towards some death certificates and cremation forms that needed to be completed for Prof's patients.'

71. It was only later in that same interview that Dr Sawati had changed her answer from a vague '*they*', which included Dr F, to being sure that it was Dr F who had done it.

72. The Tribunal had regard to Dr F's oral evidence, in which he accepted that he had limited recall of the events. However, he was clear in his evidence that he would not hand over paperwork to a junior doctor on behalf of another consultant, and he would not complete paperwork on behalf of another consultant. The Tribunal accepted that this was not his practice and that it was therefore unlikely that he would have done so on this occasion.

73. When considering the evidence before it, the Tribunal accepted that Dr F had not pushed paperwork towards Dr Sawati, nor did he instruct her to complete it.

74. Accordingly, the Tribunal found paragraph 13(a) and (b) of the Allegation proved.

Paragraph 14

75. Having found paragraphs 12(a) and (b) not proved, the Tribunal only considered this paragraph as it related to paragraphs 11(c) and (d).

76. The Tribunal has already found that someone in the Office had handed Dr Sawati some paperwork and accepted that this person was not Dr F. This therefore made Dr Sawati's statements untrue.

77. Accordingly, the Tribunal found paragraph 14 of the allegation as it related to paragraphs 11(c) and (d) proved.

Paragraph 15

78. Having found paragraphs 12(a) and (b) not proved, the Tribunal only considered this paragraph as it related to paragraphs 11(c) and (d).

79. The Tribunal has found that Dr F was not the person who handed Dr Sawati the paperwork in the office, and that this statement was therefore untrue. It therefore needed to assess what her state of mind was when she gave these answers.

80. The Tribunal noted that earlier in the interview with the Police, Dr Sawati had said that '*they*', meaning the Office staff, had given her paperwork to do.

81. It was only later in the interview, and after her supervision requirement had been raised, the breach of which is not a criminal offence, that Dr Sawati embellished her answer from a vague '*they*', which included Dr F, to being confident that it was Dr F who had told her:

> *'I have a vague memory of a row of death certificates that were possibly completed by Professor [A] which were next to Dr [F] at the time and Dr [F] pushed that towards me and said, you know, "This is the paperwork for your consultant" and implying to, you know, carry on or get on with the paperwork associated with those death certificates.'*

82. Professor B, in her oral evidence, said that a consultant being present on the ward could amount to supervision, depending on the case and circumstances. Professor A in his oral evidence told the Tribunal that *'oversight was checking … also there were other trusted clinical staff to make sure that things were being done and to the right standard.'*

83. Dr Sawati, in her written statement dated 2 June 2023, stated:

> *'…I was also reassured by the oversight and approval that was seemingly being provided by: first, the staff in the Bereavement Office (I knew that the staff were knowledgeable in this area, dealing with such forms on a daily basis; that they would often offer advice to doctors completing the forms; and I believed that they would flag any forms that had not been completed correctly); and, secondly, by Dr [F] (who, as set out above, I had assumed would be aware of my supervision requirements). However, I entirely accept that the Bereavement Office staff were not (and would not have qualified as) 'suitable named deputies' for the purposes of the condition of direct supervision; and also that, whilst I thought Dr [F] was probably aware of the requirement for direct supervision, I did not understand him to be a 'named deputy' as I had not been told that he was.'*

84. The Tribunal did not accept that Dr F was acting in this capacity while completing work in the Office; and although Dr Sawati believed that completing Cremation Forms was an administrative task, the Tribunal felt that her explanation of Dr F presence was an exaggeration.

85. Whilst it could be argued that Dr Sawati had changed her answers to present herself in a better light, the Tribunal was not satisfied that this is what happened in this case. The Tribunal noted that Dr Sawati in her oral evidence admitted that she *'was afraid [she] would end up in prison'*. It was very clear to the Tribunal that Dr Sawati was in a very stressful situation and that this had created a real sense of fear and panic, which may have caused her to misremember exactly what had happened. This interview also took place almost two months after the index events. When assessing the evidence in its totality, the Tribunal could not be certain that Dr Sawati knew that her answers were untrue.

86. The Tribunal noted that Professor A had misunderstood the legislative change and the change to death certification and cremation form requirements. This is clear from his statement and his action of going to the mortuary to check if Dr Sawati had attended. This error in understanding, evidenced in Professor A's escalation of the issue to the Dean, in turn precipitated the report to the Police and the summary of the regulations provided to them, which was out of date. Whilst the Tribunal could appreciate that there were significant pressures on Professor A at the time, given the impact of the Covid-19 pandemic, it could not ignore how this misunderstanding had triggered some of these allegations.

87. Accordingly, the Tribunal found paragraph 15 of the Allegation not proved.

Paragraph 16

88. Having found paragraphs 12(a) and (b) not proved, the Tribunal did not consider dishonesty in relation to those matters, and found paragraph 16 of the Allegation not proved.

Paragraph 17

89. The Tribunal considered that Dr Sawati had exaggerated the role that Dr F had played, out of a genuine sense of panic and pressure at the police station and had not intentionally been untrue in her answers.

90. The Tribunal recognised Dr Sawati's perception of the situation in the Office had been consistent, and took account of that perception on her state of mind and recall. She stated in her interview with the Police:

> *'I just wanted to be as helpful as possible and given the pressure all the staff were under and, you know, the pandemonium of the atmosphere in the office, I just tried to*

be as helpful as possible and I thought I was doing the right thing. Unfortunately, you know, I've been caught up in the situation and I am very regretful.'

91. The Tribunal therefore could not find that Dr Sawati had acted dishonestly.

92. Accordingly, the Tribunal found paragraph 17 of the Allegation not proved.

The Tribunal's Overall Determination on the Facts

93. The Tribunal has determined the facts as follows:

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

1. On 11 March 2020 the Interim Orders Tribunal ('IOT') imposed a condition upon your registration which stated 'she must be directly supervised in all of her posts by a clinical supervisor, as defined in Glossary for Undertakings and Conditions. Her clinical supervisor must be appointed by her responsible officer (or their nominated deputy)'. **Admitted and found proved**

2. On/around 3 April 2020 your clinical supervisor Professor A told you that you were moving from Arrowe Park Hospital ('the Hospital') to Clatterbridge Hospital ('Clatterbridge') where you would be directly supervised by Professor B. **Admitted and found proved**

3. On 6 April 2020 you were working at Clatterbridge under the clinical supervision of Professor B, when you left Clatterbridge and attended at the bereavement office of the Hospital and you:

   a. added 'hypertension' as a cause of death into part Ib of Patient C's Death Certificate; **Not proved**

   b. completed a Cremation Form 4, Medical Certificate ('Cremation Form') for Patient C; **Admitted and found proved**

   c. completed a Cremation Form for Patient D; **Admitted and found proved**

   d. ~~asked Ms E to destroy a Cremation Form which had been completed by Dr F.~~ **Withdrawn**

4. On 6 April 2020 you were not working under the direct supervision of your clinical supervisor or by a suitable named deputy/deputies, under established arrangements made and overseen by the clinical supervisor in breach of your IOT conditions set out in paragraph 1 when you:

   a. amended the Death Certificate detailed in paragraph 3a; **Not proved**

   b. completed the Cremation Form detailed in paragraph 3b; **Admitted and found proved**

   c. completed the Cremation Form detailed in paragraph 3c. **Admitted and found proved**

5. You knew that you must be directly supervised by your clinical supervisor or by a suitable named deputy/deputies, under established arrangements made and overseen by the clinical supervisor in all of your posts following the IOT hearing which took place on 11 March 2020. **Admitted and found proved**

6. You had no reasonable cause to depart from your IOT conditions as detailed in paragraph 1 when you:

   a. amended the Death Certificate detailed in paragraph 3a; **Not proved**

   b. completed the Cremation Form detailed in paragraph 3b; **Admitted and found proved**

   c. completed the Cremation Form detailed in paragraph 3c. **Admitted and found proved**

7. You knew that your clinical supervisor had sent you away from the Hospital and that you were expected to work at Clatterbridge on 6 April 2020. **Not proved**

8. You knew that the person completing Cremation Forms detailed in paragraphs 3b-c could be entitled to claim a fee for that work. **Admitted and found proved**

9. Your actions as described at paragraphs 3a, 4a and 6a were dishonest by reason of paragraphs 5 and 7. **Not proved**

10. Your actions as described at paragraphs 3b-c, 4b-c and 6b-c were dishonest by reason of paragraphs 5-8. **Not proved.**

Police interview on 4 June 2020

11. At an interview with the Police which took place on 4 June 2020, you stated that:

    a. 'I received a message that bereavement were looking for me urgently and to attend the office' or words to that effect; **Admitted and found proved**

    b. 'I had a call from- I was called to bereavement that afternoon' or words to that effect; **Admitted and found proved**

    c. 'Dr F pushed paperwork towards me and said "paperwork for your consultant" implying to carry on with certificates' or words to that effect; **Admitted and found proved**

    d. 'Dr F put paperwork in front of me and asked me to carry on with paperwork associated with patients' or words to that effect. **Admitted and found proved**

12. You were not:

    a. contacted by the bereavement office on 6 April 2020; **Not proved**

    b. asked by the bereavement office to attend the bereavement office on 6 April 2020. **Not proved**

13. Dr F did not:

    a. push paperwork towards you and say 'paperwork for your consultant' or words to that effect; **Determined and found proved**

    b. ask you to carry on with paperwork associated with patients or words to that effect. **Determined and found**

14. Your statements to the Police on 4 June 2020 as detailed in paragraph 11 were not true. **Not proved in relation to 11(a) and (b). Determined and found proved in relation to 11(c) and (d).**

15. You knew that your statements to the Police on 4 June 2020 as detailed in paragraph 11 were not true. **Not proved**

16. Your actions as described in paragraph 11a-b were dishonest by reason of paragraphs 12, 14 and 15. **Not proved**

17. Your actions as described in paragraph 11c-d were dishonest by reason of paragraphs 13-15. **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 - 16/10/2024

94. 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 Sawati's fitness to practise is impaired by reason of misconduct.

The Evidence

95. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence as follows.

96. The Tribunal received, in support of Dr Sawati, 13 testimonials from colleagues and employers, all of which it has read.

97. The Tribunal also received further documentary evidence which included but was not limited to:

- An extensive log of Continual Professional Development ('CPD') completed by Dr Sawati between April 2020 and July 2024;
- A further reading log completed between April 2020 and August 2024; and
- A bundle of 30 pages of testimonials.

Submissions

98. On behalf of the GMC, Ms Barbour submitted Dr Sawati's actions amounted to serious misconduct and that her fitness to practise is currently impaired. Throughout her submissions, Ms Barbour referred the Tribunal to the relevant authorities on determining misconduct and impairment. She referred to paragraphs of Good Medical Practice (2013) ('GMP'), in particular paragraphs 1, 14 and 65.

99. Ms Barbour submitted that the misconduct in this case was plainly in breach of one of the fundamental tenets of the medical profession, namely, to abide by any requirements imposed by the regulator. She submitted that the public must be able to have confidence in the regulatory regime or there can be no trust in the medical profession. Ms Barbour submitted that the Interim Order was imposed on grounds of both public protection and public interest, and that this was later reviewed to impose direct supervision to address the risk to patients and the public interest. She submitted that the breach of the IOT Conditions must be regarded appropriately seriously.

100. In terms of Dr Sawati's actions during her interview with Police, Ms Barbour submitted that there has been no finding of dishonesty in relation to Dr Sawati's actions, but there has been a finding that the statements she made to the Police regarding Dr F were untrue. Ms Barbour submitted that Dr Sawati then repeated that account to Dr J during the Trust investigation. She submitted that members of the public are entitled to expect that, when being interviewed in respect of their work, a registered doctor would give accurate answers, rather than answers that were untrue. She stated that the Tribunal's findings that her explanation was an '*exaggeration*' was incompatible with the requirement for a registered doctor to be trustworthy and reliable in their accounts of events.

101. Ms Barbour submitted that, taken all together, the admitted and proven facts in this case demonstrate that Dr Sawati was in breach of GMP as well as fundamental tenets of the profession. She submitted that there has been serious professional misconduct in this case.

102. Turning to impairment, Ms Barbour submitted that the Tribunal has received a bundle of CPD and testimonials which it must consider. However, she submitted that the Tribunal must also reflect carefully on what is missing. She submitted that embarrassment and '*mere words*' are insufficient to demonstrate insight and that there remains '*a glaring gap'*. She submitted that Dr Sawati has not reflected on the reality that the things that she said in her police station interview which were not true could have had a '*seismic effect'*, particularly the impact that this could have had on Dr F.

103. Ms Barbour stated that doctors do very often have to give accounts of what has happened following incidents, such as patient deaths or as part of investigations. She submitted that accuracy and truthfulness in investigations was important to protect patient safety first and foremost, and to maintain proper standards. She submitted that it was *'vital'* that when a registered doctor gives an account that it can be relied upon, not one that is inaccurate due to panic.

104. Ms Barbour reminded the Tribunal that it must be satisfied that there has been proper insight and remediation, and that without proper insight there can be no remediation. She directed the Tribunal to the CPD presented by Dr Sawati, which plainly shows a commitment to the profession. She submitted that she has sought support from various sources and has sought to make good use of her time. However, she submitted that there is insufficient evidence before this Tribunal to demonstrate that Dr Sawati has done enough to make sure that this never happens again. She stated that there was a clear lack of targeted reflection on the specific issues. Ms Barbour submitted that the nature of the misconduct in this case is such that a finding of current impairment is required in order to maintain public confidence in the profession.

105. On behalf of Dr Sawati, Mr Forde submitted that the misconduct alleged is not sufficiently serious for a finding of misconduct. He asserted that before a finding on a specific allegation is announced, it is difficult to tailor a specific reflection, and that Dr Sawati should not be criticized in a vacuum. He reminded the Tribunal that it must decide impairment on the facts proved and extraneous matters should not affect this, for example XXX and what an unrestricted return to practice might mean.

106. Mr Forde drew the Tribunal's attention to Dr Sawati's CPD record, and the testimonials produced on behalf of Dr Sawati. He highlighted the observership roles she had undertaken and the extensive CPD. He emphasised her CPD work on Probity and Ethics undertaken in June 2023 and how this assisted to remediate her deficiencies. He reminded the Tribunal that there are no patient safety issues in this case and that as had been referred to in the Tribunal's determination on the facts, these allegations were escalated to the police because of a misunderstanding of the new Covid-19 legislative regime by Professor A. He reiterated that although Dr Sawati had admitted the allegations of breaching her IOT Conditions, the forms she had completed were indeed retained in the Office so that Professor A could check them.

107. Mr Forde asserted that there was a limited risk of repetition because the police interview had been a chastening experience.

108. Mr Forde emphasised that the context to the breach of conditions was important, the system not having been defined as no regular meetings with Dr Sawati's supervisor took place and he drew on the explanation of Professor B where she said that supervision would develop from close to lighter touch, and these different approaches had meant that the position was not absolutely clear to Dr Sawati about who her supervisor was at a specific time or what that supervision entailed in respect of non-clinical work. He further submitted that there had been no proper handover, and that Professor B was not a delegated deputy and had not been provided with either the internal conditions or the revised IOT conditions from 11 March 2020. He highlighted the fact that her induction meeting did not include tasks which required approval or oversight.

109. Mr Forde submitted that this context affected the seriousness of the falling short in respect of trustworthiness and the breach of conditions.

110. Mr Forde asserted that the exaggeration or embellishing in respect of Dr Sawati's explanation to the police was not a serious falling short of the standards. It was more a failure in recognition and that she was trying to be helpful. He said that she did not persist in a lie in the internal investigation but rather that is how memory works, solidifying an impression.

111. Mr Forde emphasised Dr Sawati's realistic approach to proceedings and her early acceptance of some of the allegations should go to her benefit.

112. Mr Forde suggested that one way of assessing seriousness was to consider the guidance for imposing a warning where impairment is not found and the test which includes a falling below the standards that warrants a formal response and a significant departure or significant cause for concern.

113. Mr Forde confirmed that he was not pleading that there was not a regulation prohibiting the breach of a restriction placed on a doctor by their regulator, but that the focus for the Tribunal should be the risk of repetition which he said was non-existent to minuscule. To assist the Tribunal in assessing that he took the Tribunal to specific testimonials. He relied on these to demonstrate that Dr Sawati had reflected on her behaviour and how to address the problems which gave rise to these allegations.

Summarising, he asserted that her conduct fell below the serious threshold, that there was clear evidence of remorse, and she had demonstrated appropriate reflection.

114. Mr Forde repeated that there was no actual risk to patients and submitted that there was no suggestion that this behaviour could bring the profession into disrepute. He submitted that Dr Sawati was deeply regretful, and this was evidenced in her comments to those she had observed and been mentored by. He concluded by submitting that two to three hours of a misguided attempt to help which finds itself before the GMC having been seen through the prism of Professor A cannot amount to impairment.

The Relevant Legal Principles

115. 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 judgement alone.

116. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct, and that the misconduct was serious ('serious misconduct'), and then whether the finding of serious misconduct could lead to a finding of impairment.

117. The Tribunal must determine whether Dr Sawati's fitness to practise is impaired today, taking into account her 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.

118. The Tribunal was reminded that whilst there is no statutory definition of impairment the guidance provided by Dame Janet Smith in the *Fifth Shipman report* as adopted by the *High Court in CHRE v NMC and Paula Grant* [2011] EWHC 927 (Admin) ('Grant') would be of assistance in its consideration of impairment. In particular the Tribunal should consider whether its finding of facts showed that Dr Sawati's fitness to practise is impaired in the sense that she:

> *'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 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; and/or

d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

119. The Tribunal were advised that the purpose of fitness to practise hearings is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. Consequently, the test of current impairment is a forward looking one.

120. 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

Misconduct

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

Breach of IOT Conditions

122. The Tribunal first considered misconduct in relation to Dr Sawati's admitted breach of her IOT Conditions.

123. The Tribunal noted that Dr Sawati had her Interim Order varied on 11 March 2020, to include a requirement for direct supervision. It therefore was satisfied that Dr Sawati was aware of the need to be directly supervised.

124. The Tribunal accepted that Dr Sawati had *'just wanted to help'* and that this motivated her actions. However, the Tribunal considered that this had the opposite effect as it was not helpful to patient safety and public confidence. Dr Sawati ignored the restrictions placed on her to meet an assessed risk, so that she could meet her personal need to be

helpful. Further, it had a direct impact on Office staff and Professor A, as work she completed had to then be redone to be sure there were no inaccuracies.

125. The Tribunal took into account that the Office staff and Dr F were not aware of her IOT Conditions, and they could not have been reasonably expected to have known about them. It was Dr Sawati's responsibility to ensure she had contacted either Professor A or the Office and clarified whether she was able to complete the Cremation Forms without direct supervision. In the Tribunal's view, while the breach was not intentional, there were steps Dr Sawati could and should have taken to avoid a breach.

126. The Tribunal had regard to paragraphs 1, 14, 65, 66 and 68 of GMP, which provide:

> *'1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law*
>
> *...*
>
> *14 You must recognise and work within the limits of your competence.*
>
> *...*
>
> *65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*
>
> *66 You must always be honest about your experience, qualifications and current role*
>
> *...*
>
> *68 You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.'*

127. The Tribunal considered Dr Sawati's conduct breached these paragraphs of GMP. It was of the view that Dr Sawati's actions would be considered deplorable by fellow practitioners. The Tribunal considered that Dr Sawati had a responsibility to ensure that she was fully complying with her IOT Conditions at all times. While it accepted that there was a lack of clarity about specific expectations and instructions, against a background of a particularly stressful situation, it was nonetheless Dr Sawati's duty to abide by the restrictions imposed by her regulator, and where she was unclear about expectations, to verify the position.

128. The Tribunal concluded that Dr Sawati's breach of her IOT Conditions breached a fundamental tenet of the profession and fell seriously short of the standards reasonably expected of a doctor and therefore amounted to misconduct which was serious.

Interview with Police

129. The Tribunal assessed the allegations found in respect of untruthful statements told to the police about the interactions with Dr F in the Office on 6 April 2020. The Tribunal had found that whilst the precise terms of her supervision may not have been made explicit, Dr Sawati exaggerated and embellished the contact with Dr F under the panic of a police interview.

130. The Tribunal has acknowledged in the facts that the police investigation was precipitated by a misunderstanding about the then, current regulations in a rapidly changing landscape due to Covid-19. Whilst this panic was an explanation for her state of mind at the time she told the untrue statements, they were nevertheless untrue, and Dr Sawati had not considered the consequences of her actions on Dr F.

131. The Tribunal have not found dishonesty in respect of Dr Sawati but accept that they can nevertheless find that she has been untrustworthy. Dr F was her professional colleague, and the professional standards set out in GMP, particularly paragraph 68, require that a doctor be trustworthy in all their communication with colleagues and to make reasonable checks to make sure any information given is accurate. Working collaboratively requires that a doctor must be aware of how their behaviour may influence others within and outside the team. The effect of those untrue statements to the police caused Dr F to be bound up in an internal investigation (with its associated time cost and financial cost) during the highly stressful circumstances of a global pandemic which was causing immense pressure on the NHS. This undoubtedly created an extra burden on Dr F and may have caused friction in his professional relationships with senior colleagues such as Professor A.

132. The Tribunal found these untrue statements to have fallen seriously short of the standards and that this would be considered deplorable by other practitioners. The Tribunal therefore determined that this constituted serious misconduct.

Impairment by reason of misconduct

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

134. The Tribunal considered whether Dr Sawati's misconduct was capable of being remediated, has been remediated, and whether it was likely to be repeated. In so doing, it considered whether there was evidence of her insight into her misconduct and any steps she has taken to remediate it.

135. In considering the issue of insight, the Tribunal had regard to the CPD material provided. Overall, it was impressed with the range and depth of learning that Dr Sawati has completed since the events giving rising to the facts proved in this case. Specifically, the Tribunal acknowledged that Dr Sawati had undertaken a course on Probity and Ethics in Practice on 16 April 2021. The Tribunal does not have concerns that her clinical knowledge has become out of date and noted what Mr Forde said about her intended phased and supported return to practice.

136. The Tribunal was also provided with a range of laudable character references identifying her commitment to community and promoting the health and wellbeing of others. The Tribunal does not doubt that Dr Sawati is also a kind and thoughtful doctor and noted that several testimonials highlighted her desire to be helpful. It also considered that Dr Sawati should be commended for attending the Doctors XXX meetings between 2023 and 2024.

137. The Tribunal gave less weight to the extensive book list providing details of books read on dates between 6 April 2020 and 19 August 2024 as no evidence was provided about what Dr Sawati has learned from this reading and how this has assisted with her reflection. The missing piece is the evidence of her having identified gaps in her professional conduct and what she would do differently to be able to work as a trusted colleague.

138. The Tribunal was impressed by the testimonials provided which further evidenced Dr Sawati's drive and dedication to returning to the profession she loves. What was missing from the Tribunal was any evidence of personal reflection about the circumstances that resulted in the facts found in these proceedings. Instead, the reflection that was provided, was from those writing the testimonials explaining what might be learned.

139. The Tribunal noted, in particular, the thorough and helpful testimonial provided by Dr K, whom Dr Sawati observed between 16 March 2022 and 31 May 2022. He recognised Dr Sawati's limitations and '*a number of blind spots*'. Had Dr Sawati provided evidence of his suggested exercise to score her self-reflection, this would have been of great assistance to the Tribunal. The Tribunal also had regard to comments made by Dr L, whom she observed between 27 March 2023 and 1 June 2023, that reflective practice remained '*challenging*' to Dr Sawati. Although the Tribunal is aware that the full extent of the facts found proved would not be known to Dr Sawati until that finding was made, she had admitted the allegations in respect of the breach of IOT Conditions and knew that her assertions about Dr F actions on 6 April 2020 which he refuted, were the subject of serious allegations made by the GMC for over two years before the hearing. The diary that Dr Sawati was keeping about what she was learning and how she could build trust would be invaluable to the Tribunal, but it was not provided with any of this evidence first hand.

140. While the Tribunal found that her supervision was unstructured and she had not had explicit discussions about the meaning of direct supervision, she had breached the condition. The misconduct found in respect of the lies about Dr F's actions, suggests putting the responsibility for her behaviour on someone else. This may be through a lack of judgement in a stressful situation, but the Tribunal could not be sure from the evidence provided that Dr Sawati had reflected on this and had made plans for taking responsibility of adherence to obligations imposed on her by her regulator or an awareness that the onus was on her to maintain her effective registration. It has not found evidence of her reflection or strategies to be more trustworthy in all her communication or how she intended to ensure she made reasonable checks to make sure any information she provides in the future is accurate.

141. Taking all of this into account, the Tribunal concluded that Dr Sawati's insight is limited at this stage.

142. While the Tribunal recognised Dr Sawati's determination to be an excellent doctor, it was not persuaded that there was no risk of repetition. As Dr K identifies, being a medical professional is highly pressurised and can be stressful. Without evidence of her own

structured analysis of her actions, the Tribunal cannot be sure that these breaches of professional standards would not happen again. Dr Sawati must gain insight and self-awareness so that lessons can be learned, and improvements made to her work. In order to be a good doctor, Dr Sawati must act within the limits of her competence (including any restrictions on her practise), colleagues need to be able to trust what she does and says. Further, the accuracy with which she reports, or responds to official enquiries, must be reliable.

143. In considering the test set out in *Grant*, the Tribunal concluded that limbs (b) and (c) of the test were engaged. The Tribunal considered that Dr Sawati's actions in breaching her IOT Conditions and her untrue statements to the Police brought the medical profession into disrepute and breached a fundamental tenet of the profession.

144. In considering whether Dr Sawati's fitness to practise is currently impaired, the Tribunal balanced her limited insight and the assessed risk of repetition against the overarching objective. It also considered that her breach of restrictions imposed by her regulator would damage public confidence in the profession if a finding of impairment were not made. The Tribunal was satisfied that a member of the public in full knowledge of the facts of the case would be concerned about a doctor acting in the way Dr Sawati did. The Tribunal was also of the view that given its findings of fact and serious misconduct, a finding of impairment of fitness to practise was necessary to promote and maintain proper standards of conduct for the medical profession.

145. The Tribunal has therefore determined that Dr Sawati's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 18/10/2024

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

The Evidence

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

148. The Tribunal was informed of a previous finding of dishonesty made by the MPTS in August 2021. It was provided with the decisions from that hearing. It was also provided with Dr Sawati's successful appeal against the sanction of erasure imposed in that case, and the sanction determination from the remitted hearing in July 2022.

149. The Tribunal received further evidence on behalf of Dr Sawati including some colleague feedback and a reflective statement dated 17 October 2024.

150. The Tribunal also received witness evidence from Professor M, XXX of the Centre for Remediation, Support & Training.

151. Professor M confirmed that he was willing to work with Dr Sawati to help her address the concerns identified by this Tribunal. He told the Tribunal that the programme had a structured approach, designed to work alongside any imposed conditions. The Centre would be able to assist and support Dr Sawati with attitudinal, behavioural and communication issues and address any concerns identified in the determination of the Tribunal. He confirmed that the programme had been designed with support and input from both NHS England Workforce, Training and Education, and the GMC Outreach team. He told the Tribunal about the successes of the Centre, having helped over 400 doctors in the five years since it was established.

Submissions

152. On behalf of the GMC, Ms Barbour submitted the appropriate sanction, although a matter for the Tribunal's own judgement, would be one of suspension. She referred the Tribunal to the Sanctions Guidance (2024) ('the SG') and its determinations on facts and impairment throughout her submissions.

153. Ms Barbour reminded the Tribunal that it should carry out an exercise to balance mitigating and aggravating factors. She submitted that there is something of a mixed picture, and that there is evidence that Dr Sawati understands some of the issues, but in respect of others there is a lack of insight. She stated that Dr Sawati's previous fitness to practise history should also be taken into account.

154. Ms Barbour stated that the Tribunal should take into account that Dr Sawati had been identified as a trainee requiring extra support and had been given conditions at a local level. She stated that it should also consider that all of the events unfolded during the course of the

Covid-19 pandemic. Ms Barbour submitted that the Tribunal has received detailed information about Dr Sawati's personal circumstances and the stress that she is under now. She stated that, while those circumstances had been relevant at early stages, it would be appropriate for the Tribunal to consider them.

155. Ms Barbour submitted that Dr Sawati has provided a raft of testimonials with support set out by a number of individuals, but some of those individuals have also highlighted significant issues, not least difficulty with reflective practise and blind spots. She stated that the authors of the testimonials deal with the breach of the IOT Conditions but do not specifically address the untrue things Dr Sawati said to the Police.

156. Ms Barbour stated that insight in this case can be properly assessed as *'embryonic'*. It was noted that Dr Sawati has attended courses, but there is limited material before the Tribunal about what she has learned from those courses and what, if anything, she is doing differently.

157. Turning to the SG, Ms Barbour submitted that there were no exceptional circumstances to justify the Tribunal taking no action. She reminded the Tribunal that the purpose of conditions is to help doctors remedy deficiencies in their practise, whilst protecting the public. She directed the Tribunal to the relevant paragraphs of the SG relating to conditions and stated that the Tribunal must consider whether there are identifiable areas that would benefit from retraining, or whether in fact at the underlying issue it is more serious and more fundamental than that. She submitted that conditions would not be sufficient in this case.

158. Ms Barbour submitted that the appropriate sanction in this case was one of suspension. She submitted that suspension has a deterrent effect and can be used to send out a signal to Dr Sawati, the profession, and the public about what is regarded as behaviour unbefitting a registered doctor. She submitted that an order of suspension could be of benefit to Dr Sawati, affording her the time to reflect on the deficiencies that the Tribunal has identified so that she can work hard on addressing those before beginning any future work.

159. Ms Barbour submitted that a reasonable and well-informed member of the public would be shocked if the Tribunal drew back from imposing a sanction of suspension, because in this case it is the only sanction which meets the statutory objective. She stated that it may well be the case that Dr Sawati would benefit from the programme offered by Professor M,

but first and foremost, the Tribunal must consider the overarching objective. She submitted that the Tribunal may conclude that Dr Sawati would be better able to benefit from that programme after a period of proper reflection and after the seriousness of these matters has been properly reflected by the imposition of a period of suspension.

160. On behalf of Dr Sawati, Mr Forde submitted that Dr Sawati has been working under restriction since July 2017. He stated that the Tribunal should consider how a reasonable, well-informed member of the public, knowing the whole background in this case would be able to feel that they could have confidence in a regulatory system that leaves a junior doctor in limbo for seven years, particularly where more than two years of that is down to procedural delays that were not the fault of the doctor. He submitted that the effect has been worse than an erasure as Dr Sawati has been unable to practice as it is incredibly difficult to set up a system of direct supervision. He stated that had matters been concluded in 2023 with a 12-month suspension and this was a reviewing Tribunal, Dr Sawati would already have completed that suspension and have arrived before the Tribunal having had the time to reflect and show insight.

161. Mr Forde submitted that Dr Sawati's insight is developing. He stated that this has developed over the course of the hearing, which the Tribunal can see from her reflections in the light of its decisions. He told the Tribunal that the index events took place before XXX. He asked the Tribunal to view the patterns of behaviour against the XXX, and the lack of appreciation that Dr Sawati may need some extra support and monitoring as she gains insight.

162. Mr Forde urged the Tribunal to take a compassionate approach in this case. He submitted that Dr Sawati has been out of practice for a significant period of time and has done all she can at this stage without being in the clinical setting. He stated that the issue that needs addressing is learning how to cope with the blind spots which were identified by Dr K. He asked the Tribunal to be mindful that his testimonial predates XXX.

163. Mr Forde submitted that a period of suspension at this stage would be punitive. He stated that there was nothing constructive to be gained from a suspension, but would mean Dr Sawati would become further deskilled. He stated that Professor M has explained the programme offered by the Centre for Remediation, Support & Training. He submitted that it would be more proportionate for Dr Sawati to return to restrictive practice well supported

and, in an environment where she will be monitored and gradually reintroduced into the pressures of practice.

164. Mr Forde stated that Dr Sawati has, XXX and has reflected on how that may have influenced how she interacts with others, both in terms of communication and professional relationships. He told the Tribunal that she has been XXX. He submitted that this is good evidence of early insight, which needs to be encouraged in a therapeutic setting.

165. Mr Forde submitted that the process of going through a hearing is a chastening experience, not least that this is the second occasion that Dr Sawati has found herself before her regulator. He submitted that this previous regulatory finding was also the main aggravating factor of this case.

166. Mr Forde urged the Tribunal to consider imposing an order of supportive conditions. He submitted that Dr Sawati needs to test her insight, which is developing, and her reaction to stress and stressors within the workplace. He stated that she will be able to do that with proper support which is on offer through Professor M and the Centre for Remediation, Support & Training. He submitted that he understood that the issues in this case involved a breach of IOT Conditions, but the Tribunal should be satisfied that having gone through the ordeal of this hearing, that Dr Sawati would comply with an order of conditions. He submitted that conditions are workable and can include educational medical supervisors, mentorship and regular reporting.

167. Mr Forde stated that the Tribunal can properly formulate conditions to enable Dr Sawati to try to fulfil her potential in a supportive and therapeutic working environment. He stated that an order of suspension could be counterproductive, destructive and disproportionate. He submitted however that, should the Tribunal be minded to impose a suspension, then he would urge the shortest possible period with a review, so that a future Tribunal might be able to impose the supportive conditions he has suggested.

The Relevant Legal Principles

168. The Tribunal reminded itself that the decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own independent judgment. In reaching its decision on sanction, the Tribunal had regard to the SG. It bore in mind that the purpose of sanction is not to be punitive, but to protect patients and the wider public interest, although any sanction imposed may have a punitive effect.

169. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Sawati's interests and the public interest. It had regard to the overarching objective, which includes to protect, promote, and maintain the health, safety, and wellbeing of the public, promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for members of the profession.

170. The Tribunal, when deliberating, should start at the least severe sanction available and escalate where the lesser sanction would not be proportionate in the circumstances of the case.

171. The Tribunal was taken to *Kamberova v NMC* [2016] EWHC 2955 (Admin):

> *'The Committee must take account of any interim order and its effect on the registrant in deciding whether any sanction was proportionate. This is no more than common fairness dictates.'*

The Tribunal's Determination on Sanction

172. The Tribunal first identified what it considered to be the aggravating and mitigating factors in this case.

<u>Aggravating factors</u>

173. The Tribunal accepted that Dr Sawati has not demonstrated timely insight. While it understood her personal limitations, it noted that it had not received any personal reflection until after the Tribunal's determination on impairment, and that this recent reflection was still limited. It accepted that insight is a journey but noted that her insight and reflection at this stage was not as developed as it could have been. The Tribunal considered that Dr Sawati may need additional support in order to develop both her insight and coping strategies to prevent future repetition.

174. The Tribunal also took into account that Dr Sawati has a previous finding of impairment, and that similar behaviour and attitudinal issues had been identified on that occasion.

175. The Tribunal also considered that Dr Sawati had made untruthful statements to the Police. At this point the Tribunal noted that this had become a more personal issue, as she was facing criminal allegation. This made the issues both professional and personal to her. The Tribunal also noted that those untruths could have had a serious impact on Dr F.

Mitigating

176. The Tribunal noted that, since the events, Dr Sawati has XXX.

177. The Tribunal took into account that Dr Sawati was under restrictions on 6 April 2020 as she was awaiting an MPTS hearing in respect of allegations dating back to the four years between 2014 and 2018. This hearing was scheduled to take place in May 2020. However, due to the impact of the Covid-19 pandemic and lockdown, Dr Sawati was notified in March 2020 that this hearing would be postponed. This hearing took place in August 2021 by which time she had already been reported to the GMC in respect of the current allegation and an investigation begun.

178. The Tribunal noted that as a consequence of the overlapping proceedings, Dr Sawati had been unable to work unrestricted for a period of more than seven years. Mr Forde submitted that her career had effectively been on hold since 2014. Within that period there had been a period of six months' suspension imposed in July 2022 at a remitted sanctions hearing for the previous misconduct, after a sanction of erasure imposed in August 2021 had been successfully appealed in February 2022. Dr Sawati had been under a restriction of direct supervision since 11 March 2020 which had the net effect of her having been unable to undertake salaried work since then. The Tribunal also took into account that if the current proceedings had taken place in June 2023 as first listed, and a sanction of 12 months imposed, it would have been completed by now and Dr Sawati may have been able to return to unrestricted practice.

179. The Tribunal took into account that Dr Sawati has apologised from the very outset. She immediately apologised when challenged by Professor A. She had apologised to the Tribunal in her witness statement and accepted that she should have behaved differently in respect of the breach of conditions. This was reflected in her early admission to these allegations. The Tribunal was satisfied that Dr Sawati was very regretful and remorseful for her actions. She has attempted to remediate for her actions, although there are still areas that need further addressing with additional support.

180. The Tribunal considered that Dr Sawati's insight into the impact of her exaggeration about her interaction with Dr F was developing and took into account her statement submitted accepting the findings of impairment and recognising the importance of trustworthiness. The Tribunal was of the view that this embryonic insight would not develop without tailored support from the kind of mentors who could both support and challenge Dr Sawati in a therapeutic environment, as described by Professor M in his evidence.

181. The Tribunal had regard to Dr Sawati's extensive CPD completed since April 2020 and considered that she had taken steps within the limits of her restricted practise to keep her clinical knowledge up to date.

182. The Tribunal also considered the overall positive testimonials that it has received on behalf of Dr Sawati. It noted that these testimonials were balanced and fair. At times, they were critical of Dr Sawati, in a way designed to help her to identify and address her behavioural issues. The Tribunal also considered that the testimonials were from senior colleagues and were relatively recent.

183. The Tribunal balanced these factors throughout its deliberations and went on to consider each sanction in order of ascending severity, starting with the least restrictive.

No action

184. The Tribunal first considered whether to conclude the case by taking no action. It noted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

185. The Tribunal was satisfied that there were no exceptional circumstances in Dr Sawati's case which could justify it taking no action. It determined that, given the seriousness of the misconduct and its findings in respect of impairment, taking no action would not be sufficient, proportionate or in the public interest.

Conditions

186. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Sawati's registration. It had regard to paragraphs 81 to 85 of the SG:

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

a involving the doctor's health

b involving issues around the doctor's performance

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

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

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 *When deciding whether remedial training is possible, the tribunal needs to consider any objective evidence that has been submitted. For example, assessments of the doctor's performance, health or knowledge of English, or evidence about the doctor's practice, health or knowledge of English.*

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)

e …

85 Conditions should be appropriate, proportionate, workable and measurable.'

187. The Tribunal considered both findings of impairment - the breach of IOT Conditions which was admitted, and the untruthful statements told in the police station, exaggerating the role of Dr F, which were found proved. Dr Sawati's breach of her IOT Conditions was characterised as a breach of a fundamental tenet of the profession. The exaggeration and embellishment were a breach of GMP paragraphs 1, 14, 65, 66 and 68.

188. The Tribunal had found the breach of her IOT Conditions was not dishonest and was inadvertent, and that supervision at that time had not been directive and explicit and was at a time of rapid changes for Dr Sawati. It found in respect of the untruthful statements told in the police station that these were not dishonest but were a response to stress and panic, fearing she would be sent to prison.

189. The Tribunal has been provided with a chronology of the circumstances leading up to the facts proved on 6 April 2020. From the information provided, Dr Sawati had been working under restricted practice since 2017 and had abided by the conditions for close to three years until the breach in 2020. The Tribunal considered that the breach was not egregious, and no further breaches have been identified in the four years since the events. Overall, the Tribunal was satisfied that Dr Sawati would comply with an order of conditions on her registration.

190. The Tribunal was provided with information in respect of another regulatory finding which it was entitled to take into account as an aggravating feature, but which also give important context in terms of chronology to the breaches that are the subject of these

proceedings. A Performance Assessment carried out by the GMC in November and December 2018, during which Professor A was interviewed as Dr Sawati's Clinical and Educational Supervisor, identified communication difficulties.

191. The Tribunal had also been provided with an XXX.

192. The Tribunal considered that Dr Sawati still lacks insight into her misconduct and that this is largely because she has reached the limit of what she can develop herself. However, Dr Sawati has recognised that she needs support and has sought out groups to provide this. The Tribunal had regard to the evidence of Professor M, who has offered Dr Sawati a place at the Centre for Remediation, Support & Training to commence in January 2025. This Centre offers a supported structure, and staff who can assess her and tailor the programme to Dr Sawati's specific needs. The Tribunal was reassured that the highlighted lack of insight could be appropriately addressed by Dr Sawati's engagement with this programme. The Tribunal was also reassured that the Centre had strong connections with the GMC and would commit to ensuring regulatory findings were considered and addressed within her programme.

193. The Tribunal accepted that public confidence might require that the breach of conditions resulted in a serious response but noted that the public interest could also be served by ensuring that a committed doctor, essentially at the start of her career, did not become deskilled. While conditions would not normally be suitable where there was evidence of lack of compliance, the particular circumstances of this breach, persuaded the Tribunal that the public interest would be served by reframed conditions.

194. The Tribunal also considered whether to impose the more serious sanction of suspension. The Tribunal was mindful that the purpose of sanction was not to punish Dr Sawati, and such an action would remove her from the working environment in which the Tribunal considered she needed to develop her remediation, progressing from the observerships undertaken over the last two years. The Tribunal therefore should impose the least restrictive sanction necessary on the facts of the case.

195. The Tribunal was of the view that the current circumstances made imposing an order of conditions which required Dr Sawati's attendance at the Remediation Centre for Support & Training would allow Dr Sawati to re-enter the workforce with a structured, boundaried and overall safe approach. This could provide the necessary support and assistance to deal with

the attitudinal, behavioural and communication issues that have been identified by this Tribunal and Dr Sawati's employers.

196. The Tribunal did not agree that a period of suspension was necessary to satisfy the three limbs of the overarching objective, nor was it in Dr Sawati's interest. The Tribunal was of the view that imposing a period of suspension would be a disproportionate response.

197. Accordingly, the Tribunal determined that the appropriate and proportionate sanction in this case was to impose an order of conditional registration.

Length of Order

198. Having determined to impose an order of conditional registration, the Tribunal considered the length of the order. The Tribunal determined to impose conditions for a period of 12 months as sufficient to allow Dr Sawati time to engage with the Centre for Remediation, Support & Training. This period also allows time for her regulator to sufficiently monitor her progress in addressing the behavioural issues that have been identified in this case.

199. This period should also provide sufficient time for Dr Sawati to demonstrate that she has addressed the concerns which have arisen in this case. The Tribunal considered that this period of conditional registration struck a fair balance between the wider public interest and Dr Sawati's interests.

The Conditions

200. The following conditions will be published:

1 She 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 her current post, including:

i her job title

ii her job location

iii her responsible officer (or their nominated deputy)

b the contact details of her employer and any contracting body, including her direct line manager

c any organisation where she has practising privileges and/or admitting rights

d any training programmes she is in

e of the contact details of any locum agency or out of hours service she is registered with.

2 She must personally ensure the GMC is notified:

a of any post she accepts, before starting it

b that all relevant people have been notified of her conditions, in accordance with condition 9

c if any formal disciplinary proceedings against her are started by her employer and/or contracting body, within seven calendar days of being formally notified of such proceedings

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

e if she applies for a post outside the UK

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

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

b She must not work until:

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

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

5 She must only work under the direction of the Centre for Remediation, Support & Training, in the tailored arrangements they devise that will provide necessary support.

6 a She must be directly supervised in all of her posts by a clinical supervisor, as defined in the Glossary for undertakings and conditions. Her clinical supervisor must be approved by her responsible officer (or their nominated deputy).

b She must not work until:

i her responsible officer (or their nominated deputy) has appointed her clinical supervisor and approved her supervision arrangements

ii She has personally ensured that the GMC has been notified of the name and contact details of her clinical supervisor and her supervision arrangements.

7 She must not work:

a as a locum/in a fixed term contract

b out-of-hours

c on-call.

8 She must have a mentor who is approved by her responsible officer (or their nominated deputy).

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

a her responsible officer (or their nominated deputy)

b the responsible officer of the following organisations:

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

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

iii any organisation where she 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 she is registered with.

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

c the approval lead of her regional Section 12 approval tribunal (if applicable) - or Scottish equivalent

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

201. XXX

Review

202. The Tribunal determined to direct a review of Dr Sawati'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 Sawati to demonstrate how she has developed insight and addressed her behavioural issues. It therefore may assist the reviewing Tribunal if Dr Sawati provides:

- A report from the Centre for Remediation, Support and training to include:
  - The three monthly reports provided to the GMC;
  - A summary of her job plan, her level of engagement with this, her rate of progression and achievement of meeting these agreed individual goals;
  - An opinion on her ability to return to unrestricted practice.
  - A report on her objective improvements in remediation of misconduct; including, but not limited to, observations on her attitudes, behaviour and communication within the workplace, including at times when she is under pressure. The report to comment on Dr Sawati's self-rated /subjective feedback and if any discrepancies between that observed; and
- A report from her Professional mentor Professor O on her progress including observations on her development of reflective practice, trustworthiness and working collaboratively with colleagues including insight into how her behaviour may influence others within and outside the team.

Determination on Immediate Order - 18/10/2024

203. Having determined to impose an order of conditions on Dr Sawati's registration, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether her registration should be subject to an immediate order.

Submissions

204. On behalf of the GMC, Ms Barbour submitted that the decision as to whether to impose an immediate order is one for the Tribunal. She directed the Tribunal to the relevant paragraphs of the SG and to paragraphs of the Tribunal's sanction determination. She submitted that it would not be in the public interest or Dr Sawati's interests for her to have the possibility to practice unrestricted during the appeal period. She stated that, in light of the Tribunals findings, the test for an immediate order is met.

205. On behalf of Dr Sawati, Mr Forde submitted that he did not oppose the need for an immediate order. He stated that it may in this case be in Dr Sawati's interests as an additional safeguard. He submitted that Dr Sawati has been out of practice since 2020 and would benefit from guidance, mentoring and a structure for her return to work. He stated that

there may be some advantages to the additional month to allow her to get arrangements, such as her mentoring, in place before the start of the substantive order, in order to allow her to '*hit the ground running*'. He stated that Professor M had confirmed that he could work with Dr Sawati to arrange for a responsible officer, and to assess her needs before she started the programme.

206. Mr Forde also wished to put on the record the possibility of an early review, should Dr Sawati make sufficient progress, to revisit the conditions and consider a step down from direct supervision.

The Tribunal's Determination

207. In reaching its decision, the Tribunal considered the relevant paragraphs of the SG and exercised its own independent judgement. In particular, it took account of paragraphs 172, 173 and 178, which state:

> '*172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*
>
> *173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*
>
> …
>
> *178 Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the*

> *substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.'*

208. The Tribunal determined that an immediate order was necessary to meet all limbs of the statutory overarching objective and was in the best interests of Dr Sawati. The Tribunal was satisfied that all of the evidence supported an ongoing need for supervision in this case.

209. This means that Dr Sawati'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.

210. The interim order is hereby revoked.

211. That concludes this case.

ANNEX A – 07/10/2024

Application for the hearing to be heard in private under Rule 41

212. On Day One of the hearing, Mr Forde, on behalf of Dr Sawati made an application, pursuant to Rule 41 of the General Medical Council (Fitness to Practise) Rules, as amended ('the Rules'), for the whole of the hearing to be held in private.

213. The application was made on the exceptional grounds of XXX.

Submissions

214. On behalf of Dr Sawati, Mr Forde summarised XXX..

215. Mr Forde also submitted that a public hearing potentially exposed Dr Sawati to adverse comments on social media XXX. He emphasised that this was the second listing of this hearing as the previous proceedings had been abandoned when a Tribunal member became unavailable during the hearing. He submitted that Dr Sawati was keen to progress the proceedings as it had been hanging over her for four years.

216. On behalf of the GMC, Ms Barbour submitted that the GMC were neutral on the application.

The Tribunal's decision

217. The Tribunal considered the rules and their discretion under Rule 41(2). Rule 41 of the Rules provides that hearings shall be heard in public. There is a public interest in transparency to promote confidence in the fairness of proceedings. This ensures openness and that the process is accountable. Rule 41(2) provides:

> *(2) The Committee or FTP Panel may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the particular circumstances of the case outweigh the public interest in holding the hearing in public.*

218. The Tribunal considered the particular circumstances of this case XXX. It also had regard to the fact that this was a second listing of these proceedings and the impact that social media coverage had XXX.

219. The Tribunal determined that these particular circumstances outweighed the public interest in a public hearing.

220. The Tribunal agreed to the request and ordered that the hearing be in private XXX.

221. The final record of determination will be a public document save any references to XXX. The Tribunal cannot confirm what redactions will be made.

222. Accordingly, the Tribunal granted Mr Forde's application for the hearing to be heard entirely in private.

XXX

223. XXX

ANNEX B – 07/10/2024

Application to admit a witness statement as hearsay evidence under Rule 34

224. On Day Three of the hearing, Ms Barbour, on behalf of the GMC, made an application under Rule 34(1) for the witness statement of Ms E to be admitted as hearsay evidence. She told the Tribunal that Ms E had been due to attend the hearing and give oral evidence, but, due to personal circumstances and ill health, was no longer able to.

225. Ms Barbour provided the Tribunal with a short bundle containing a telephone note of a conversation between the GMC and Ms E, and medical evidence to support the application.

Submissions

226. On behalf of the GMC, Ms Barbour submitted that the GMC had first become aware of Ms E's personal circumstances and XXX health on 1 October 2024, during a telephone call. She submitted that Ms E had expressed concerns that if she was to attend in her current state of XXX health, then she might undermine the hearing as her health would impair the evidence she was to give. She submitted that Ms E had provided medical evidence to support her reasons for non-attendance.

227. Ms Barbour submitted that Ms E had, on a previous occasion, attended the hearing centre and given oral evidence in relation to her witness statement. She stated that, due to an error, a recording was not made, and no transcripts could be obtained for that evidence.

228. Ms Barbour referred the Tribunal to relevant caselaw on the matter of hearsay evidence including *R (Bonhoeffer) v GMC* [2011] EWHC 1585 (Admin) and *Thorneycroft v NMC* [2014] EWHC 1565 (Admin). She stated that there is no suggestion that Ms E's evidence was provided in bad faith or a fabrication. She submitted that there is no personal relationship between Ms E and Dr Sawati that would motivate lying. She submitted that Ms E is the central witness in respect of some paragraphs of the Allegation and the Tribunal should look at the individual paragraphs rather than the weight of the case against Dr Sawati.

229. Ms Barbour submitted that the GMC cannot arrange for this witness to be available for cross examination and therefore the application to submit her statement by way of hearsay is strong. She submitted that it is in the interest of justice for this witness statement to be admitted into evidence. It would be contrary to the overarching objective if the Tribunal was unable to take into account Ms E's evidence by reason of her ill health when the evidence has been distilled into a written and signed witness statement prepared for these proceedings. She reminded the Tribunal that it must not accept the witness statement into evidence and then decide what weight to give to it later. She stated that the Tribunal must decide now whether it is appropriate and fair for the statement to be admitted, and then in due course, consider what weight to give.

230. On behalf of Dr Sawati, Mr Forde opposed the application. He referred to relevant caselaw in relation to hearsay evidence throughout his submissions. He reminded the Tribunal that Ms E's evidence goes to paragraph 3(d) of the Allegation, which is one of the only paragraphs which is not said to demonstrate dishonesty and the Tribunal has far more serious matters to deal with.

231. Mr Forde submitted that it was regrettable that Ms E was unable to attend, and he did not seek to suggest that the paperwork received did not demonstrate a good reason for her non-attendance. However, he submitted that this was only one part of the consideration of the Tribunal.

232. Mr Forde submitted that Ms E's evidence contained several areas on which he would like to ask questions as they did not feature in statements made by other witnesses who

were present on the day of events. He submitted that Ms E's statement was not taken until 9 December 2022, some 20 months after the date of the events. Mr Forde submitted that an inability to cross examine this witness means her evidence goes unchallenged, and it was not a question of admitting it and then determining to attach less weight to it than the oral evidence given by Dr Sawati.

233. Mr Forde submitted that, given the other paragraphs of the Allegation, and the gravity of those paragraphs, was it necessary and desirable to have this slightly peripheral evidence about an alleged altercation, that none of the other witnesses present called by the GMC seemed to recall. He submitted that Dr Sawati was at a serious disadvantage by his not being able to put the various factors of dispute to Ms E. He stated that Dr Sawati has always refuted that there was such an altercation. He therefore submitted that it was not fair, under Rule 34(1) to admit this evidence.

Legal Advice

234. The Legally Qualified Chair ('LQC') gave the following advice to the Tribunal.

235. Hearsay is not defined in the Rules but is defined in the CPR6 as '*a statement made, otherwise than by a person while giving oral evidence in proceedings, which is tendered as evidence of the matters stated*'. This may arise where one party notifies the other that they require the witness to attend for cross examination, but the witness refuses or is unable to attend.

236. The test for admitting hearsay, as with all evidence in hearings, is set out in Rule 34(1):

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

237. The Tribunal would be prudent to consider the admission of the hearsay evidence after the conclusion of the live evidence to assess whether any of them provided evidence about what the absent witness was capable of saying (*Squire v Chief Constable of Thames Valley Police* [2016] EWCA Civ 1315).

238. In considering fairness in admitting hearsay evidence, it is important for the Tribunal to apply the legal principles derived from the case of *R (Bonhoeffer) v GMC* [2011] EWHC

1585 (Admin), confirmed in *Freeman v GMC* [2023] EWHC 45 (Admin); and *Thorneycroft v NMC* [2014] EWHC 1565 (Admin).

239. There are two distinct stages to assessing fairness when considering hearsay evidence in regulatory proceedings:

- Stage One: Admissibility.
- Stage Two: The weight to be attached to the hearsay evidence (given that it's not been tested in cross examination).

240. *Bonhoeffer* set out three questions that a tribunal should consider when deciding whether to allow or exclude evidence from an absent witness:

- was there a good reason for non-attendance (and, consequently, for the admission of the absent witness's untested statements as evidence)?
- whether the evidence of the absent witness constitutes the sole or decisive basis for the factual finding(s)?
- are there sufficient counter-balancing factors to ensure a fair hearing?

241. *Thorneycroft* expands on these questions:

1. Whether the statements were the sole and decisive evidence in support of the charges;
2. The nature and extent of the challenge to the contents of the statements;
3. Whether there was any suggestion that the witnesses had reasons to fabricate their allegations;
4. The seriousness of the charge, taking into account the impact which adverse findings might have on Registrant's career;
5. Whether there was a good reason for the non-attendance of the witnesses;
6. Whether the Respondent had taken reasonable steps to secure the attendance of the witness;
7. The fact that Registrant did not have prior notice that the witness statements were to be read.

242. Tribunals should first therefore satisfy themselves that the evidence ought to be classed as hearsay, and if so, should consider the admissibility (whether it is fair to admit it). What is fair is fact sensitive and will depend on the circumstances of an individual case, particularly the nature and subject matter of the proceedings.

243. Where such evidence is the sole or decisive evidence in relation to the charge, the decision whether or not to admit requires the Tribunal to make a careful assessment, weighing up the competing factors. To achieve this, the Tribunal must consider the issues in the case, the other evidence which is to be called and the potential consequences of admitting the evidence. It must be satisfied that the evidence is demonstrably reliable or alternatively that its reliability can be tested.

The Tribunal's decision

244. The Tribunal carefully considered the submissions made in respect of the GMC application to admit the statement of Ms E as hearsay.

245. The Tribunal applied the test for admitting hearsay, as set out in Rule 34(1).

246. The Tribunal found that there was a good reason for the non-attendance of Ms E and that because of the nature of the reason, it was not realistic for her to attend later in the proceedings.

247. The Tribunal found that the evidence of Ms E is the sole and decisive evidence in respect of paragraph 3(d) of the Allegation, which is denied by Dr Sawati. It recognised that the evidence of Ms E is therefore subject to substantial challenge.

248. The Tribunal accepted that the GMC had taken all reasonable steps to secure the attendance of the witness.

249. The Tribunal accepted that Dr Sawati's representatives had been made aware of the fact that Ms E may not be able to attend on 1 October 2024, the second day of the hearing.

250. The Tribunal considered the admission of hearsay at the conclusion of live witness evidence on behalf of the GMC. The Tribunal considered the issues in the case, the other evidence which was called and the potential consequences of admitting the evidence. The Tribunal was not satisfied that the evidence of Ms E was demonstrably reliable. The evidence provided by Ms E was not as contemporaneous to the event as the other witnesses.

251. The Tribunal carefully considered the evidence of all those who had been in the Bereavement Office where the incident that Ms E describes took place and, in particular, their evidence about the layout of the open plan room. The Tribunal considered the evidence

of Dr F who was present and spoke to Dr Sawati while she was in the Bereavement Office who said that he did not complete a Cremation form in respect of Professor A's patient. He did not mention raised voices or any dispute, either in his internal investigation interview or in his evidence for the GMC. The evidence of Ms I and Mr H was that because the Bereavement Office was open plan, conversations could be overheard both on the telephone and as between those people in the room. Ms I did not overhear the raised voices or the alleged altercation.

252. Taking all of these factors into account, although this paragraph of the Allegation does not form part of the dishonesty allegations, it is serious and the admission of this statement as hearsay would not be fair.

253. The Tribunal accordingly determined to reject Ms Barbour's application under Rule 34(1).