

PUBLIC RECORD

Dates: 26/04/2021 - 10/05/2021
10/06/2021 - 11/06/2021
14/06/2021

Medical Practitioner’s name: Dr Ramon MARTOS MARTINEZ
GMC reference number: 4298135
Primary medical qualification: LMS 1995 Universidad de Sevilla

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

Summary of outcome

Erasure
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mrs Julia Oakford
Lay Tribunal Member:	Mrs Joy Hamilton
Medical Tribunal Member:	Dr Keith Dunnett
Tribunal Clerk:	Mr Michael Murphy (26/04/2021 - 10/05/2021) Mr Andrew Ormsby (10/06/2021 - 11/06/2021) Miss Emma Saunders (14/06/2021)

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner’s Representative:	Miss Vivienne Tanchel, Counsel, instructed by Adkirk Law
GMC Representative:	Mr Christopher Rose, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 07/05/2021

1. This determination will be read in private. However, as this case concerns Dr Martos Martinez's misconduct, a redacted version will be published at the close of the hearing XXX.

Background

2. Dr Martos Martinez qualified in Spain in 1995. He moved to the UK and then to Ireland in 2001 to work as a junior doctor. In 2005 he became a Member of the Royal College of Physicians of Ireland MRCP(I). From 2010 to 2012 he spent time at Croydon and Royal Brompton University Hospital as a Cardiology Fellow. He returned to Spain to work at Torrejon University Hospital, Madrid to gain experience in more complex coronary intervention from 2012 to 2014. At the time of the events in the Allegation, Dr Martos Martinez was practising as an Interventional Cardiology Consultant at University Hospitals of Derby and Burton NHS Foundation Trust (the Trust), a position he had held since 2014. In addition, from September 2014 he worked at University Hospital of North Midlands, Stoke Hospital as a Cardiologist one day a week until April 2019. In 2015 he set up his own private practice and this continued until 2018.

3. The Allegation that has led to this hearing can be summarised as Dr Martos Martinez soliciting his services as a cardiologist on a private basis to Patients A and B for personal financial gain. The GMC alleged that Dr Martos Martinez described/allowed himself to be described as being a Fellow of the American College of Cardiology (FACC) and a Fellow of the Royal College of Physicians of London (FRCP) when he knew that he was not and it is alleged that this was dishonest. The GMC also alleged that Dr Martos Martinez falsified a letter pertaining to Patient F which was dishonest.

4. In addition, the GMC alleged that Dr Martos Martinez submitted an application form to Shrewsbury and Telford NHS Trust ('STNT') and did not declare that he was under investigation by the GMC or that his employment had been terminated by the Trust. As such, the GMC alleged that Dr Martos Martinez had acted dishonestly.

5. Dr G, associate medical director at the Trust, carried out an investigation into complaints raised by Patient A and B and other matters. A disciplinary hearing was held and his employment terminated on 2 February 2019. These concerns were then referred to the GMC.

The Outcome of Applications Made during the Facts Stage

6. The Tribunal granted the GMC's application, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that paragraph 1(b) should be amended. The full decision on the application is included at Annex A.

7. The Tribunal considered Dr Martos Martinez's application, made through his Counsel Miss Tanchel, pursuant to Rule 17(2)g of the Rules that there was no case to answer for paragraphs 1, 3, 5, 6, 11(b), 11(c) and 11(e) of the Allegation. The Tribunal determined that there was no case to answer for paragraphs 5(a), 6(a), 6(b) and 11(c) of the Allegation. The full decision on the application is included at Annex B.

8. The Tribunal considered Dr Martos Martinez's application, made through his Counsel Miss Tanchel, to address its Rule 17(2)g application. The full decision on the application is included at Annex C.

9. Having had regard to Rule 41 of the Rules, the Tribunal determined that the hearing would be held in private session XXX. The Tribunal was of the view that it would be appropriate to exclude the press and public from these parts of the hearing.

The Allegation and the Doctor's Response

10. The Allegation made against Dr Martos Martinez is as follows:

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

1. You solicited your services as a cardiologist on a private basis, for personal financial gain, to:
 - a. Patient A on 28 October 2016; **To be determined**
 - b. Patient B on ~~4 May 2017~~ 17 May 2017. **Successful application under Rule 17(6)**
To be determined

Use of post nominals

2. You described yourself, or allowed yourself to be described, as having the post nominal:
 - a. FACC [Fellow of the American College of Cardiology]:
 - i. on your letterhead for:
 1. Burton Hospital NHS Foundation Trust ('BHFT') between August 2014 and August 2017; **Admitted and found proved**
 2. private services between August 2014 and October 2017; **Admitted and found proved**
 - ii. on 13 October 2017 on the website of:
 1. BHFT; **Admitted and found proved**
 2. Spire Healthcare; **Admitted and found proved**
 - b. FRCP [Fellow of the Royal College of Physicians of London]:
 - i. on your letterhead for BHFT between August 2014 and December 2017; **Admitted and found proved**
 - ii. on 13 October 2017 on the website of:
 1. BHFT; **Admitted and found proved**
 2. University Hospitals North Midlands NHS Trust; **Admitted and found proved**
 3. Spire Healthcare. **Admitted and found proved**
3. On 7 December 2017, during an investigatory meeting into your alleged inappropriate use of the post nominal FACC, you failed to disclose that you were not a Fellow of the Royal College of Physicians in London. **To be determined**
4. You knew that, at the time of the events referred to in paragraphs 2-3 above, you were not a Fellow of the:

- a. American College of Cardiology; **To be determined**
- b. Royal College of Physicians of London. **To be determined**

Dishonest interactions with others

5. On 28 November 2017 you:
 - a. ~~gave Ms C a statement (the ‘statement’) that indicated Ms C had witnessed Patient D asking you about receiving private treatment on 4 October 2016;~~
Successful application under Rule 17(2)g
 - b. said to Ms C ‘can you sign this for me’ or words to that effect. **To be determined**
- ~~6. You knew:~~
 - a. ~~that Ms C did not witness Patient D asking you about private treatment on 4 October 2016; **To be determined**~~
Successful application under Rule 17(2)g
 - b. ~~the statement you gave Ms C to sign was false. **To be determined**~~
Successful application under Rule 17(2)g
7. On 19 June 2018 you sent an email to Dr E containing a copy of a letter to Patient F’s GP dated 31 July 2017 (‘the copy letter’). This was not a true copy in that it had been amended to:
 - a. include the paragraph ‘[Patient F] also complained of signs of impotence for the last month, I would be grateful if could consider starting on Sildenafil tablets’; **Admitted and found proved**
 - b. remove the paragraph ‘He will have a repeat blood test, including FBC, U+E’s and GFR and I will see him back in my clinic at the beginning of September 2017’. **Admitted and found proved**
8. You knew:
 - a. the copy letter had been falsified, as described in paragraph 7;
Admitted and found proved

- b. you had falsified the copy letter. **Admitted and found proved**

Application to Shrewsbury and Telford NHS Trust

9. You submitted an application form to Shrewsbury and Telford NHS Trust ('STNT') on or around 19 March 2019 in which you:
- a. responded 'No' to the question, 'Are you currently subject to a fitness to practise investigation and/or proceedings of any nature by a regulatory or licensing body in the UK or in any other country'; **Admitted and found proved**
 - b. stated 'Seeking employment in an University Hospital with a dynamic Interventional Cardiology Department' in response to a request for your reason for leaving BHFT. **To be determined**
10. You knew at the time of submitting your application form to STNT that:
- a. you were subject to a fitness to practise investigation by the General Medical Council; **To be determined**
 - b. you had been dismissed by BHFT. **To be determined**
11. Your actions at paragraph:
- a. 2 were dishonest by reason of paragraph 4; **To be determined**
 - b. 3 were dishonest by reason of paragraph 4b; **To be determined**
 - c. ~~5 were dishonest by reason of paragraph 6; **To be determined**~~
Successful application under Rule 17(2)g
 - d. 7 were dishonest by reason of paragraph 8; **Admitted and found proved**
 - e. 9a were dishonest by reason of paragraph 10a; **To be determined**
 - f. 9b were dishonest by reason of paragraph 10b. **To be determined**

The Admitted Facts

11. At the outset of these proceedings, through his counsel Miss Tanchel, Dr Martos Martinez made admissions to some paragraphs and sub-paragraphs of the Allegation, as set

out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('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 Evidence

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

- Dr G, associate medical director at the Trust, by video link;
- Ms H, medical secretary at the Trust, by video link;
- Patient A, Dr Martos Martinez's patient, by video link;
- Patient B, Dr Martos Martinez's patient, by video link;
- Ms I, medical secretary at the Trust, by video link;
- Ms J, Lead Medical Secretary at the Trust and Dr Martos Martinez's secretary for his private practice, by video link;
- Ms C, Sister in the Coronary Care Unit at the Trust, by video link.

13. 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:

- Ms K, Associate General Counsel at the American College of Cardiology;
- Dr E, Consultant in anaesthesia at the Trust and previous Medical Director;
- Dr L, previous Medical Director at STNT.

14. Dr Martos Martinez provided his own witness statement dated 12 April 2021 and also gave oral evidence at the hearing.

Documentary Evidence

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

- Trust statement of Ms H, 9 November 2017;
- Trust Statement of Ms I, 7 November 2017;
- Trust Statement of Ms J, 24 October 2017;
- Trust Statement of Ms C, 2 February 2018;
- Job application form for STNT, 19 March 2019;
- Declaration form for job application, 14 April 2019;
- Trust interviews with Dr Martos Martinez, 7 December 2017 and 18 January 2018;

- XXX
- Certificate from the Official College of Physicians, Almeria, 13 January 2020;
- Testimonials.

16. The Tribunal took into account the submissions of Mr Rose and Miss Tanchel and bore these in mind throughout its deliberations.

The Tribunal's Approach

17. 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 Martos Martinez 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.

18. The legally qualified chair's advice included the case law referred to by both parties. She advised the Tribunal that the burden of proof is always the balance of probabilities. However, where dishonesty is an issue the Tribunal should consider the cogency of the evidence as well as inherent improbabilities. She reminded the Tribunal of the Supreme Court judgment in the case of *Ivey v Genting Casinos (UK) Limited [2017] UKSC 67*, in which Lord Hughes set out the correct test for dishonesty as follows:

'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'

The Tribunal's Analysis of the Evidence and Findings

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

Paragraph 1(a) of the Allegation

20. It is not disputed that Dr Martos Martinez made a telephone call to Patient A on 28 October 2016. Patient A had made an outpatient appointment for 21 November 2016. Patient A's evidence was that his main concern was that he had symptoms which could indicate that he may become unable to continue to care for his wife who was very seriously ill

at that time.

21. During the course of the conversation of 28 October 2016 Patient A maintained throughout his evidence that Dr Martos Martinez offered to see him as a private patient so that he would be seen more quickly. Patient A was confused about who he was speaking to at the time but there is no dispute that it was Dr Martos Martinez. In his PALS interview Patient A stated that on 31 October Dr Martos Martinez's private secretary phoned him giving details of the cost of the necessary private treatment. This conflicts with what Dr Martos Martinez said during the Trust investigation when he said that he emailed his private secretary to tell her that *'this gentleman would call her for some private fees'*. The Tribunal concluded, on the basis that this phone call was made, there would have been a discussion between Patient A and Dr Martos Martinez about private care on 28 October 2016. Patient A decided that private care was unaffordable and unnecessary. During the course of his trust investigation, Dr Martos Martinez said Patient A had told him about his appointment on 21 November 2016 and that he had advised him to keep it. When cross examined on this point Dr Martos Martinez stated that he was unaware of this appointment. Subsequently Patient A received notification that his outpatient appointment had been changed to a later date (21 December 2016). Patient A stated he was upset about this change and attributed it to his failure to take up the offer of private healthcare.

22. Subsequently, the appointment was brought forward to 9 November 2016 and Patient A was happy with the treatment and care he received. Dr Martos Martinez admitted he had made the telephone call on 28 October 2016 and apologised for it. Dr Martos Martinez said it was a misunderstanding and he thought Patient A had private medical insurance. Patient A said that 10 years previously he did have private medical insurance through his work. The Tribunal considers this to be further evidence that there was a discussion about private care on 28 October 2016.

23. The Tribunal accepted that Patient A's evidence has varied over the last five years. It would be surprising if Patient A had given an identical account of events over such a long period of time. However his contention that Dr Martos Martinez, on 28 October 2016, had initiated a conversation offering to see him more quickly if he were to be seen privately had persisted throughout this time and was maintained under cross examination. Patient A was adamant and, in the opinion of the Tribunal, convincing when it was put to him that he had initiated the discussion about private care. His response was *'absolutely incorrect'* and *'not true'*.

24. Miss Tanchel submitted it may have been in Patient A's best interests for Dr Martos Martinez to offer him private care, as he could have been seen earlier. No evidence has been presented at this hearing to suggest that Patient A needed to be seen earlier. The Tribunal did not agree with the view that it may always be in the patients best interests to transfer to private care as urgent treatment is available on the NHS if required.

25. The Tribunal considered that the suggestion to move to private care was not in Patient A's best interests rather, it must follow that it was discussed for Dr Martos Martinez's personal financial gain.

26. The Tribunal considered the point made by Miss Tanchel that none of Dr Martos Martinez's secretaries had ever heard or witnessed him soliciting patients for private care. However, it noted that Dr Martos Martinez may not have made these calls in their presence. Dr Martos Martinez has denied calling Patient A to solicit private care.

27. The Tribunal also took into account evidence that Ms H's desk was positioned very close to Dr Martos Martinez's desk but considered this was not enough to suggest that she actually overheard the conversation. This conversation could have been with any patient and may not even have taken place while Dr Martos Martinez and Ms H were in the office at the same time.

28. In considering Patient A's evidence, the Tribunal noted he was consistent that a doctor called him to discuss private care and that he did not initiate any conversation about this. Patient A has persisted with this view since 2016, despite being happy with the care he received overall. Patient A's primary concern was that his appointment had been delayed due to, in his view, his refusal to switch to private care. He wanted to be seen quickly so he could care for his ill wife. The Tribunal could not see any other motive for Patient A's complaint. As such, it viewed Patient A as a credible witness.

29. The Tribunal accepted that Patient A had spoken to a secretary about the cost of private treatment but considered it was not unusual for someone who had been spoken to about private care to enquire about the cost. This did not mean that Patient A had asked for private care.

30. The Tribunal concluded that Dr Martos Martinez attempted to solicit private care for Patient A for his own personal financial gain. It therefore found, on the balance of probabilities, paragraph 1(a) of the Allegation proved.

Paragraph 1(b) of the Allegation

31. In considering this paragraph, the Tribunal noted that it was an agreed fact that Dr Martos Martinez had seen Patient B on 17 May 2017 at the outpatient clinic. It had regard to Patient B's statement that she felt as though she was *'in front of a double glazing sales man'*. It questioned why Patient B would seem so annoyed with Dr Martos Martinez for discussing private health care if she had initiated the conversation with him.

32. The Tribunal had regard to Patient B's evidence and noted that she gave the wrong date but took the view that the date did not change the nature of the Allegation. Patient B made a complaint on 31 July 2017. She was keen for her surgery to take place during the school holidays. She was consistent about how anxious she was to know the results of her tests and how persistent Dr Martos Martinez was in soliciting private care. The Tribunal did

not accept the proposition that there was insufficient time to discuss private care as the appointment lasted for 30 minutes. The Tribunal viewed this as ample time for Dr Martos Martinez to discuss private care.

33. The Tribunal noted that no evidence was received to suggest that Patient B was in need of urgent medical attention. It noted Miss Tanchel's submission that Dr Martos Martinez arranged for expeditious NHS care ensuring Patient B's interests and welfare but noted that this would be expected of any medical practitioner. The Tribunal noted the evidence of Ms I who stated that Dr Martos Martinez would have seen Patient B's results as they were marked 'file'. He then went on holiday without forwarding these onto her.

34. The Tribunal bore in mind that Patient B did enquire about the costs of switching to private care but found this to be usual if another option of treatment was presented. This does not suggest that she initiated the conversation about private care. It noted the submission that Dr Martos Martinez has a busy private practice so has no need for additional work of this nature. However, it concluded that this did not necessarily mean he would not solicit more private work.

35. The Tribunal was mindful of the possibility of cross admissibility in this case but did not consider this as the evidence regarding Patients A and B was of such weight that it was not necessary.

36. The Tribunal therefore found, on the balance of probabilities, paragraph 1(b) of the Allegation proved.

Paragraph 3 of the Allegation

37. In considering this paragraph the Tribunal had regard to paragraph 66 of Good Medical Practice (2013)(GMP) which states:

'You must always be honest about your experience, qualifications and current role.'

38. The Tribunal noted that Dr Martos Martinez became a MRCP(I) in 2005. However, it did not accept his suggestion that it was reasonable for him to assume that any Consultant Physician automatically became a Fellow of the College in the country in which they were practising without any further formalities or payment of subscription fees.

39. The Tribunal took the view that there was a duty upon Dr Martos Martinez to cooperate with the Trust's investigation and to engage with it fully. This included an obligation to declare that he had used post nominals to which he was not entitled. It did not accept that Dr Martos Martinez being under stress, at the time of the disciplinary hearing at the Trust, would have impacted upon his ability to inform them of his use of the additional post nominal FRCP.

40. The Tribunal rejected Miss Tanchel's comparison with a police interview and found that this was an investigatory meeting relating to his professional obligations as a doctor and not part of a criminal investigation.

41. The Tribunal therefore found, on the balance of probabilities, paragraph 3 of the Allegation proved.

Paragraph's 4(a) and 4(b) of the Allegation

42. Ms H's evidence was that Dr Martos Martinez had asked her to remove FACC from his official NHS letterhead in August 2017 as he told her that he was no longer a member of this organisation and *'had not kept his membership'*. Miss J's evidence was that Dr Martos Martinez had told her to remove FACC from his private letterhead in October 2017 as he no longer wished to pay for this. The Tribunal was satisfied that he would have been aware had he been paying registration or membership fees for Fellowships.

43. Dr Martos Martinez's evidence was that he was under the impression he was a Fellow of the American College of Cardiology as he had written a chapter in a book for a member of the College who subsequently recommended him for Fellowship. The evidence of Dr G and Ms K was that two people are required to sponsor a cardiologist for Fellowship. The Tribunal did not accept that Dr Martos Martinez genuinely believed he would become FACC simply by writing a chapter for a book and therefore he must have known that he was not a Fellow. In addition, no evidence was adduced to indicate that Dr Martos Martinez ever received written confirmation that he had been awarded a Fellowship.

44. The Tribunal noted that Dr Martos Martinez qualified in Spain, where post nominals were not necessarily used. The Tribunal received a certificate dated 13 January 2020 from the Official College of Physicians of Almeria that stated *'that it is not necessary or usual, in Spain, for specialists to provide evidence of or write the letters of their qualification after their names when drafting a medical report'*. The Tribunal did not accept this as a reason for incorrectly using post nominals, particularly as he had been practising in the UK for a number of years.

45. The Tribunal concluded Dr Martos Martinez must have known he was not a Fellow of the ACC or RCP London when he asked his medical secretaries to put these post nominals on his official letterheads and associated websites.

46. The Tribunal therefore found, on the balance of probabilities, paragraphs 4(a) and 4(b) of the Allegation proved.

Paragraph 5(b) of the Allegation

47. The Tribunal considered the evidence presented at this hearing by Ms C. It did not consider Ms C to be a credible witness as her evidence was vague and she was unable to recall many details of the conversation between Dr Martos Martinez and herself. However,

Dr Martos Martinez and Ms C both accepted that he gave her a letter to sign and this was produced in evidence.

48. The Tribunal therefore found, on the balance of probabilities, paragraph 5(b) of the Allegation proved.

Paragraph 9(b) of the Allegation

49. The Tribunal had regard to Dr Martos Martinez's job application form for STNT. In the section requiring the reason for leaving the previous job it states '*Seeking employment in an University Hospital with a dynamic Interventional Cardiology Department*'. There was no dispute that it was Dr Martos Martinez who submitted this job application form.

50. The Tribunal therefore found, on the balance of probabilities, paragraph 9(b) of the Allegation proved.

Paragraphs 10(a), 10(b), 11(e) and 11(f) of the Allegation

51. In determining the state of Dr Martos Martinez's mind and whether he knew he was subject to a fitness to practise investigation by the GMC the Tribunal had regard to his evidence. In his oral evidence he stated that, as there were no clinical restrictions on his practice, he believed he was fit to practise. He informed the Tribunal that the answer to this question was prepopulated but as he understood it, he was fit to practise.

52. The Tribunal bore in mind that Dr Martos Martinez stated that he had lodged an appeal against his dismissal from BHFT. The Tribunal found that lodging the appeal did not negate his dismissal until an appeal had been successful. It took the view he did not declare this as he may have thought that this would affect his chance of obtaining an interview with STNT. Dr L stated that Dr Martos Martinez's interview was withdrawn because of '*the lack of full disclosure and apparent breach of probity, as a minimum in the initial job application*'.

53. The Tribunal considered that the GMC investigation and Dr Martos Martinez's dismissal may never have come to light as he provided two referees from Stoke Hospital. However, he did give details of his supervisor from the Trust. The Tribunal found that although there was a possibility the reason for dismissal and referral to the GMC may have come from a third party, nevertheless Dr Martos Martinez was the one completing the application form and he should have been open and honest in his answers.

54. The Tribunal noted that Dr Martos Martinez did eventually give the correct information as to being subject to a fitness to practise investigation and being dismissed by BHFT but this was after providing incorrect answers.

55. The Tribunal found that overall he manipulated the application form to try to hide these facts and that it was his responsibility to have been honest when completing it. The

Tribunal concluded that ordinary decent people would find withholding this information to be dishonest.

56. The Tribunal therefore found, on the balance of probabilities, paragraphs 10(a), 10(b), 11(e) and 11(f) of the Allegation proved.

Paragraph 11(a) of the Allegation

57. The Tribunal has already found that Dr Martos Martinez did know he was not a Fellow of the American College of Cardiology or the Royal College of Physicians of London. It noted that his mental state was not in question when he asked his medical secretaries to include and then later remove the post nominals from the websites and his official NHS and private letterheads.

58. The Tribunal considered that the purpose of the post nominals on Dr Martos Martinez's official documents would be to give others a better impression of his qualifications and experience. It bore in mind it has already found it was inconceivable Dr Martos Martinez could have believed he had these qualifications and therefore ordinary decent people would find his actions dishonest.

59. The Tribunal concluded that the evidence received is so cogent that there is no explanation other than Dr Martos Martinez dishonestly included the post nominals for his own benefit.

60. The Tribunal therefore found, on the balance of probabilities, paragraph 11(a) of the Allegation proved.

Paragraph 11(b) of the Allegation

61. The Tribunal has already found Dr Martos Martinez's behaviour to have breached paragraph 66 of GMP (as quoted above).

62. The Tribunal acknowledged that the Trust investigation would have been stressful for Dr Martos Martinez but this should not have affected his communication skills. The Trust investigation meeting notes indicate there was clear communication throughout. XXX. The Tribunal found that stress would not have prevented him from informing them about his improper use of the post nominal FRCP as he was already addressing his use of the post nominal FACC.

63. The Tribunal concluded that ordinary decent people would find Dr Martos Martinez's conduct dishonest.

64. The Tribunal therefore found, on the balance of probabilities, paragraph 11(b) of the Allegation proved.

The Tribunal's Overall Determination on the Facts

65. The Tribunal has determined the facts as follows:

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

1. You solicited your services as a cardiologist on a private basis, for personal financial gain, to:
 - a. Patient A on 28 October 2016; **Determined and found proved**
 - b. Patient B on ~~4 May 2017~~ 17 May 2017. **Successful application under Rule 17(6)**
Determined and found proved

Use of post nominals

2. You described yourself, or allowed yourself to be described, as having the post nominal:
 - a. FACC [Fellow of the American College of Cardiology]:
 - i. on your letterhead for:
 1. Burton Hospital NHS Foundation Trust ('BHFT') between August 2014 and August 2017; **Admitted and found proved**
 2. private services between August 2014 and October 2017; **Admitted and found proved**
 - ii. on 13 October 2017 on the website of:
 1. BHFT; **Admitted and found proved**
 2. Spire Healthcare; **Admitted and found proved**
 - b. FRCP [Fellow of the Royal College of Physicians of London]:
 - i. on your letterhead for BHFT between August 2014 and December 2017; **Admitted and found proved**
 - ii. on 13 October 2017 on the website of:

1. BHFT; **Admitted and found proved**
2. University Hospitals North Midlands NHS Trust; **Admitted and found proved**
3. Spire Healthcare. **Admitted and found proved**
3. On 7 December 2017, during an investigatory meeting into your alleged inappropriate use of the post nominal FACC, you failed to disclose that you were not a Fellow of the Royal College of Physicians in London. **Determined and found proved**
4. You knew that, at the time of the events referred to in paragraphs 2-3 above, you were not a Fellow of the:
 - a. American College of Cardiology; **Determined and found proved**
 - b. Royal College of Physicians of London. **Determined and found proved**

Dishonest interactions with others

5. On 28 November 2017 you:
 - a. ~~gave Ms C a statement (the 'statement') that indicated Ms C had witnessed Patient D asking you about receiving private treatment on 4 October 2016;~~
Successful application under Rule 17(2)g
 - b. said to Ms C 'can you sign this for me' or words to that effect.
Determined and found proved
6. ~~You knew:~~
 - a. ~~that Ms C did not witness Patient D asking you about private treatment on 4 October 2016; **To be determined**~~
Successful application under Rule 17(2)g
 - b. ~~the statement you gave Ms C to sign was false. **To be determined**~~
Successful application under Rule 17(2)g

7. On 19 June 2018 you sent an email to Dr E containing a copy of a letter to Patient F's GP dated 31 July 2017 ('the copy letter'). This was not a true copy in that it had been amended to:
- a. include the paragraph '[Patient F] also complained of signs of impotence for the last month, I would be grateful if could consider starting on Sildenafil tablets'; **Admitted and found proved**
 - b. remove the paragraph 'He will have a repeat blood test, including FBC, U+E's and GFR and I will see him back in my clinic at the beginning of September 2017'. **Admitted and found proved**
8. You knew:
- a. the copy letter had been falsified, as described in paragraph 7; **Admitted and found proved**
 - b. you had falsified the copy letter. **Admitted and found proved**

Application to Shrewsbury and Telford NHS Trust

9. You submitted an application form to Shrewsbury and Telford NHS Trust ('STNT') on or around 19 March 2019 in which you:
- a. responded 'No' to the question, 'Are you currently subject to a fitness to practise investigation and/or proceedings of any nature by a regulatory or licensing body in the UK or in any other country'; **Admitted and found proved**
 - b. stated 'Seeking employment in an University Hospital with a dynamic Interventional Cardiology Department' in response to a request for your reason for leaving BHFT. **Determined and found proved**
10. You knew at the time of submitting your application form to STNT that:
- a. you were subject to a fitness to practise investigation by the General Medical Council; **Determined and found proved**

- b. you had been dismissed by BHFT. **Determined and found proved**
11. Your actions at paragraph:
- a. 2 were dishonest by reason of paragraph 4; **Determined and found proved**
 - b. 3 were dishonest by reason of paragraph 4b; **Determined and found proved**
 - c. ~~5 were dishonest by reason of paragraph 6; To be determined~~
Successful application under Rule 17(2)g
 - d. 7 were dishonest by reason of paragraph 8; **Admitted and found proved**
 - e. 9a were dishonest by reason of paragraph 10a; **Determined and found proved**
 - f. 9b were dishonest by reason of paragraph 10b.
Determined and found proved

Determination on Impairment - 10/06/2021

1. 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 Martos Martinez's fitness to practise is impaired by reason of misconduct.

The Evidence

2. The Tribunal has taken into account all the evidence received during the fact-finding stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence as follows:

- Dr Martos Martinez's reflective statement;
- Continuing professional development (CPD);
- Letter from Official College of Physicians of Almeria dated 26 April 2021.

Submissions

3. On behalf of the GMC, Mr Rose submitted that Dr Martos Martinez tried to persuade two patients to accept private treatment, for his own financial gain. Both patients were made

to feel that they would only get the best level of care if they agreed to be treated privately. Dr Martos Martinez's actions undermined these patients' confidence in the quality of care they would receive as NHS patients.

4. Mr Rose went on to submit that Dr Martos Martinez deliberately attempted to mislead by allowing post nominals to be incorrectly added to his letterheads and website entries and this had a potential for risk to patients. He reminded the Tribunal that Dr Martos Martinez falsified the contents of a letter he had sent to a GP in order to give a false impression of the care he had provided to a patient. He then submitted that Dr Martos Martinez's completion of the application form for STNT was a deliberate attempt to mislead those considering his application and all of these were found to be dishonest.

5. Mr Rose submitted that paragraphs 1, 2, 65, 66 and 78 of GMP were engaged in this case. He stated that Dr Martos Martinez's conduct undermined public confidence in the medical profession and the need to promote proper standards of behaviour.

6. On behalf of Dr Martos Martinez, Miss Tanchel submitted that paragraph 1 of the Allegation does not amount to misconduct as there is no evidence that this impacted upon the care he provided to Patient A and Patient B. She stated that paragraph 5(b) of the Allegation does not amount to misconduct as Ms C confirmed that the contents of the statement were correct. Miss Tanchel conceded that the rest of the facts found proved do amount to misconduct.

7. She stated that there is unequivocal evidence that Dr Martos Martinez is an excellent clinician. She reminded the Tribunal that there are no public safety concerns in this case and that Dr Martos Martinez has continued to practise since the events in the Allegation took place and no new concerns have been raised.

8. Miss Tanchel stated that the remediation already completed by Dr Martos Martinez means the Tribunal can be satisfied that there will be no repetition. With regard to impairment, Miss Tanchel submitted that she did not seek to dissuade the Tribunal from making a finding of impairment in the public interest.

The Relevant Legal Principles

9. The Tribunal accepted the relevant legal principles as referred to by Miss Tanchel and Mr Rose. It bore in mind throughout the advice of the legally qualified chair. It has set out below the main principles but this list is not exhaustive.

10. 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.

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

12. The Tribunal must determine whether Dr Martos Martinez’s fitness to practise is impaired today, taking into account his conduct at the time of the events and any relevant factors since then. These include whether the matters are remediable, have been remedied and whether there is any likelihood of repetition.

13. The Tribunal had regard to the case of *Cohen v GMC [2008] EWHC 581 (Admin)* in which Mr Justice Silber states:

‘It must be highly relevant in determining if a doctor’s fitness to practise is impaired that; first his or her conduct which led to the charge is easily remedied, second that it has been remedied and third that it is highly unlikely to be repeated’

14. The Tribunal also had regard to the questions posed by Dame Janet Smith in the Fifth Shipman Report, as referred to in the case of *CHRE v NMC and Grant [2011] EWHC 927 (Admin)*, as follows:

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

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

15. The Tribunal had regard to the overarching objective as to whether any of the three limbs were engaged.

The Tribunal’s Determination on Impairment

Misconduct

16. The Tribunal first considered whether Dr Martos Martinez’s actions in paragraph 1 of the Allegation amounted to misconduct. In doing so, it found paragraph 78 of GMP engaged:

‘You must not allow any interests you have to affect the way you prescribe for, treat, refer or commission services for patients.’

17. The Tribunal bore in mind its finding that Dr Martos Martinez tried to persuade two patients to switch to private care for his own personal financial gain. It considered that he put his own financial interests before the interests of these patients and the Tribunal found this to be deplorable and serious misconduct. As such the Tribunal concluded that paragraph 1 of the Allegation amounted to misconduct.

18. The Tribunal did not consider paragraph 5(b) of the Allegation to amount to misconduct as it was solely a factual finding with no further implications.

19. The Tribunal then considered if the remaining paragraphs of the Allegation, which were found proved, amounted to misconduct. There were several instances of dishonesty relating to Dr Martos Martinez's application to STNT, Patient F's GP letter and the use of post nominals.

20. The Tribunal found the following paragraphs of GMP were engaged in this case:

'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.'

'2. Good doctors work in partnership with patients and respect their rights to privacy and dignity. They treat each patient as an individual. They do their best to make sure all patients receive good care and treatment that will support them to live as well as possible, whatever their illness or disability.'

'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.'

'71. You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.

- a. You must take reasonable steps to check the information is correct.*
- b. You must not deliberately leave out relevant information.'*

'73. You must cooperate with formal inquiries and complaints procedures and must offer all relevant information while following the guidance in Confidentiality.'

'78. You must not allow any interests you have to affect the way you prescribe for, treat, refer or commission services for patients.'

21. The Tribunal considered that Dr Martos Martinez's dishonesty was for his own personal gain. It concluded that he was dishonest in his application form to STNT and used post nominals he was not entitled to so people would view him more favourably. Dr Martos Martinez's repeatedly acted dishonestly for his own interests. These instances of dishonesty amounted to misconduct both individually and collectively. Dr Martos Martinez has breached GMP as set out above.

22. Overall, apart from paragraph 5(b) of the Allegation, the Tribunal concluded that Dr Martos Martinez's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct.

Impairment

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

24. In its deliberations, the Tribunal considered if Dr Martos Martinez's dishonesty is easily remedied. It considered that dishonesty is not easily remediable. It had regard to the remediation bundle provided by Dr Martos Martinez which included a reflective statement dated 5 May 2021 (after the fact-finding stage had been concluded); an online medical ethics and law course; essential communication skills and maintaining professionalism.

25. The Tribunal did not consider this to be sufficient to show that he had remediated his misconduct. The Tribunal was concerned that the CPD was dated February 2019 which is over two years ago. Although these courses were to Dr Martos Martinez's credit and he had reflected upon them, there were no recent courses. The Tribunal noted that the courses that he did undertake totalled 7 hours. In his reflective statement he said '*I would like to attend a medical ethics course on a regular basis to maintain my awareness of issues with probity*'. In addition he stated '*henceforth, I would like to make a commitment to reading and refreshing my knowledge and familiarity with the four professional domains of the GMP on a weekly basis*'. The Tribunal has not seen any evidence of this having taken place. Despite the pandemic, Dr Martos Martinez could have done additional online courses more recently.

26. The Tribunal has not been provided with any detailed personal development plan, although Dr Martos Martinez did say that he would follow such a plan.

27. The Tribunal acknowledged that the legal adviser of the College of Physicians of Almeria reported on 26 April 2021, '*I have no problem in terms of professionalism or honesty in his work in the province of Almeria as a cardiologist*'. The Tribunal accepted that there had been no issues of concern since the events in question.

28. Miss Tanchel stated that the remediation already completed by Dr Martos Martinez means the Tribunal can be satisfied that there will be no repetition of the serious misconduct. The Tribunal further considered Dr Martos Martinez's reflective statement did

not address how his actions could have impacted upon patient care or the reputation of the medical profession.

29. As Dr Martos Martinez has not fully remediated, failed to develop meaningful insight or shown remorse, the Tribunal could not be satisfied, based on the evidence received, that there was no risk of repetition of the dishonesty.

30. The Tribunal accepted that no clinical concerns have been raised with Dr Martos Martinez and as such he did not put any patients at unwarranted risk of harm. However, it did consider Dr Martos Martinez's actions to have brought the medical profession into disrepute and to have breached a fundamental tenet of the medical profession by being dishonest. Accordingly, it concluded that a finding of impairment was necessary to protect public confidence in the medical profession and to promote proper standards of conduct for members of the profession.

31. The Tribunal has therefore determined that Dr Martos Martinez's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 14/06/2021

1. This determination will be read in private. However, as this case concerns Dr Martos Martinez's misconduct, a redacted version will be published at the close of the hearing XXX.

2. Having determined that Dr Martos Martinez's fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 22(1)(h) of the Rules what action, if any, it should take with regard to Dr Martos Martinez's registration.

The Evidence

3. The Tribunal has taken into account the background to the case and the evidence received during the earlier stages of the hearing in reaching a decision on what action, if any, it should take with regard to Dr Martos Martinez's registration.

4. The Tribunal received further evidence on behalf of the Dr Martos Martinez including:

- Witness evidence by video link from Dr M, Consultant Cardiologist, Royal Stoke Hospital, who worked with Dr Martos Martinez at the Royal Stoke Hospital. In addition to the evidence contained within his written statement, Dr M expressed his view that post nominals have little or no effect in influencing a choice of consultants;
- Witness evidence by video link from Ms N, Advance Nurse Practitioner in Cardiology, University Hospitals of North Midlands NHS Trust, who previously worked with Dr Martos Martinez at Burton General Hospital. In addition to the evidence contained within her written statement, Ms N stated that Dr Martos Martinez was an excellent clinician who was working in difficult conditions;
- Transcripts of the following cases:

- *Geile v GMC* [2005] EWHC 2143 (Admin)
- *Awan v GMC* [2020] EWHC 1553 (Admin)
- *Wallace v Secretary of State for Education* [2017] EWHC 109 (Admin)
- *Counsel for the Regulation of Healthcare Professionals and GMC v Professor David Patrick Southall* [2005] EWHC 579 (Admin)
- *Towuagbantse v GMC* [2021] EWHC 2681 (Admin)
- *Biji v GMC* [2001] UKPC 42.

Submissions

5. On behalf of the GMC, Mr Rose prefaced his submissions by making reference to the fact that the decision as to the appropriate sanction to impose is a matter solely for the Tribunal, exercising its own independent judgement. He submitted that where dishonesty is found, it is usually only in an exceptional case that a doctor is not erased. He submitted that the characteristics of such an exceptional case usually relate to where dishonesty is limited to a single incident, where there is evidence of insight and remediation, and where the context of the dishonest incident might be described as momentary. He submitted that none of those characteristics applied in the present case.

6. Mr Rose submitted that the gravamen in this case is not the effect that Dr Martos Martinez's dishonesty had but rather the intention behind it. He stated that the public should be able to trust a doctor and that this trust had been undermined by the doctor's repeated acts of dishonesty.

7. Mr Rose submitted that suspension is sometimes considered to be the appropriate sanction for behaviour that is unbecoming of a doctor. He submitted that suspension would not be appropriate in this case considering:

- Dr Martos Martinez's abuse of trust regarding his conduct towards Patient A and Patient B;
- dishonestly using two sets of post nominals in letter heads and on websites when he knew he was not entitled to and dishonestly failing to disclose he was not entitled to use the FRCP nominal during a disciplinary hearing;
- dishonestly amending a letter he had sent to a patient's GP in the course of an internal Trust investigation conducted by Dr E;
- his deliberate attempt to frustrate Dr E's investigation by falsifying correspondence '*so as to effect the outcome of an internal disciplinary investigation into his conduct*';
- and his subsequent false answers to questions that were aimed at safeguarding in his application to STNT.

8. Mr Rose submitted that Dr Martos Martinez's dishonesty was self-serving and committed over a lengthy period of time and, sequentially, his last episode of dishonesty in his application to STNT took place at a point in time where it would have been obvious that such behaviour was inappropriate as it followed the Trust investigation which highlighted the importance of total honesty.

9. Mr Rose submitted that the only sanction which meets the statutory need of the overarching objective in this case was erasure.
10. On behalf of Dr Martos Martinez, Miss Tanchel submitted the GMC's assertion that 'the only sanction that can be given is erasure' was incorrect in law and that the sanction that must apply is a matter for the Tribunal and, accordingly, that each case turns on its facts.
11. Miss Tanchel submitted that, while Dr Martos Martinez's dishonesty was not a single incident, the Tribunal should not consider the facts of the case through the prism that was presented by the GMC, but rather consider that the episodes were isolated to a period of time in the doctor's career while his was working at BHFT. She submitted that the circumstances in this case arose from an environment of dysfunction and professional jealousy at the Trust.
12. Miss Tanchel stated that Dr Martos Martinez had shown remorse and had taken responsibility for his actions which, she submitted, were completely out of character when considering the whole of his career rather than the period of time that he worked at the BHF Trust.
13. Miss Tanchel further submitted that the GMC submissions fell into error on the evidence and stated that post nominals were wholly different from a qualification. She stated that where a doctor engages in lying regarding a qualification there is a risk to patient safety but argued that post nominals have no real role to play in indicating the experience of a doctor or whether a patient might be influenced by them when choosing a particular doctor.
14. She submitted that, while Dr Martos Martinez's conduct in soliciting his services as a cardiologist on a private basis to Patient A and Patient B was clearly wrong, they were no more vulnerable than any other patient, and, according to the evidence were both perfectly able to express themselves clearly and contemporaneously.
15. XXX.
16. Miss Tanchel stated that Dr Martos Martinez's dishonesty was unlikely to be repeated and, while not isolated, was directly attributable to the circumstances relating to the environment at the Trust and noted that in a different environment such as at Stoke Hospital no such incidents or allegations arose.
17. Miss Tanchel submitted that it was not inevitable that Dr Martos Martinez should not practise again, and that erasure was inappropriate. She stated that a sanction of suspension with a review hearing was the most appropriate sanction in this case. Miss Tanchel further emphasised that suspension was not a soft sanction and would be taken seriously by the profession and the public.

The Law

18. The Tribunal was referred to a number of cases and was provided with transcripts of six cases. The principles established by some of these cases can be summarised as:

- *Chandra v GMC* [2018] EWCA Civ 1898 - The 'Bolton principles' apply equally to doctors as they do to solicitors. The importance of the overarching objective was emphasised.
- *Bolton v The Law Society* [1994] 1 WLR 52 - Serious cases which involve proven dishonesty and, no matter how strong the mitigation, lead to solicitors being struck off the register. The most fundamental purpose of sanctions is to maintain the reputation of the profession and sustain public confidence in the integrity of the profession.
- *Atkinson v GMC* [2009] EWHC 3634 (Admin) - Small residue of cases of dishonesty where erasure is not appropriate.
- *SRA v Sharma* [2010] EWHC 2022 - Concluded that, save in exceptional circumstances, a finding of dishonesty will lead to a solicitor being struck off the roll but there will be a small residue of cases where it will be disproportionate to strike off in all the circumstances and deciding whether a case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary or over a lengthy period of time and whether it was of benefit to the solicitor and whether it had an adverse effect on others.
- *Geile* - It is the wrong approach to say erasure unless exceptional circumstances. There is a need to start with the least severe and work upwards in determining sanction. There is a public interest in not ending the career of a competent doctor. The Panel must look at the misconduct and the mitigation in deciding what sanction is appropriate. The interests of public confidence in the profession must outweigh the interests of a doctor. Confidence will be maintained by imposing such sanction that is, in all the circumstances, appropriate.
- *Towuaghantse* - It is not procedurally fair for a registrant to face the risk of enhanced sanction by virtue of having robustly defended allegations made against him.
- *Wallace* - Unacceptable professional conduct but had insight and significant public interest in allowing her to continue her professional work.
- *Watters v NMC* [2017] EWHC 1888 (Admin) - Important to apply the principle of proportionality and to put in context the dishonesty.
- *Awan* - There should not be enhanced sanctions because the doctor denied the allegation.

19. The Tribunal accepted the Legally Qualified Chair's advice that the above cases were relevant but the essential matter was for the Tribunal to have regard to the facts found proved, the circumstances of this case and the level of seriousness it finds. The Tribunal should use the Sanctions Guidance (November 2020) (SG) but, if it departs from it, it should give cogent reasons.

The Tribunal's Determination on Sanction

20. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement.

21. In reaching its decision, the Tribunal has borne in mind that the purpose of a sanction is not to be punitive, but to protect the public, although a sanction may have a punitive effect.

22. Throughout its deliberations, the Tribunal has taken into account the overarching objective and applied the principle of proportionality, balancing Dr Martos Martinez's interests with the public interest.

23. The Tribunal has taken into account the SG and GMP, and all the evidence before it, together with the submissions of Mr Rose and Miss Tanchel. The Tribunal has carefully considered its findings of fact as to misconduct and impairment as set out in the earlier parts of this determination.

Aggravating and Mitigating factors

24. The Tribunal first considered the aggravating factors in relation to Dr Martos Martinez's misconduct:

- The Allegation found proved relates to three separate categories of dishonesty over a period of almost five years and was not restricted purely to the period of time spent at BHFT;
- The dishonesty was multifactorial in that Dr Martos Martinez was dishonest in using post nominals to which he was not entitled, in altering Patient F's records in a letter to Dr E in order to mislead a Trust investigation, and in his application for a position at STNT;
- The Tribunal did not agree with Miss Tanchel's submission that post nominals are not indicative of qualifications or that they make much difference to a doctor's reputation. It noted that Dr Martos Martinez's use of post nominals that he was not entitled to use may have benefited him particularly in his private practice. The Tribunal was of the view that post nominals are usually a direct reflection of a qualification received from a professional body;
- Dr Martos Martinez's instances of dishonesty were designed to pursue his own personal interests. Soliciting his services to Patient A and Patient B was for his own personal financial gain; and
- The Tribunal has received no evidence of CPD completed since February 2019. Despite the pandemic, the Tribunal was of the view that more could have been done to demonstrate ongoing learning.

25. The Tribunal then considered the mitigating factors:

- XXX.
- The Tribunal considered Dr Martos Martinez’s reflective statement, dated 5 May 2021. It noted that the reflective statement was submitted after the fact-finding stage of the hearing. It accepted that Dr Martos Martinez had denied parts of the Allegation and therefore could not expect him to develop insight immediately. However, it considered that one of the dishonesty matters had been admitted so insight on this dishonesty could have been more developed. Further, there were almost five weeks between the finding of impairment and submissions on sanction and Dr Martos Martinez could have done more during this time to demonstrate that his insight was developing;
- It noted that Dr Martos Martinez had apologised for his conduct in his reflective statement. However, the Tribunal had not received any evidence that this apology had been given directly to Patient A, Patient B or the Trust. It further noted that the doctor had referred to his solicitation of his services to both Patient A and Patient B on a private basis as a ‘mistake’ and a ‘misunderstanding’;
- Dr Martos Martinez had cooperated with the GMC regulatory process;
- The Tribunal received evidence that there were no concerns about Dr Martos Martinez’s clinical work in the UK prior to July 2019. It would have assisted the Tribunal to have received more information about the current role he undertakes and the standard of his work in Spain;
- The Tribunal noted that Dr Martos Martinez did eventually give the correct information to STNT as to being subject to a GMC fitness to practise investigation and being dismissed by BHFT but this was after providing incorrect answers on his application form and only after being shortlisted for the post; and
- The Tribunal received evidence of the CPD that was undertaken, the most recent being from February 2019. The Tribunal heard that Dr Martos Martinez continued to work on the ‘frontline’ during the pandemic but received no further details about his role or work commitments. Despite the pandemic, the Tribunal was of the view that more could have been done, especially if Dr Martos Martinez wanted to return to practise in the UK as he had been working in Spain since July 2019.

The Tribunal’s decision

26. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement.

27. The Tribunal considered each sanction in ascending order of seriousness starting with the least restrictive.

No action

28. In reaching its decision as to the appropriate sanction, if any, to impose in this case, the Tribunal first considered whether to conclude the case by taking no action.

29. The Tribunal determined that there were no exceptional circumstances to justify taking no action in this case and that to do so would be wholly inappropriate.

Conditions

30. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Martos Martinez's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

31. The Tribunal determined that the imposition of conditions on Dr Martos Martinez's registration would be inappropriate and unworkable given the nature of the misconduct found proved.

Suspension

32. The Tribunal then went on to consider whether imposing a period of suspension on Dr Martos Martinez's registration would be appropriate and proportionate.

33. The Tribunal acknowledged that suspension has a deterrent effect and can be used as a signal to the doctor, the profession, and to the public about what is regarded as behaviour unbecoming a registered doctor.

34. The Tribunal took account of factors at paragraph 97 of the SG which indicates circumstances in which it may be appropriate to impose a sanction of suspension and states:

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

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

...

f No evidence of repetition of similar behaviour since incident.

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

35. The Tribunal considered the facts of this case and was of the view that dishonesty is not easily remediable.

36. It found that Dr Martos Martinez was dishonest in his use of post nominals that he was not entitled to use; in his amended correspondence to Dr E; and his subsequent application to STNT. The Tribunal further noted that these were three separate episodes of dishonesty over a long period of time, in very different circumstances, and that Dr Martos Martinez's dishonesty had the aim of solely benefiting himself.

37. In its findings on impairment, the Tribunal found that it could not be satisfied there is no risk of repetition of his behaviour.

38. The Tribunal also took account of its earlier findings as to the seriousness of Dr Martos Martinez's misconduct, the serious departures from the principles of GMP, his repeated dishonesty and the breach of trust. It noted that the public should be able to trust their doctors. Having regard to the overarching objective and the requirement *'to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for members of the profession'*, it found that these would be undermined if Dr Martos Martinez were permitted to continue to practise as a doctor. The Tribunal had regard to paragraph 124 of the SG which states that *'Evidence of clinical competence cannot mitigate serious and persistent dishonesty'*.

39. The Tribunal considered that Dr Martos Martinez's conduct and the surrounding circumstances of this case are incompatible with continued registration. Given the misconduct in this case, the Tribunal did not consider that a sanction of suspension, even for a period of 12 months, would sufficiently maintain public confidence in the profession, nor promote and maintain proper professional standards and conduct for the members of the profession.

40. Having found that Dr Martos Martinez's serious misconduct is fundamentally incompatible with continued registration as a doctor, the Tribunal determined that suspension of Dr Martos Martinez's registration would not be appropriate.

Erasure

41. The Tribunal considered the following paragraphs of the SG to apply to Dr Martos Martinez's case:

'108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.'

'109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).

a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.

b A deliberate and reckless disregard for the principles set out in Good medical practice...'

42. The Tribunal concluded that, considering the evidence as a whole, the misconduct and episodes of multifactorial dishonesty of the doctor in this case were of such a serious nature, and involved such a disregard for professional standards, that Dr Martos Martinez's misconduct is fundamentally incompatible with continued registration.

43. The misconduct in this case is of such a serious nature that, for all the reasons set out above, the Tribunal has concluded that erasure is the only proportionate sanction to promote and maintain public confidence in the medical profession, and to uphold proper professional standards and conduct for members of the profession. The Tribunal therefore directs that Dr Martos Martinez's name be erased from the Medical Register.

Determination on Immediate Order - 14/06/2021

1. Having determined to erase Dr Martos Martinez's name from the Medical Register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Martos Martinez's registration should be subject to an immediate order.

Submissions

2. Mr Rose, Counsel on behalf of the GMC, submitted that the imposition of an immediate order was necessary. He referred to a number of paragraphs of the SG, including:

'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.'

3. Mr Rose submitted that Dr Martos Martinez put his own interests before those of Patient A and Patient B. He stated that both patients were vulnerable and, as such, the

provisions of paragraph 173 of the SG relating to patient safety and abuse of position of trust apply and that an order was necessary. Mr Rose submitted that, in any event, an immediate order was otherwise in the public interest given the significant effect that Dr Martos Martinez's conduct will have on public confidence in the profession. He submitted that this was particularly so given that some of Dr Martos Martinez's dishonesty involved misleading an internal investigation and misleading those conducting a first sift in regard to an application for a post and because of the repeated and persistent nature of the dishonesty.

4. Mr Rose stated that there was no interim order in place on Dr Martos Martinez's registration.

5. Miss Tanchel, Counsel on behalf of Dr Martos Martinez, submitted that there was no immediate risk which made an immediate order necessary in respect of patient safety nor in terms of the wider public interest.

6. Miss Tanchel submitted that the Tribunal had made no findings on the basis of patient safety, and they were only in relation to the public interest. She invited the Tribunal to reject Mr Rose's submissions that there were patient safety concerns. Miss Tanchel stated that it had not been in the public interest to require an interim order before and that nothing has changed in this position.

7. She stated that Dr Martos Martinez was not working in the UK. Miss Tanchel reiterated that the test for an immediate order was neither met nor satisfied.

The Tribunal's Determination

8. In making its decision the Tribunal exercised its own judgement. It had regard to the SG, including paragraph 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.'

9. The Tribunal had regard to the facts it has found proved in this case and the seriousness of those matters, which it has outlined in detail in its previous determinations. The Tribunal today is in a very different position from when Dr Martos Martinez admitted the count of dishonesty in 2019. There are now a significant number of facts found proved, a finding of impairment and a sanction of erasure imposed to uphold public confidence in the profession.

10. In all the circumstances, the Tribunal determined to impose an immediate order of suspension on Dr Martos Martinez's registration. It concluded that this was appropriate in

order to maintain public confidence in the medical profession and to uphold proper professional standards and conduct for the profession.

11. This means that Dr Martos Martinez’s registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from when written notice of this determination has been served upon Dr Martos Martinez, 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.

12. There is no interim order to revoke.

13. That concludes this case.

Confirmed

Date 14 June 2021

Mrs Julia Oakford, Chair

ANNEX A - 29/04/2021

Application to amend the Allegation

1. On behalf of the GMC, Mr Rose made an application pursuant to Rule 17(6) of Rules, that, paragraph 1(b) should be amended to state ‘17 May 2017’ as opposed to ‘4 May 2017’.

Submissions

2. Mr Rose informed the Tribunal that the incorrect date of 4 May 2017 was an oversight and that Patient B got this date wrong. He submitted that the date was not a contentious part of the Allegation and that the Tribunal should consider if they accept Patient B’s evidence that dates are easily misremembered.

3. On behalf of Dr Martos Martinez, Miss Tanchel submitted that to amend paragraph 1(b) of the Allegation would be unfair and prejudicial against Dr Martos Martinez as the case was prepared on the Allegation as it stands. She reminded the Tribunal that the burden of proof rests with the GMC and the incorrect date being an oversight is not fair to Dr Martos Martinez.

The Tribunals decision

4. The Tribunal considered whether it would be unfair to Dr Martos Martinez to amend the date in this paragraph of the Allegation. The substantive section of the Allegation relates to whether he initiated a conversation about private health care for his personal financial gain. The Tribunal found that changing the date did not change the nature of the Allegation and as such can be made without injustice to either party.

5. The Tribunal therefore determined to grant this application.

ANNEX B - 29/04/2021

Application under Rule 17(2)(g)

1. The case for the GMC has concluded and it is therefore open to the medical practitioner under Rule 17(2)(g) of the Rules to make submissions that there is insufficient evidence for the Tribunal to find some or all of the allegations proved. Rule 17(2)(g) states:

‘the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld’.

Submissions

2. Miss Tanchel, on behalf of Dr Martos Martinez, made an application pursuant to Rule 17(2)(g) of the Rules. She submitted that there is insufficient evidence to find paragraphs 1, 3, 5, 6, 11(b), 11(c) and 11(e) of the Allegation proved.
3. Miss Tanchel submitted that, relating to paragraph 1(a) of the Allegation, the premise of Patient A's complaint was that his medical appointment had been moved due to him not accepting Dr Martos Martinez's offer of private care. She stated Dr Martos Martinez did not have access to the patient appointment system and that this was confirmed by Ms H. In relation to paragraph 1(b) of the Allegation, Miss Tanchel submitted that Patient B was seen by Dr Martos Martinez on 17 May and not the 4 May and there was no evidence that the conversation had taken place as stated. She stated that if the patients could be seen sooner privately as opposed to later on the NHS then this would be in the patients best interests.
4. In relation to paragraph 3 of the Allegation, Miss Tanchel submitted that there was no evidence that Dr Martos Martinez was asked whether he was a Fellow of the Royal College of Physicians in London during the Trust investigation and there was therefore no duty to disclose this information.
5. Miss Tanchel went on to submit, regarding paragraph 5 of the Allegation, that Ms C's evidence was inconsistent, vague and tenuous that these paragraphs could not be proved.
6. Miss Tanchel submitted, in relation to paragraph 6, that Ms C confirmed Dr Martos Martinez had raised the issue of private health care. She submitted that this is unequivocal evidence that this paragraph of the Allegation is simply wrong. She further contended that if her submission was upheld paragraph 11(c) of the Allegation would fall.
7. Further, Miss Tanchel submitted, in relation to paragraph 11(b) that no evidence has been provided to indicate that Dr Martos Martinez had any dishonest intent by not disclosing that he was not a Fellow of the Royal College of Physicians in London.
8. Finally, Miss Tanchel submitted that cross admissibility should not be permitted in this case and that each paragraph of the Allegation should be considered individually.
9. Mr Rose, on behalf of the GMC, submitted that, in relation to paragraph 1 of the Allegation, the alleged soliciting of private care was not done in the patients best interests but for Dr Martos Martinez's personal financial gain. Patient A believed that the purpose of the call from Dr Martos Martinez was to persuade him to go into private care. He also submitted that Patient B conceded that she was seen by Dr Martos Martinez on 17 May 2017 not 4 May 2017 as set out in the Allegation. He submitted that there is a case to answer in relation to patients A and B as both complained that there was a delay to their treatment and both perceived this to be a result of them not accepting private treatment.

10. Mr Rose submitted, in relation to paragraph 3 of the Allegation, that Dr Martos Martinez should have raised that he was not a Fellow of the Royal College of Physicians in London during his disciplinary hearing at the Trust for using post nominals he was not entitled to. He submitted that the focus and context of the meeting was clear and this raised a duty for the doctor to disclose this information. Also, in relation to paragraph 11(b) of the Allegation, the Tribunal could find this dishonest.

11. Mr Rose submitted that the GMC is neutral on whether there is a case to answer for paragraphs 5 and 6 of the Allegation and that if these are removed then paragraph 11(c) of the Allegation should also be removed.

The Tribunals decision

12. In its deliberations, the Tribunal had regard to the test laid out in *R v Galbraith (1981) 1 WLR 1039*:

'If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty - the judge will stop the case. The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence. Where the judge concludes that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case. Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witnesses reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.'

13. The Tribunal first considered if there is a case to answer with regard to paragraph 1(a) of the Allegation. It bore in mind Miss Tanchel's submission that the sole reason for Patient A's complaint was that there was a delay to his medical appointment. It did not consider this to be entirely accurate as Patient A also complained about Dr Martos Martinez raising the issue of private care. As such, based on the evidence received the Tribunal found that there was a case to answer.

14. With regard to paragraph 1(b) of the Allegation, the Tribunal had regard to Patient B's witness statement in which she stated *'I felt as though I was in front of a double glazing sales man.'* It took the view that Patient B would not have said this unless Dr Martos Martinez was persistent in his approach. As such, based on the evidence received, the Tribunal found that there was a case to answer for paragraph 1(b) of the Allegation.

15. In considering paragraph 3 of the Allegation, the Tribunal bore in mind that Dr Martos Martinez attended a Trust disciplinary hearing, on 7 December 2017, regarding his use of a post nominal. It took the view that Dr Martos Martinez should have declared here that he

also used another post nominal that he was not entitled to use. As such, based on the evidence received, the Tribunal found that there was a case to answer for paragraph 3 of the Allegation.

16. With regard to paragraph 5(a) of the Allegation, the Tribunal noted that Ms C confirmed she wasn't sure if she read Dr Martos Martinez' statement. Her oral evidence was inconsistent and she could not recall much of the events. Due to the vagueness of Ms C's evidence, the Tribunal found that there was no case to answer for paragraph 5(a) of the Allegation.

17. In considering paragraph 5(b) of the Allegation, the Tribunal noted that there was consistent evidence from Ms C that she had been asked to sign a statement by Dr Martos Martinez. Ms C also confirmed that she had signed this statement. Accordingly, the Tribunal found that there was a case to answer for paragraph 5(b) of the Allegation.

18. The Tribunal noted that no evidence has been provided to support paragraph's 6(a) and 6(b) of the Allegation. It therefore found that there was no case to answer for paragraph's 6(a) and 6(b) of the Allegation and as such also no case to answer for paragraph 11(c) of the Allegation.

19. With regard to paragraph 11(b) of the Allegation, the Tribunal found there was a case to answer for paragraph 3 and therefore found that there was a case to answer in relation to 11(b).

20. Finally, the Tribunal considered paragraph 11(e) of the Allegation. It noted that Dr Martos Martinez has already admitted that he did not declare he was the subject to a GMC investigation and as such there was a case to answer for paragraph 11(e) of the Allegation.

ANNEX C - 30/04/2021

Application in relation to Tribunal's 17(2)g decision

1. On behalf of Dr Martos Martinez, Miss Tanchel made an application for the Tribunal to reconsider some wording in its determination on the Rule 17(2)g application in Annex B.

Submissions

2. Miss Tanchel submitted that paragraphs 14 and 15 of Annex B give the impression that the Tribunal has already made a factual decision. She stated that the Tribunal has an obligation to keep an open mind, be unbiased and should have only determined whether there is sufficient evidence for a case to answer at this stage. She concluded that a fair minded observer might conclude that the Tribunal was biased, based on the wording of the determination.

3. Miss Tanchel also submitted that she had indicated she did not intend to proceed with her application of no case to answer for paragraph 11(e) of the Allegation.

4. On behalf of the GMC, Mr Rose submitted that the Tribunal should not be re-determining its decisions. He stated that the Legally qualified chair, in her legal advice, made repeated references to *Galbraith* and that it was clear it was at the front of the Tribunal's mind. Mr Rose had no concern that the Tribunal had gone beyond that or made any findings of fact.

The Tribunals decision

5. The Tribunal considered this application and determined to amend its wording in paragraph 14 of Annex B to state:

'It took the view that Patient B may not have said this unless Dr Martos Martinez might have been persistent in his approach'

6. The Tribunal also determined to amend its wording in paragraph 15 of Annex B to state:

'It took the view that Dr Martos Martinez may have had a duty to declare that he also used another post nominal that he may not have been entitled to'

7. The Tribunal made all of its findings in the 17(2)g decision in line with the test laid out in *R v Galbraith (1981) 1 WLR 1039* and other case law referred to by the parties. It amended its determination to address any ambiguity in its 17(2)g decision. The Tribunal refuted any suggestion that it was biased in any way or that it was not open minded at this stage.

8. The Tribunal noted that Miss Tanchel did initially make an application of no case to answer for paragraph 11(e) of the Allegation but subsequently made no submission on the matter. Nonetheless, the Tribunal considered if there was a case to answer for this paragraph of the Allegation.