PUBLIC RECORD

Dates: 09/11/2026 - 10/11/2026

Doctor:	Dr Riccardo FRATI
GMC reference number:	4686561
Primary medical qualification:	MD 1998 Universita degli Studi di Roma ''La Sapienza''

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

Summary of outcome
No action (warning not considered)

Tribunal:

Legally Qualified Chair	Mr Ian Comfort
Lay Tribunal Member:	Ms Catherine Pease
Registrant Tribunal Member:	Dr Emma Sellars

Tribunal Clerk:	Mr Sewa Singh

Attendance and Representation:

Doctor:	Present, represented
Doctor's Representative:	Mr Christopher Geering, Counsel, instructed by Ms Amanda Riley, Counsel, Direct Access
GMC Representative:	Ms Georgina Goring, 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 public.

Protecting the Public

Throughout the decision making process the tribunal has borne in mind the statutory duty as set out in s1(1) of the Medical Act 1983 (the 1983 Act) to protect the public. The tribunal has considered the relevance and impact on each of the three distinct parts of public protection 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/Impairment - 11/11/2026

1. This determination was handed down in public. The Tribunal was not invited to exercise its powers under Rule 41 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended (the Rules), to sit in private to consider any matters that were confidential.

Background

2. Dr Frati qualified in 1998 in Rome.

3. These fitness to practise proceedings arise from allegations that on or around 23 July 2021, Dr Frati authorised sending Patient A a Disclaimer and Settlement document to sign which stated 'I also undertake to keep the fact and the terms of this agreement confidential and not to divulge any details pertaining to this agreement to any third party. I will not divulge any information to any regulators.' It is alleged that Dr Frati's fitness to practise is impaired by reason of misconduct.

4. The matter came to the attention of the GMC following a complaint received from Patient A.

5. Dr Frati is the sole practitioner at the Harley Surgery ('the Surgery'), located in Manchester, United Kingdom, and is part of the Harley Medical Group with offices in London and Leeds.

6. In late 2020, Patient A contacted the Surgery to discuss breast augmentation surgery. Correspondence was exchanged between the Surgery and Patient A and Patient A had consultations with the Surgery in early 2021. On 27 April 2021, Dr Frati performed the breast augmentation surgery on Patient A. Between April and July 2021, communication took place between the Surgery and Patient A regarding aftercare and potential complications from the surgery.

7. As a consequence, an agreement was reached between the Surgery and Patient A to settle the matter by way of a compensatory payment by the Surgery to Patient A. Dr Frati arranged for a Disclaimer and Settlement Agreement ('the Agreement') document to be drawn up which was sent to Patient A on 22 July 2021 agreeing a settlement figure of £8,500. Patient A signed and returned the Agreement on 23 July 2021, and provided her bank account details into which the settlement figure was to be paid. On the same date, the Surgery paid the settlement figure of £8,500 into Patient A's bank account.

8. On 17 July 2023, Dr Frati issued civil proceedings against Patient A alleging breach of the Agreement following publications made by Patient A on social media. On 20 July 2023, legal proceedings were served on Patient A and these are ongoing.

The Outcome of Applications Made During the Facts Stage

9. There were no applications made.

The Allegation and the Doctor's Response

10. The Allegation made against Dr Frati is as follows:

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

1. On or around 23 July 2021, you authorised sending Patient A a Disclaimer and Settlement document to sign which stated "I also undertake to keep the fact and the terms of this agreement confidential and not to divulge any details pertaining to this agreement to any third party. I will not divulge any information to any regulators." Admitted and found proved

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

11. At the outset of these proceedings, through his Counsel, Mr Christopher Geering, Dr Frati admitted 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 the Allegation as admitted and found proved.

IMPAIRMENT

12. 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 above, Dr Frati's fitness to practise is impaired by reason of misconduct.

The Evidence

Documentary Evidence

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

- Correspondence between Ms B at the Surgery and Patient A dated 22 and 23 July 2021;
- A copy of the Disclaimer and Settlement Agreement Form;
- Agreed facts between the parties in this case;
- Dr Frati's reflective statements dated 9 and 21 August 2026, and 1 November 2026;
- A copy of the Surgery's Complaints Procedure;
- A copy of the Surgery's Draft Patient Settlement Agreement Form;
- Certificates of Dr Frati's attendance at relevant training courses, which included 'Working with Others – MH08.2'and 'Complaint Management for the Independent Sector - MH16.1', both dated 1 March 2025;
- Testimonials from Dr Frati's colleagues attesting to his clinical work and character.

14. There were no witness statements or oral evidence presented to the Tribunal.

15. Dr Frati did not give oral evidence. However, in his reflective statements, he set out his learning from the GMC investigation process about his professional judgement. He stated that when he authorised the settlement agreement in July 2021, he was focused on bringing a difficult dispute with Patient A to a fair and final conclusion, for the benefit of both Patient A and the Surgery, with the confidentiality of the settlement terms preserved. He added that it was never his intention to prevent or discourage Patient A from raising more general concerns with the GMC or any other regulator, and that this remained his position today.

16. Dr Frati stated that he now understood how the wording contained within the Agreement could be read and misinterpreted by another person, adding that *'a patient reading "I will not divulge any information to any regulators," on its own, could reasonably conclude that their right to contact the GMC was being restricted, regardless of how the clause sat alongside the earlier paragraphs, and regardless of what I intended it to mean. I am sorry that the wording was capable of creating that impression, and I regret that it did.'* Dr Frati accepted his responsibility stating that he should have recognised the risk in the wording before the Agreement was sent to Patient A, rather than after a complaint was made. He said if he could go back, he would remove the sentence entirely, adding it was *'clumsy, ill conceived, and should never have been included.'*

17. Dr Frati went on to say that this mattered to him because a patient's ability to raise concerns with the regulator is not simply a matter of courtesy or good communication, but a part of how the profession is held accountable and how patients are protected. He stated *'Anything that could reasonably discourage a patient from exercising that right, even inadvertently, works against the purpose regulation is there to serve. I understand this more clearly now than I did in 2021.'*

18. Dr Frati stated that since and as a result of these events, he had changed how final documents are issued from the Surgery. He said that he now asked a simple question before anything is sent to a patient.... *"how will this be understood by the person receiving it?"* Dr Frati said that he had given clear guidance to his Practice Manager and administrative staff that no document should ever contain wording that could be interpreted as restricting or discouraging a patient's right to contact the GMC or any other regulatory body. He stated that *'I now understand that responsibility for how a document reads sits with me, not only with whoever drafted it.'*

19. Dr Frati stated that patients place a great deal of trust in their doctors and part of that trust was the assumption that any document provided to them was fair and appropriate, in every letter, email and agreement sent in his name. Dr Frati added that the lessons he had learnt from this experience would stay with him, adding that maintaining public confidence in the profession depended not only on clinical competence but on the fairness and integrity of every interaction with a patient, including in the documents patients are asked to sign. He said that these are the standards he held himself to and would continue to do so throughout his career.

20. Dr Frati went on to say that in relation to paragraph 8 of the Agreement, his intention was to protect the confidentiality of the settlement and the terms upon which the dispute had been resolved with Patient A. He said that he did not intend that the Agreement should prevent the patient from raising a concern or making a complaint to the regulator and that he now understood the words in paragraph 8 of the Agreement - *'I will not divulge any information to any regulators'* – did not read as being limited to confidentiality of the settlement alone. Dr Frati acknowledged that this would have been Patient A's understanding based on the wording contained within the Agreement. He said that Patient A could not have been expected to know or infer the narrower meaning he had in mind when he drew up the Agreement and he recognised that it was his own responsibility to ensure that the wording accurately reflected his intention and did not create uncertainty about the patient's ability to raise concerns or approach a regulatory body.

21. Dr Frati stated that as part of his wider professional development, he undertook further CPD in 2025 relevant to the management of complaints and difficult situations, including a course specifically concerning complaint management within the independent sector. He said that this training had assisted him in reflecting upon how concerns and difficult situations should be handled and communicated. Dr Frati stated that he did not rely upon what he did or did not appreciate at the time as an excuse for the wording used in the Agreement, and accepted full responsibility for authorising the use of the words. He went on to say that at the time of writing the Agreement, the Surgery had discussions with a Solicitor about the proposed wording to be used but that did not remove his own professional obligations to ensure the wording was accurate in paragraph 8 of the Agreement, specifically with reference to the use of the word 'regulators'. He said that he regarded the provision as forming part of the arrangements intended to protect the confidentiality of the financial terms of the settlement.

22. Dr Frati stated that the wording and potential effect of paragraph 8 of the Agreement was not brought to his attention until October 2025 following receipt of correspondence from the GMC, and it was at that point he realised the provision of the wording in paragraph 8 and its implications were being questioned and required further consideration. He said that from January 2026, he began considering more carefully the implications of the wording of the 2021 Agreement, including discussions with staff and professional colleagues and the practical changes needed within the Surgery, including the revision to the template to now expressly preserve a patient's right to make a complaint, provide information and documents, cooperate with any regulatory investigations and disclose the terms of a settlement agreement, where relevant. Further, the template now makes clear that a patient does not require permissions or advance notification before contacting a regulator and are not subject to any penalties for doing so. Furthermore, he stated that the documentation and the wording used in the template should be clear and unambiguous to ensure patients clearly understand their rights without the need for having to seek legal advice on clarification or meanings.

23. Dr Frati went on to say that introducing a revised template was only one part of the changes made and that his responsibility extended beyond the wording of individual documentation to the culture and standards which he encouraged within his practice. He said that patients should feel they can raise questions and raise any concerns without the fear of intimidation, or from being discouraged to do so, and that any concerns should be listened to respectfully and considered objectively and addressed openly. Dr Frati said that he understands the importance of his staff members knowing these principles and patients' rights. He stated *'Ultimately, I understand that patient trust depends not only on the clinical care provided, but also on the openness, integrity and fairness with which concerns are received and handled'* and that this was *'the beginning of a wider review of the procedures within Harley Surgery, which continued during the following months and included the introduction of a revised Patient Complaints Policy.'*

24. Dr Frati stated that as part of his continuing reflections, he reviewed two GMC publications between January and March 2026 which helped him to consider the issue from a wider professional perspective:

a. *Openness and honesty when things go wrong: the professional duty of candour*; and
b. *Raising and acting on concerns about patient safety*

25. He acknowledged the GMC's guidance on the professional duty of candour reinforcing the need for openness and honesty when patients raised concerns or when something goes wrong in the provision of care to them. He said that a doctor's responsibility extended beyond the clinical treatment and into the way doctors communicate with patients and address their concerns. He added *'I also considered the guidance concerning apologies. I understand that an apology should be genuine and should acknowledge what went wrong, rather than simply attempt to bring an uncomfortable matter to an end.'* Dr Frati went on to state that he recognised the importance of creating an environment in which concerns can be raised openly about patient safety.

26. Dr Frati referenced Good Medical Practice (GMP) including the requirements of paragraph 65 which states that *'a doctor's conduct must justify patients' trust in them and the public's trust in the profession.'* and the need to consider how his conduct including documents he authorised, may affect patients' trust and confidence in the medical profession. Dr Frati also spoke of the wider implications to public confidence and how the wording used in the Agreement can impact on this in that it could be perceived by a member of the public that the doctor was attempting to *'avoid independent scrutiny.'*

27. Dr Frati acknowledged that independent regulatory oversight was fundamental to protecting patients, to maintain professional standards and to ensure that doctors remain accountable for their conduct. He said that as a doctor he had personal responsibility to uphold that confidence, including responding to complaints, resolving disputes and dealing with matters which may be difficult.

28. Dr Frati spoke of discussions he had with his staff and their views on the use of relevant wording to be included in the template forms to be used in the future. He said that their views had helped him to gain better understanding and reinforced the importance of how a patient might understand the implications of wording used in documentation. He went on to speak of CPD activity he had undertaken as part of his learning, which included several online courses during 2024 entitled 'Patient Safety and Quality Care', 'Leadership and Management in Health Care', and 'Empowering People with Disabilities.' and further online courses in 2025 entitled 'Complaint Management for the Independent Sector', 'Working with Others', 'Personal Effectiveness' and 'Influencing Assertively'.

29. Dr Frati spoke of the importance of communication and professional judgement when dealing with difficult or challenging situations, stating *'I do not suggest that completing these courses, in itself, demonstrates insight into the concerns raised by the 2021 agreement. What matters is how I have subsequently reflected upon and applied the relevant principles.'* Dr Frati stated that he understands he cannot delegate responsibility for the appropriateness of patient facing documentation, and that where legal drafting is required, he will ensure that appropriate professional advice is obtained and that he will personally review and consider the wording of any documentation.

30. Dr Frati reiterated that he did not intend to prevent Patient A from approaching the regulator but understood why that intention was not clear and could reasonably be misinterpreted. He expressed regret for the wording used in the Agreement and apologised for the error of judgement on his part.

Submissions on Impairment

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

31. Ms Georgina Goring, Counsel, reminded the Tribunal that the complaint originally was raised by Patient A regarding clinical aspects of her surgery, which she alleged went wrong. However, a GMC commissioned expert's report concluded that no aspect of the clinical care

provided by Dr Frati fell seriously below the standards required, hence the only allegation in this case relates to the Agreement, specifically the clause regarding non-disclosure set out at paragraph of the Agreement.

32. Ms Goring submitted that the allegation as admitted and announced as found proved amounted to serious misconduct, and as a result, Dr Frati's fitness to practise is impaired by reason of misconduct. She reminded the Tribunal that there is no legal definition of misconduct but there is guidance from the case of *Roylance v GMC* which states that misconduct is a word of general effect, involving some act or omission, which falls short of what would be proper in the circumstances. She said that the standard of proprietary may often be found by reference to the rules and standards ordinarily required to be followed by a registrant in the particular circumstances, and that case law also goes on to describe misconduct as conduct that fellow practitioners would find to be deplorable.

33. She referred the Tribunal to GMP (2013 version) and said that paragraph 65 was engaged. Ms Goring submitted that paragraph 8 of the Agreement was designed to prevent Patient A from making a complaint to the regulator, adding that this undermined the purpose of the regulator and the safeguards that it provided to patients and the wider public, and the Tribunal may consider the wider medical profession. Ms Goring said that Dr Frati's actions in asking Patient A to sign the Agreement was a serious departure from the standards expected of doctors. She said that patients should be able to trust their doctors, and that doctors should be open and honest with patients and not take steps to try and prevent them from raising concerns about doctors' clinical practice.

34. Ms Goring referred the Tribunal to the four questions set out in Dame Janet Smith's *Fifth Shipman Report* . Ms Goring submitted that whilst it was accepted by the GMC that there was no risk to patients in this case, Dr Frati's actions had the potential to put patients at risk of harm; his conduct brought the medical profession into disrepute in that the Agreement undermined the public's confidence in the wider medical profession and by taking steps to invite a patient to sign this, may have prevented the regulator to carry out its proper function; his actions breached of one of the fundamental tenets of the profession, adding that honesty and, importantly, integrity is a cornerstone of the medical profession and Dr Frati by allowing this document to be signed by Patient A had not acted with integrity. Ms Goring submitted that all three elements of public protection are engaged in this case and on that basis, the Tribunal could make a finding of impaired fitness to practise.

35. Ms Goring referred the Tribunal to the MPTS Guidance (the MPTS Guidance) (effective from 24 November 2025) and submitted that the misconduct in this case falls at the higher end of the spectrum of seriousness. She drew the Tribunal's attentions to paragraph 34 which sets out features which may increase the seriousness of the allegation, four of which are engaged in that Dr Frati's actions were premeditated, undermined a system designed to protect the public, he put his own interests before that of the patient, and he attempted to hide or avoid taking responsibility for his behaviour or poor performance.

36. Moving on to current and ongoing risk, Ms Goring submitted that there was no relevant context in the circumstances of this case which would apply. In relation to how Dr

Frati has responded to the Allegation, In relation to insight and remediation, Ms Goring submitted that the Tribunal needed to consider what, if any, insight Dr Frati had shown and whether that is genuine, and did he understand what happened and accept how he could act differently in future. Further, she said that the Tribunal needed to consider evidence demonstrating the misconduct has been remediated. She acknowledged Dr Frati has shown some insight and remediation, referring the Tribunal to his reflective statements, and that he has undertaken some relevant CPD activity to address the concerns in this case. Ms Goring submitted that it was accepted the risk of repetition is low given Dr Frati has taken steps to amend the wording of the template document, and so the Tribunal could be assured that the wording in paragraph 8 of the Agreement would not be used again. She reminded the Tribunal that there has been no repeat of the behaviour since these matters came to the attention of the GMC. However, in referencing paragraph 44 of the MPTS Guidance, Ms Goring reminded the Tribunal that where a case falls at the higher end of the spectrum, evidence of insight and remediation will usually carry less weight and therefore will have less impact, if any, on the assessment of current and ongoing risk to public protection. She also referred the Tribunal to paragraphs 109 and 117 of the MPTS Guidance.

37. Ms Goring reminded the Tribunal that Dr Frati has continued to work with no further concerns raised and, therefore, there were no concerns about his medical knowledge and skills. Ms Goring invited the Tribunal to find Dr Frati's fitness to practise impaired by reason of misconduct.

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

38. Mr Christopher Geering invited the Tribunal to find Dr Frati's fitness to practise not impaired. He made no submissions on the question of misconduct. He submitted that the conduct in this case falls at the lower end of the spectrum of seriousness.

39. Mr Geering reminded the Tribunal of the nature of the allegation in this case which concerned a contractual agreement containing an inappropriate clause. He accepted that there was clearly an important public interest in ensuring that a patient is not restricted or prevented from making a complaint to the regulator if required. He said that on the face of it, Patient A may have understood the clause in paragraph 8 of the Agreement to be doing just that. Mr Geering reminded the Tribunal that this case does not involve that there was any dishonest intention behind the inclusion of the clause, nor alleged any issue of integrity, adding that it is precisely these features which would raise the culpability of the doctor. He said that no such suggestion could now be brought in through the back door. He referred the Tribunal to case law which he submitted supports his assertion. He went on to say that the GMC has not put its case on the basis of any failing to act with honesty, integrity and uphold the law, and therefore an imputation cannot now be brought in on a sidewind.

40. Mr Geering submitted that in this case, Dr Frati failed to appreciate how the clause set out in paragraph 8 of the Agreement read. He said that apart from the words 'I will not divulge any information to any regulators', the rest of the clause concerns limiting the disclosure of the Agreement and the terms of it not being shared with a third party. Mr Geering submitted that it was not Dr Frati's intention to limit this element of the Agreement

with any regulators. He submitted that the fact was that Dr Frati did not give the matter sufficient attention, adding that under pressure of time, he issued an Agreement which was improper, but with no intention that it should be so. Mr Geering submitted that it was of note that the Agreement was drafted with the assistance of a Solicitor and Dr Frati placed reliance on that individual's professional skills, which would extend to a professional obligation not to be a party to inappropriate contractual terms. Mr Geering acknowledged, however, that this does not absolve Dr Frati of responsibility but said that it was relevant to the degree of his culpability in not reflecting as fully as he should on how the clause read. He said it should be noted that Dr Frati never made any attempts to bring any legal proceedings against Patient A for alleged breach for her contacting the GMC, but did so only in respect of her social media posts. He said that this was consistent with this understanding that he was not seeking to prevent general provision of information to the regulator. Mr Geering reminded the Tribunal that no harm came to Patient A or any other patients as a result of this and there was no evidence to suggest Patient A was in fact prevented from making a complaint to the regulator.

41. Mr Geering referred the Tribunal to the MPTS Guidance and submitted that, in looking at each category, there was no obvious example which encompasses this misconduct. He said there was no suggestion that this case falls within the higher category, adding that the examples set out deal with matters of far greater gravity such as violence, sexual abuse, serious dishonesty, and a criminal custodial conviction. Mr Geering submitted that this case sits better within category dealing with matters which fall at the lower spectrum of seriousness such as a criminal conviction resulting in a fine, limited discriminatory conduct, and limited dishonesty.

42. Mr Geering referred the Tribunal to paragraph 36 of the MPTS Guidance and reminded it that it should not double count. By way of example, he submitted that if the Tribunal's starting point reflects the fact that the allegation undermined the regulatory regime, that same factor cannot then also be used to elevate the seriousness of the misconduct further. Mr Geering reminded the Tribunal that Dr Frati's conduct was not persistent or repeated, and this case involved one isolated incident, which did not affect the quality of the clinical care provided to Patient A or to the wider handling of the patient's complaint. Mr Geering said that there was no suggestion of a breach of the duty of candour, and there is no charge relating to the provision of any similar contractual provision in any other case prior to or since these matters came to light. He submitted that Dr Frati qualified in 1998 and having registered with the GMC in 2000, having previously practised in Italy, and is on the specialist register in plastic surgery. Further, there is no course of conduct and no wider attitudinal concerns.

43. Referring to whether the Dr Frati's actions were premeditated, Mr Geering acknowledged that of course the Agreement was not devised spontaneously. He said, however, that the paragraph in the MPTS Guidance dealing with premeditated behaviour did not seek to address this but rather usually arises where a doctor looks for, or identifies, an opportunity to take advantage of a person or situation and takes steps towards doing so. He added that there was no opportunity for Dr Frati to exploit Patient A which otherwise would amount to a lack of integrity or honesty.

44. Mr Geering submitted that in relation to whether there was a reckless disregard of professional standards, this was only engaged in so far that Dr Frati failed to give sufficient consideration to the wording of paragraph 8 of the Agreement or consider its implications. Mr Geering acknowledged and accepted that Dr Frati's actions had the potential to undermine a system designed to protect the public but not through any deliberate intention. He said that Dr Frati's actions did not equate to any deliberate, dishonest attempt to undermine the regulatory recourse to the GMC. Mr Geering submitted that the Tribunal, therefore, needs to grapple with the seriousness of Dr Frati's conduct, taking account that this was a single incident in a long unblemished career and involves no dishonesty or lack of integrity or nefarious intention or patient harm, and where there is no question of abuse of position, or dealing with a vulnerable patient, or any suggestion of a lack of duty of candour. He reminded the Tribunal that the GMC also has not alleged that Patient A was prohibited from making a complaint to the regulator. All of this information, he submitted, indicates why this case falls at the lower end of the spectrum of seriousness.

45. In dealing with the impact of relevant context, Mr Geering submitted that Dr Frati has reflected significantly on why he made the mistake in including the clause in paragraph 8 of the Agreement, and referred the Tribunal to Dr Frati's reflections statement where he states:

> *'The agreement was prepared in haste on a particularly difficult and pressured day, when the patient was seeking an urgent resolution and prompt payment of the agreed settlement sum. My immediate focus was on resolving the situation and bringing the matter to a conclusion.'*

46. Mr Geering reminded the Tribunal that this statement is corroborated by the testimonial of Ms B, the Practice Manager at the Surgery where she states:

> *'I recall that the settlement agreement in July 2021 was dealt with in circumstances of considerable urgency, including a telephone discussion with a solicitor concerning the settlement documentation, as the patient was seeking a prompt resolution and payment of the agreed settlement sum.'*

47. Mr Geering took the Tribunal through the steps Dr Frati has undertaken to address the concerns and respond to the allegation. He submitted that Dr Frati has 'shown insight in spades', adding that he admitted the facts alleged in a timely manner and cooperated in drawing up a statement of facts to facilitate the speedy resolution of this matter, and thereby cooperated in the most comprehensive way possible and shown respect for the regulator and the regulatory process. Mr Geering reminded the Tribunal that Dr Frati remains engaged in ongoing legal proceedings against Patient A for breach of confidentiality and therefore there is no appropriate way in which he can communicate his apology to Patient A, which he does so before this Tribunal, as set out in his reflective statement. Mr Geering submitted that Dr Frati has reflected very fully, setting out his position over three reflective documents, drafted over a period of three months. He said that this is not cosmetic insight, it contains detailed consideration of the relevant guidance, on his own responsibilities, and on the wider

need for openness and transparency. Mr Geering added that Dr Frati has faced up to his failure and accepted responsibility for the wording in the Agreement.

48. Mr Geering went on to say that Dr Frati has reflected on his conduct with his colleagues, and with staff at the Surgery, addressing the need to ensure that in future such contractual agreements are properly drafted, embracing a culture of openness and transparency. Further, he submitted that Dr Frati has devised and implemented a comprehensive complaints policy to deal with any future complaints. Mr Geering submitted that, in short, Dr Frati has reflected on matters going beyond the allegation before the Tribunal. Furthermore, he stated that Dr Frati's reflections extend also to a consideration of the public interest, and Dr Frati has engaged, understood and acknowledged the damage his conduct may cause to the profession more widely.

49. Mr Geering referred the Tribunal to the testimonials provided by Dr Frati's clinical colleagues all of whom attest to his clinical skills and character, and speak of his openness, his willingness to reflect, and reinforce the point no further instances of a like nature have arisen since. All those issues are fundamental to current impairment. Mr Geering drew the Tribunal's attention, in particular, to the testimonial of Dr C, Ms D, Ms B, and Dr E.

50. Referring to the risk of repetition, Mr Geering submitted that there is evidence before the Tribunal of insight and practical remediation all of which indicate a low risk of repetition. He added that the GMC also acknowledged the risk of repetition is low. He said that the Tribunal should be mindful this incident occurred almost five years ago and there has been no repeat of this since. In dealing with the public interest, Mr Geering submitted that there was no question of Dr Frati being anything other than an excellent clinician, adding that there has not been any complaint about his clinical practice. Mr Geering submitted that the public interest could be said to be marked by the very regulatory process and these proceedings.

51. In all the circumstances, Mr Geering invited the Tribunal to find Dr Frati's fitness to practise is not currently impaired.

Additional Submissions

52. In response to a point raised by the Tribunal, Ms Goring confirmed that the GMC was not advancing its case on grounds of a lack of integrity and/or dishonesty.

The Tribunal's Approach

53. The Tribunal reminded itself that whether the facts found proved amount to misconduct is a matter for its own independent judgment. No burden or standard of proof applies at this stage. The Tribunal accepted the advice of the Legally Qualified Chair.

54. The Tribunal had regard to *Roylance v General Medical Council (No 2) [2000] 1 AC 311*, in which misconduct was described as a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances, judged by reference to the standards ordinarily required of a medical practitioner. The falling short must be

serious. Not every departure from professional standards, error of judgment or negligent act will reach that threshold.

55. The Tribunal also had regard to *R (Calhaem) v General Medical Council [2007] EWHC 2606 (Admin)*. Mere negligence does not amount to misconduct. A single negligent act or omission is less likely to cross the threshold than multiple acts or omissions, although a single act which is particularly grave may do so.

56. The Tribunal reminded itself that it must confine itself to the Allegation as charged and may not make findings on matters that have not been alleged: *Roomi v General Medical Council [2009] EWHC 2188 (Admin)* and *Chauhan v General Medical Council [2009] EWHC 2093 (Admin)*. The GMC did not allege dishonesty or lack of integrity. Nor did it allege that Dr Frati deliberately sought to prevent Patient A from communicating with a regulator. The Tribunal proceeded on the basis upon which the GMC advanced its case. It makes no such findings and its assessment of seriousness proceeds solely on the facts found proved.

57. The relevant edition of Good Medical Practice (GMP) was that published in 2013, which was in force at the material time. At the Tribunal's request, both counsel confirmed that the heading "Acting with honesty and integrity", under which paragraphs 65 and 71 appear, did not import any allegation of dishonesty or lack of integrity into the Tribunal's consideration and that each paragraph fell to be applied according to its own wording. The Tribunal proceeded on that basis.

58. Paragraphs 65 and 71 of GMP state:

> *'Act with honesty and integrity*
>
> *65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*
>
> *71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents.22 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.'*

The Tribunal's Decision

59. The Tribunal found that the wording contained in the Disclaimer and Settlement Agreement was inappropriate. A reasonable patient could understand the following words as discouraging or limiting communication with a regulator:

> "I will not divulge any information to any regulators"

60. The Tribunal found that Dr Frati approved that wording. He was responsible for the content of the agreement and failed adequately to consider how the wording might reasonably be understood by a patient and its impact.

61. The Tribunal was satisfied that the conduct constituted a departure from paragraph 65 of GMP. A patient asked to agree to such wording could reasonably have been left with the impression that their freedom to approach a regulator was restricted. Conduct capable of creating that impression is not conduct which justifies patients' trust or the public's trust in the profession.

Seriousness

62. The Tribunal then considered whether that departure from professional standards was sufficiently serious to amount to misconduct.

63. The Tribunal approached that question with care. Wording capable of being understood as restricting a patient's communication with a regulator is a serious matter. The ability of patients to raise concerns with a regulator freely and without restriction is fundamental to the protection of the public, the proper regulation of the profession, and the maintenance of public confidence in doctors.

64. The Tribunal recognised that the seriousness of such wording lies principally in its potential effect and is not dependent upon proof of actual harm. It therefore did not regard the absence of harm as decisive, but considered whether the wording itself, viewed in its full context, amounted to a serious falling short of the standards expected of a registered medical practitioner.

65. In reaching its judgment, the Tribunal considered the following matters:

(a) This was a single incident arising from one agreement. There is no evidence of any similar wording having been used in any other agreement or on any other occasion.

(b) On the facts found proved, the wording arose from a failure sufficiently to appreciate how it might reasonably be understood by a patient. The Tribunal has not found that the wording reflected an intention to restrict Patient A's communication with a regulator, and no such intention was alleged.

(c) There is no evidence that Patient A was in fact prevented or deterred from communicating with a regulator, or that any regulatory process was impeded. The Tribunal treated this as relevant to its overall assessment, but not as decisive.

(d) The Allegation does not concern Dr Frati's clinical care, the handling of Patient A's complaint more generally, or the duty of candour.

66. The Tribunal balanced those matters against the importance of unrestricted access to regulators. It considered that the public interest in that principle is substantial. However, the Tribunal was careful not to assess seriousness solely by reference to the importance of the principle engaged. The question remained whether the conduct, viewed in its proper factual context, amounted to a serious departure from the standards expected of a registered medical practitioner.

67. Having weighed all these matters, the Tribunal concluded that the conduct was an isolated error of judgment arising from a failure sufficiently to appreciate the implications of the wording used. The Tribunal was satisfied that the case was properly characterised as one of negligent error rather than deliberate interference with the regulatory process. Whilst the Tribunal recognised the importance of the interests engaged, it was not persuaded that the conduct demonstrated a deliberate attempt to inhibit access to a regulator, an abuse of professional position, an attitudinal failing, or any wider disregard for professional obligations. In those circumstances, the Tribunal concluded that the conduct, although falling below the standards expected of a registered medical practitioner, did not amount to a serious departure from those standards and was not particularly grave within the meaning of *Calhaem*. The conduct in this case did not therefore reach the threshold to amount to serious misconduct.

68. Having determined the issue as to misconduct, the Tribunal did not need to go on to consider the question of impairment.

69. The Tribunal determined that Dr Frati's fitness to practise is not impaired by reason of misconduct.

70. After announcing verbally its decision on misconduct/impairment, the Tribunal inquired and was informed that there is no interim order in place.

71. That concludes the case.