

PUBLIC RECORD

Dates: 12/12/2022 - 21/12/2022

Medical Practitioner’s name: Dr Robert MAYOMBWE LUTAAYA

GMC reference number: 5194290

Primary medical qualification: Lekarz 1995 Akademia Medyczna im Piastow Slaskich

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

Summary of outcome
Suspension, 1 month

Tribunal:

Legally Qualified Chair	Mr Angus Macpherson
Lay Tribunal Member:	Mr Peter Scofield
Medical Tribunal Member:	Dr Joanne Topping
Tribunal Clerk:	Ms Lauren Clark (12 December 2022) Ms Maria Khan (13 December 2022) Mr John Poole (14 December 2022) Ms Evelyn Kramer (15 December 2022) Mr Laurence Millea (16 – 21 December 2022)

Attendance and Representation:

Medical Practitioner:	Present and not represented
Medical Practitioner’s Representative:	N/A
GMC Representative:	Mr Carlo Breen, 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 - 20/12/2022

1. This determination will be handed down in private. However, as this case concerns Dr Mayombwe Lutaaya's misconduct, a redacted version will be published at the close of the hearing with those matters relating to XXX removed.

Background

2. Dr Mayombwe Lutaaya qualified in 1995 from Worclaw Medical University as MBChB, and obtained a MSc Psych from the University of Manchester in 2014. At the time of the events Dr Mayombwe Lutaaya was employed by CGL Substance Misuse Service and was, in addition, engaged as an on-call doctor at the Priory Hospital in Preston ('the Priory'), where he had practised for the previous 17 years. The Priory is a private mental health provider and Dr Mayombwe Lutaaya's role there was to clerk patients upon admission and assess patients on the ward with urgent physical or mental health needs, including prescribing and detaining patients under the Mental Health Act.

3. The allegation that has led to Dr Mayombwe Lutaaya's hearing can be summarised as follows. On 31 March 2021, Dr Mayombwe Lutaaya consulted with a patient at the Priory Hospital and failed to make adequate reasonable adjustments for the patient's communication and support needs, to communicate adequately with the patient and to obtain a relevant history. It is alleged that Dr Mayombwe Lutaaya inappropriately limited the duration of the assessment. It is also alleged that Dr Mayombwe Lutaaya failed to take

adequate steps to obtain the patient’s blood test results and/or arrange for blood tests, or record the patient’s views on hospital admission and medication. It is further alleged that Dr Mayombwe Lutaaya made entries concerning a physical examination in the patient’s medical records that he knew he had not undertaken and that by doing so, he was acting dishonestly.

4. The initial concerns were raised with the GMC on 30 April 2021 by Dr Mayombwe Lutaaya himself. He self-referred in an email to the GMC following the commencement of a local investigation and his suspension by the Priory.

The Outcome of Applications Made during the Facts Stage

5. The Tribunal permitted Dr Mayombwe Lutaaya to retract his admissions to paragraphs 3(a) and 3(b) of the Allegation. The Tribunal’s full decision on the application is included at Annex A.

The Allegation and the Doctor’s Response

6. The Allegation made against Dr Mayombwe Lutaaya is as follows:

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

1. On 31 March 2021 you consulted Patient A and you:
 - a. failed to make adequate reasonable adjustments to Patient A’s communication and support needs in that you did not:
 - i. repeat information and instructions; **To be determined**
 - ii. provide written information; **To be determined**
 - iii. confirm his understanding and recall of the information provided; **To be determined**
 - b. failed to adequately communicate with Patient A in that you did not:
 - i. obtain Patient A’s:

1. full relevant social and family situation; **To be determined**
 2. personal history; **To be determined**
 3. previous medical history; **To be determined**
- ii. explain the likely benefit and potential side effects of each prescription drug; **To be determined**
- c. failed to obtain a relevant history from Patient A’s family, friends or significant others; **To be determined**
- d. inappropriately limited the duration of Patient A’s assessment rather than conduct the assessment in a ventilated environment; **To be determined**
- e. failed to take adequate steps to obtain the results of any blood tests Patient A underwent at Royal Blackburn hospital; **To be determined**
- f. in the alternative to paragraph 1e, failed to take adequate steps to arrange for Patient A to undergo blood tests; **To be determined**
- g. failed to record:
- i. Patient A’s views towards mental health admission; **Admitted and found proved**
 - ii. Patient A’s views towards prescription medication; **To be determined**
 - iii. in the alternative to paragraphs 1b-1c, having undertaken the actions outlined in paragraphs:
 1. 1b; **To be determined**
 2. 1c; **To be determined**
- h. recorded that you had heard Patient A’s:

- i. heart sounds; **Admitted and found proved**
 - ii. breathing sounds; **Admitted and found proved**
 - iii. bowel sounds; **Admitted and found proved**
- i. recorded that you had assessed Patient A’s vibration sense. **Admitted and found proved**
2. When you made the record referred to at paragraph:
- a. 1h you knew that you had not heard the sounds referred to at paragraphs 1hi-1hiii; **Admitted and found proved**
 - b. 1i you knew you had not assessed Patient A’s vibration sense; **Admitted and found proved**
3. Your actions referred to at paragraph:
- a. 1h were dishonest by reason of paragraph 2a; **To be determined**
 - b. 1i were dishonest by reason of paragraph 2b. **To be determined**

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

The Admitted Facts

7. At the outset of these proceedings, Dr Mayombwe Lutaaya 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. It found them proved as set out below.

Witness Evidence

8. The Tribunal received evidence on behalf of the GMC from the following witnesses:
- Ms B, Health Care Assistant at the Priory, by video link, who also provided a written witness statement dated 6 May 2022;
 - Ms D, Deputy Ward manager at the Priory, by video link, who also provided a written witness statement, dated 18 May 2022;
 - Dr E, Medical Director at the Priory and head of local investigation, by video link, who also provided a Management Report, dated 27 July 2021.
9. Dr Mayombwe Lutaaya provided an undated written account for these proceedings, and gave oral evidence at the hearing.
10. The Tribunal also received evidence on behalf of Dr Mayombwe Lutaaya in the form of witness statements from the following witnesses who were not called to give oral evidence:
- Dr F, Dr Mayombwe Lutaaya’s Responsible Officer (‘RO’), dated 1 October 2022, and;
 - Dr H, Consultant Psychiatrist in Addictions, Associate Medical Director at Change Grow Live, dated 25 November 2022.

Expert Witness Evidence

11. The Tribunal also received evidence from one expert witness, Dr I. He provided oral evidence to the Tribunal, by video link, and provided a written Medical Report, dated 7 November 2021, as well as a supplemental report dated 12 May 2022 and a further email, dated 30 July 2022. Dr I’s evidence was to assist the Tribunal in understanding the requirements and obligations expected of a practitioner in Dr Mayombwe Lutaaya’s role and position, and to assess the standard of care he provided to Patient A.

Documentary Evidence

12. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to relevant medical records for Patient A including prescription charts, local investigation meeting notes, various Priory Group guidance documents and CCTV footage of Dr Mayombwe Lutaaya entering and leaving the consultation.

The Tribunal's Approach

13. 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 Mayombwe Lutaaya 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.

14. When considering the alleged dishonesty in this case, the Tribunal had regard to the test set out in *Ivey v Genting Casinos (UK) Limited (t/a Crockfords Club)* [2017] UKSC 67:

'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.

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

15. 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.

Dr Mayombwe Lutaaya's account

16. The general account of Dr Mayombwe Lutaaya, as set out in his written account and oral evidence, was that due to XXX from a transferred patient in January 2021, he decided to spend less time in an unventilated room with the patient (Patient A) who had been transferred from Blackburn Hospital ('Blackburn') by conducting a focused assessment and a focused physical examination. Because Patient A had been examined at Blackburn, he did not

conduct the full physical examination which was required by the policies and procedures which were in place for any patient received at the Priory.

17. Dr Mayombwe Lutaaya described how he asked Patient A about his mental health concerns, conducted a Mental State Examination ('MSE') and asked him about his physical health. He stated that he asked Patient A whether, since leaving the previous hospital, he had any heart, kidney or lung problems and that Patient A told him that he had a pain at the back of his head which was his only complaint. He stated that he then examined Patient A and palpated his head and that he also carried out a nervous system examination looking for any deficits, and that there were no neurological deficits, lumps or redness on his skull.

18. Dr Mayombwe Lutaaya stated that after that he left the room, he returned to the staff room at the Priory where he transferred relevant information from the previous hospital (Blackburn) onto the Priory's system. He stated that although this was an assessment, he did not have to ask Patient A detailed questions again as the detail was already in the medical history. He stated that this was similarly the case with regard to the physical examination, as Patient A was not experiencing any physical concerns apart from the head pain.

Paragraph 1

1(a)

19. In reaching its determination on this paragraph, the Tribunal considered whether Dr Mayombwe Lutaaya had an obligation to make reasonable adjustments, and had failed to do so. The Tribunal noted that Dr Mayombwe Lutaaya stated that he had access to medical records from Blackburn which he reviewed prior to seeing Patient A, and the notes included a record of a Multi-Disciplinary Team ('MDT') meeting in which observations were made as to Patient A's capacity, including that he had capacity to make decisions and there were no concerns about his having any specific communication or support needs.

20. The oral evidence of Ms D was that the Priory only received electronic transfer notes. However, Ms D stated in her interview with Dr E that she "*gave him the notes*". Moreover the evidence of Dr E was that sometimes they received paper notes which they often did not have time to scan; in consequence they would set up another file. The Tribunal therefore accepted that Dr Mayombe Lutaaya was provided with a set of notes

21. The Tribunal also noted that Ms B was in the room at the time of the consultation and, although not medically qualified, would have been able to identify if Patient A appeared to be having difficulties in communicating. Her evidence was that Dr Mayombwe Lutaaya asked questions, that Patient A was able to respond, and that:

“...I do remember that the consultation didn’t feel rushed at all. I also recall that Dr Lutaaya asked the patient if there was anything he wanted to discuss and Dr Lutaaya was thorough in answering the patient’s questions.”

22. Dr Mayombwe Lutaaya’s notes, made on the assessment form at the time state:

Appearance: Casually dressed with good eye contact and rapport. Sustained gaze at me.

Behaviour: Calm and cooperative

Speech: Normal. No pressure or retardation.

Mood: Stressed out. No suicidal thoughts. Poor sleep but eating well.

23. The Tribunal noted that, in the relevant section of his report, the expert witness, Dr I, addressed the question:

Please identify whether there was any information available to Dr Lutaaya which raised as question as to whether Patient [A] had:

a. Particular communication and support needs;

b. Capacity to make decision about his treatment.

24. In answering this question, Dr I only referred to Dr Mayombwe Lutaaya’s record in the notes that Patient A was:

Stressed out. No suicidal thoughts. Poor sleep but eating well. ... tested positive for illicit drugs at Ribble ward.

25. Dr I seems to have accepted that Dr Mayombwe Lutaaya did not have the case notes which were transferred with Patient A from Blackburn. Moreover, Dr I had no information in regard to what happened during the consultation when compiling his expert report, including the account of Ms B. His opinion that Dr Mayombwe Lutaaya could not have undertaken all

of the actions which he claims, as set out in the Allegation, appeared to be based to a great extent on the time spent during the consultation. Further, Dr I answered the question narrowly, appearing not to take into account Dr Mayombwe Lutaaya's other observations.

26. The Tribunal was provided with no evidence of any new issues relating to Patient A beyond those identified at Blackburn; the indications were that Patient A was able to communicate fully and had mental capacity. The evidence of Dr I was to the effect that Patient A had, in fact, improved during his time at Blackburn.

27. In light of all the evidence the Tribunal determined that Dr Mayombwe Lutaaya did not fail to make reasonable adjustments for Patient A as set out at paragraph 1(a) of the Allegation as there were no indications requiring him to do so. Accordingly it found this paragraph not proved.

1(b)(i)

28. The Tribunal considered that the basis of this Allegation was that Dr Mayombwe Lutaaya could not have communicated with Patient A adequately as he did not record any reference to the matters set out at paragraph 1(b)(i) of the Allegation, and because of the short duration of the consultation.

29. The Tribunal was satisfied that Dr Mayombwe Lutaaya did have an obligation to communicate adequately with Patient A. The evidence of Dr Mayombwe Lutaaya was that he did have a conversation about family with Patient A, guided by the notes from Blackburn. The Tribunal also considered that the assessment form used by Dr Mayombwe Lutaaya does not specifically request the information as per the wording of the Allegation. Whilst it does contain reference to "*Relevant Social/Family Situation*", it does not specify that the entry should be "*full*" nor does it invite completion in respect of personal history and previous medical history.

30. The Tribunal reminded itself of the evidence of Ms B that Dr Mayombwe Lutaaya did not rush the assessment, reassured the patient and did everything other doctors would do in that situation.

31. The Tribunal determined that it could not rule out that Dr Mayombwe Lutaaya had discussed the several aspects of Patient A's history and social and family situation to which paragraph 1(b) of the Allegation refers during the consultation solely on the basis that the

consultation was limited to just under eight minutes, in the light of the evidence it heard from Dr Mayombwe Lutaaya himself and from Ms B and in the context of his having had the case notes from Blackburn.

32. It therefore found this paragraph of the Allegation not proved.

1(b)(ii)

33. The Tribunal noted that of the six medications prescribed to Patient A, four of those had previously been prescribed at Blackburn. They were Mirtazapine, Lorazepam, Ibuprofen and Nicotine patches. The Tribunal also received evidence that Mirtazapine had been specifically discussed in the MDT that day.

34. The Tribunal considered that Dr Mayombwe Lutaaya did not have an obligation to reiterate the advice on the existing prescriptions. The Tribunal considered that Dr Mayombwe Lutaaya's obligation in this regard was properly addressed by his enquiring whether Patient A was happy with the medication that he was taking. Further, Lorazepam and Ibuprofen were prescribed as required. In consequence, they would not be administered in a controlled setting without discussion.

35. So far as the nicotine patches were concerned, Dr I did not recount any specific side effects or problems in relation to their use.

36. The Tribunal then went on to consider Dr Mayombwe Lutaaya's evidence in respect of the two new prescriptions, for Co-codamol and Zopiclone.

37. Dr Mayombwe Lutaaya's evidence was that he had enquired of Patient A what medication, if any, he had been previously prescribed to deal with head or neck pain and difficulty sleeping. Patient A responded by referring to Co-codamol and Zopiclone. Dr Mayombwe Lutaaya stated that he went on to ask if he knew the benefits and side-effects of these medications, and Patient A said that he did.

38. The Co-codamol was prescribed for a head pain. The evidence of Dr I was that the reason for detailed discussion about its side effects was to ensure it was not taken with paracetamol, as Co-codamol does in fact contain paracetamol. The Tribunal determined that, as Patient A was in a controlled environment, he could not have taken paracetamol unless it was specifically prescribed. It was therefore not necessary for Dr Mayombwe Lutaaya to

explain this side effect as there was very little risk of Patient A separately taking paracetamol in these circumstances.

39. Dr I's evidence was that the risk associated with the Zopiclone prescription was dependency. However, the Tribunal noted that it was being prescribed in a controlled setting, for acute, short-term usage and so there was no danger of long-term dependency. There was therefore no necessity to explain the side effect to Patient A.

40. Accordingly, the Tribunal found this paragraph of the Allegation not proved.

1(c)

41. The Tribunal noted that there was no one apart from Patient A himself from whom Dr Mayombwe Lutaaya could have obtained "a relevant history" at the time of the consultation. The records from Blackburn stated that Patient A declined to give his father's number and so he could not have been contacted. Additionally, given the time of night at which the consultation occurred, it is unlikely that it would have been appropriate to attempt to contact Patient A's family members to obtain this information. The evidence of Dr I was that Dr Mayombwe Lutaaya should have flagged this to be chased up at a later stage, but the Tribunal noted that this did not form part of the Allegation brought by the GMC.

42. The Tribunal was also mindful of the assessment form completed by Dr Mayombwe Lutaaya, which states:

"Relevant Social/Family Situation: Note names, ages and gender of any children if safeguarding issues are identified (if available)"

43. Accordingly, the Tribunal determined that Dr Mayombwe Lutaaya did not have an obligation at that time to obtain a relevant history from Patient A's family, friends or significant others, and found this paragraph of the Allegation not proved.

1(d)

44. The evidence of Dr Mayombwe Lutaaya was that the patient's bedroom, where the consultation was held, was unventilated. The evidence of Ms B was that patient bedrooms had windows but that it was the patients' decision as to whether these should be opened. Although Ms B also stated that the meeting room at the Priory had windows, the evidence

established that it was the policy at the Priory to isolate patients to their rooms until they had a negative covid 19 test result. The Tribunal concluded that Dr Mayombwe Lutaaya could not have conducted the consultation in a (more) ventilated environment.

45. Accordingly, the Tribunal found this paragraph of the Allegation not proved.

1(e)

46. Blood tests for Patient A were taken at Blackburn on 25 March 2021. Although these were in fact normal, the Tribunal could not be sure whether or not Dr Mayombwe Lutaaya actually received and reviewed these results. However, there was nothing in the transfer notes to suggest anything abnormal.

47. At the time of the consultation, Dr Mayombwe Lutaaya knew that some blood tests had been taken but that the results had not been received. His approach to this was to make a note to “*chase bloods*” on Patient A’s records.

48. The Tribunal considered that, on account of the time of the consultation, approximately 8pm, and the absence of any factors indicating that the test results were urgently required, and the ability of other staff present to obtain them, Dr Mayombwe Lutaaya did not have an obligation to obtain the blood test results that night. Although Dr I expressed the view that the results should have been obtained, he also stated that arrangements should have been made to have them obtained. The Tribunal concluded that Dr Mayombwe Lutaaya discharged this requirement by noting on the assessment form “*chase bloods*”. Additionally, the evidence of Dr E was that out of hours blood tests are a clinical decision for doctors. He also said that unless there was some urgency identified, they could be done the next day.

49. Accordingly, the Tribunal found this paragraph of the Allegation not proved.

1(f)

50. As per the evidence of Dr E above, the Tribunal accepted that the requirement to arrange further blood tests was a clinical decision for Dr Mayombwe Lutaaya and that there were no physical indications that this was necessary. Dr Mayombwe Lutaaya fulfilled his duty by prompting the ward doctor or another member of staff to obtain the blood test results the following day. There was no evidence that there was a need or duty to do more under the

circumstances. Dr E, in response to questions, acknowledged that out of hours blood tests can be left to the following day.

51. Accordingly, the Tribunal found this paragraph of the Allegation not proved.

1(g)(i)

52. Dr Mayombwe Lutaaya admitted this paragraph of the Allegation, which the Tribunal therefore found proved.

1(g)(ii)

53. The Tribunal considered whether Dr Mayombwe Lutaaya had an obligation to record Patient A's view towards prescription medication. It noted that in his expert report, Dr I states:

"In his electronic notes entry dated 31 March 2021, Dr Lutaaya did not make any reference to the views of Patient [A] towards mental health admission or towards prescription medication."

Notwithstanding that statement, the Tribunal determined that Dr I's report does not identify any duty to record such a discussion in a patient's medical notes. The Tribunal considered that, although it would expect such a conversation to take place, it would be surprised if Dr Mayombwe Lutaaya would be expected to record this in the terms set out in the Allegation, unless the patient gave a negative or clinically relevant response.

54. Given that a duty to record such a conversation was not established, the Tribunal determined that this paragraph of the Allegation was not proved.

1(g)(iii)

55. This allegation, insofar as it relates to paragraph 1(b) of the Allegation, fails to set out what it is alleged Dr Mayombwe Lutaaya failed to record. It is therefore found not proved. Insofar as it relates to paragraph 1(c), it is found not proved, for similar reasons and because the Tribunal found that Dr Mayombwe Lutaaya had no duty as alleged in paragraph 1(c).

1(h)

56. Dr Mayombwe Lutaaya admitted this paragraph of the Allegation, which the Tribunal therefore found proved.

1(i)

57. Dr Mayombwe Lutaaya admitted this paragraph of the Allegation, which the Tribunal therefore found proved.

Paragraph 2

58. Dr Mayombwe Lutaaya admitted this paragraph of the Allegation in its entirety, which the Tribunal therefore found proved.

Paragraph 3

59. In considering paragraph 3 of the Allegation, the Tribunal considered Dr Mayombwe Lutaaya's accounts of events. At the outset of these proceedings, he admitted that he knew he had not heard the relevant sounds which he had recorded in Patient A's records, nor assessed Patient A's vibration sense, but he stated that, at the time, he believed he had made this clear on the admission assessment. He admitted dishonesty, but stated that he had no intention to mislead. In his final submissions, and in his evidence, Dr Mayombwe Lutaaya explained his position further. He stated that he had taken the relevant data from the notes from Blackburn. He contended that he had in fact made this clear in the admission assessment note, but he was 'kicked off' the computer and when he re-entered the data, he omitted to repeat his acknowledgement as to the source of the data because he was rushing. He accepted that, if he had not intended to make the position clear in the notes, he would have been dishonest. However, he asserted that, as he had no intention to mislead, his actions were not dishonest.

60. The Tribunal was concerned that Dr Mayombwe Lutaaya may have wrongly admitted paragraph 3 of the Allegation and, of its own motion, but with the consent of Dr Mayombwe Lutaaya, amended his plea in respect of paragraph 3 to "*Not Admitted*".

61. The Tribunal carefully considered Dr Mayombwe Lutaaya's account. It reached the conclusion that there were inconsistencies in Dr Mayombwe Lutaaya's evidence, and that his account of events has in fact evolved over time in a number of respects.

62. Dr Mayombwe Lutaaya stated that he had intended to clarify the true position in Patient A's notes, but that he had not done so due to "IT issues" at the Priory. These had generated in him a fear that he would be "kicked out" of the system when entering data and, in consequence, he was rushing. However, during his oral evidence to this Tribunal, Dr Mayombwe Lutaaya stated, for the first time, that he had in fact entered the information onto the system, but that, when the system crashed due to the IT issues, the information was lost or deleted from the system, and he forgot to re-enter it.

63. Dr Mayombwe Lutaaya stated in oral evidence that he had been horrified when he learned that his explanatory notes had not been correctly entered or saved on the system. However, he never mentioned this during the Priory investigation or in any of his written accounts.

64. Dr Mayombwe Lutaaya was inconsistent in his account as to when he had performed focused physical examinations on transferred patients. He explained that he had adopted the strategy of performing a focused physical examination, namely an actual examination of only those physical matters which were causing a patient distress or causative of concern and, in respect of all other matters, relying upon the recent physical examination of the transferring hospital, when he resumed work at the Priory in early March 2021. He explained that, in respect of such examinations, he made clear his approach on the admission assessment notes. Dr Mayombwe Lutaaya had explained this alleged approach to Dr E who had undertaken an investigation of his case at the Priory. Dr E was asked, when he was giving oral evidence, whether he had checked the position in respect of other patients whom Dr Mayombwe Lutaaya had clerked on admission to the Priory earlier in March. Dr E said that he had; there were only two; and it appeared that Dr Mayombwe Lutaaya had documented a full physical examination on each of them. When this point was put to Dr Mayombwe Lutaaya, he stated, for the first time, that Patient A was the first patient in respect of whom he had taken this approach.

65. In this regard, the Tribunal noted that in his interview with Dr E on 16 April 2021, Dr Mayombwe Lutaaya was asked if he had done limited physical examinations before with other patients. He replied "*after XXX only with transferred patients*". In the subsequent management report, Dr E said "*he said he was doing focused examinations for new patients who had been transferred from another hospital since March 2021. He could not quantify how many patients he had seen during the period of March*". The Tribunal noted that the word 'patients', in the plural, had been used by both Dr Mayombwe Lutaaya and Dr E. It also noted

Dr Mayombwe Lutaaya's own submission that *"my plan was to put it on the care notes, as this is what I always do"*.

66. The Tribunal therefore concluded that if Dr Mayombwe Lutaaya had conducted focused examinations on patients before 31 March 2021, he had not recorded the circumstances of his doing so in the notes, contrary to his contention before this Tribunal.

67. Dr Mayombwe Lutaaya contended that when adopting an approach of focused examinations, if there was an area of concern he would do a thorough or detailed examination, for example the neurological examination with Patient A. However it was apparent that he had not carried out a complete neurological examination as he accepted, in answer to the Tribunal's questions, that he had not examined for power, tone, vibration and co-ordination; nevertheless he had entered *"normal"* in respect of these matters on the admission assessment notes. He never contended that he had or meant to have entered an explanation in the notes that these findings which he entered concerning the neurological examination had been taken from notes from the transferring hospital.

68. The Tribunal considered what Dr Mayombwe Lutaaya's actual state of knowledge and belief was in respect of the facts which are alleged to amount to dishonesty in paragraphs 3(a) and 3(b) of the Allegation. It has borne in mind the inconsistencies which have been set out above and the evolution of his explanation as to why the admission assessment notes did not record that he had taken the information from elsewhere rather than from an examination of the patient himself. As against this it has considered the GMC's submission that Dr Mayombwe Lutaaya recognised that the Priory would be likely to object to his not carrying out a full physical examination and that is why, having decided that he would only carry out a focused examination, he did not disclose the fact that he had taken much of the information from the transferring Hospital notes. The Tribunal preferred the GMC's submission to the evidence of Dr Mayombwe Lutaaya.

69. Having determined Dr Mayombwe Lutaaya's state of knowledge and belief as to the facts, the Tribunal went on to consider whether Dr Mayombwe Lutaaya's conduct would be regarded as dishonest by the standards of ordinary decent people. It found that it would be.

70. Accordingly, the Tribunal found paragraphs 3(a) and 3(b) of the Allegation proved.

The Tribunal's Overall Determination on the Facts

71. The Tribunal has determined the facts as follows:
1. On 31 March 2021 you consulted Patient A and you:
 - a. failed to make adequate reasonable adjustments to Patient A’s communication and support needs in that you did not:
 - i. repeat information and instructions; **Not proved**
 - ii. provide written information; **Not proved**
 - iii. confirm his understanding and recall of the information provided; **Not proved**
 - b. failed to adequately communicate with Patient A in that you did not:
 - i. obtain Patient A’s:
 1. full relevant social and family situation; **Not proved**
 2. personal history; **Not proved**
 3. previous medical history; **Not proved**
 - ii. explain the likely benefit and potential side effects of each prescription drug; **Not proved**
 - c. failed to obtain a relevant history from Patient A’s family, friends or significant others; **Not proved**
 - d. inappropriately limited the duration of Patient A’s assessment rather than conduct the assessment in a ventilated environment; **Not proved**
 - e. failed to take adequate steps to obtain the results of any blood tests Patient A underwent at Royal Blackburn hospital; **Not proved**
 - f. in the alternative to paragraph 1e, failed to take adequate steps to arrange for Patient A to undergo blood tests; **Not proved**

- g. failed to record:
 - i. Patient A's views towards mental health admission; **Admitted and found proved**
 - ii. Patient A's views towards prescription medication; **Not proved**
 - iii. in the alternative to paragraphs 1b-1c, having undertaken the actions outlined in paragraphs:
 - 1. 1b; **Not proved**
 - 2. 1c; **Not proved**
 - h. recorded that you had heard Patient A's:
 - i. heart sounds; **Admitted and found proved**
 - ii. breathing sounds; **Admitted and found proved**
 - iii. bowel sounds; **Admitted and found proved**
 - i. recorded that you had assessed Patient A's vibration sense. **Admitted and found proved**
2. When you made the record referred to at paragraph:
- a. 1h you knew that you had not heard the sounds referred to at paragraphs 1hi-1hiii; **Admitted and found proved**
 - b. 1i you knew you had not assessed Patient A's vibration sense; **Admitted and found proved**
3. Your actions referred to at paragraph:

- a. 1h were dishonest by reason of paragraph 2a;
Determined and found proved

- b. 1i were dishonest by reason of paragraph 2b.
Determined 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**

Determination on Impairment - 21/12/2022

1. This determination will be handed down in private. However, as this case concerns Dr Mayombwe Lutaaya's misconduct, a redacted version will be published at the close of the hearing with those matters relating to XXX removed.

2. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts found proved, Dr Mayombwe Lutaaya's fitness to practise is impaired by reason of misconduct.

The Evidence

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

Submissions

On behalf of the GMC

4. On behalf of the GMC, Mr Breen submitted that Dr Mayombwe Lutaaya's fitness to practise is currently impaired by reason of misconduct.

5. Mr Breen submitted that of the facts admitted and/or found proved, the dishonesty is the most serious aspect; Dr Mayombwe Lutaaya knew that what he was writing on Patient A's assessment form was supposed to relate to his own examination of Patient A. He submitted that this does amount to misconduct which is serious.

6. Mr Breen submitted that, in cases involving dishonesty, there may be a presumption of impairment in the first instance, but that a finding of misconduct does not necessarily lead to a finding of impairment. He submitted that nonetheless, a finding of impairment should be made in this case in order to maintain the reputation of the profession.

7. Mr Breen submitted that his impression of some of the answers given by Dr Mayombwe Lutaaya in his evidence to the Tribunal was that he still maintains that he was not doing anything wrong and that he did not understand the problem with entering test results taken four days earlier. He submitted that the Tribunal has received no evidence of remediation; Dr Mayombwe Lutaaya has not been on any sort of course to understand and develop insight into what he did and why it was wrong. He submitted that a risk of repetition therefore remains. However, he submitted that the paramount consideration is the statutory overarching objective, which should lead the Tribunal to make a finding of impairment in order to maintain public confidence in the profession and maintain standards for members of that profession.

Dr Mayombwe Lutaaya

8. Dr Mayombwe Lutaaya submitted that his judgement at the time was clouded by XXX and the conditions at the Priory, and that his actions were not deliberately dishonest. He said that *“It was an isolated incident I regret terribly and it won’t happen again.”* He stated that he cares about patients and has not had such issues relating to either dishonesty, or record keeping and patient care before or since. In this regard, he relied upon the testimonials and statements provided on his behalf.

9. Dr Mayombwe Lutaaya submitted that he has been practising remediation. He has avoided putting himself in situations where he could end up doing anything which may be considered misconduct. He assured the Tribunal that his intention was not to be dishonest and that such behaviour will not be repeated.

10. He submitted that he is personally in a much better place now, having XXX. He has developed insight into his frame of mind at the time and his actions. He submitted that there is no risk of repetition and he remains concerned to address patient needs according to the policies and procedures in the organisation where he is working.

11. Dr Mayombwe Lutaaya informed the Tribunal that, since the events in question, he took up a substantive position at Ocean Recovery after first confirming with the Medical

Director that he would have supervision and support in place. When the supervisor left the role, Dr Mayombwe Lutaaya explained that he resigned as he wanted to ensure he had someone overseeing his decisions and work.

12. Dr Mayombwe Lutaaya submitted that his ongoing fitness to practise is demonstrated by the witness statements and testimonials provided on his behalf, further reassuring the Tribunal that these events were out of character and that they would not be repeated.

The Relevant Legal Principles

13. 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.

14. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts found proved amount to misconduct which was serious, and then whether the finding of misconduct should lead to a finding of impairment.

15. The Tribunal must determine whether Dr Mayombwe Lutaaya's fitness to practise is impaired today, taking into account his conduct at the time of the events and any relevant factors since then, such as whether the matters are remediable, have been remedied and any likelihood of repetition.

16. The Tribunal reminded itself of the statutory overarching objective 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 the profession.

17. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in the case of *Council for Healthcare Regulatory Excellence v NMC and Grant* [2011] EWHC 927. In particular, the Tribunal considered whether its findings of fact show that Dr Mayombwe Lutaaya's fitness to practise is impaired in the sense that he:

- a. *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

- b. *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. *has in the past acted dishonestly and/or liable to act dishonestly in the future.*

The Tribunal's Determination on Impairment

Misconduct

18. In reaching its determination on misconduct, the Tribunal considered the relevant paragraphs of Good Medical Practice (2013 edition) ('GMP'). It noted that the cover page includes the following:

The duties of a doctor registered with the GMC

Patients must be able to trust doctors with their lives and health. To justify that trust you must show respect for human life and make sure your practice meets the standards expected of you in four domains.

Knowledge, skills and performance

Make the care of your patient your first concern.

19. The Tribunal also considered that paragraphs 1, 15(a) and 65 of GMP were applicable 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.*

15 *You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must:*

a adequately assess the patient's conditions, taking account of their history (including the symptoms and psychological, spiritual, social and cultural factors), their views and values; where necessary, examine the patient

...

65 *You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*

20. The Tribunal noted that in respect of Dr Mayombwe Lutaaya's admitted failure to record Patient A's views towards mental health admission, Dr I did not deem it seriously below the standards expected. The Tribunal accepted Dr I's conclusion and found that this omission did not amount to misconduct which was serious.

21. The Tribunal then went on to consider Dr Mayombwe Lutaaya's dishonesty. Patients, members of the public and colleagues should all be able to expect that doctors are honest and transparent at all times. This is made clear in the relevant paragraphs of GMP set out above. In failing to be honest and transparent, Dr Mayombwe Lutaaya breached a fundamental tenet of the profession.

22. Whilst this dishonesty may have been a single event in an otherwise unblemished career, the Tribunal considered it serious enough that a finding of misconduct was the only proper conclusion to draw. In doing so, it took the extenuating circumstances in this case into account, but determined that these could not justify Dr Mayombwe Lutaaya's actions and that a finding of misconduct remained necessary. It noted that Dr Mayombwe Lutaaya was undergoing a phased return to his substantive post at the time, but that he had not raised any concerns XXX on his return to the Priory in the lead up to events. He exercised a choice to return to his on-call role at the Priory, and in so doing put his own interests before those of his patients.

23. The Tribunal has therefore concluded that Dr Mayombwe Lutaaya's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct, which goes to impairment.

Impairment

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

25. The Tribunal noted that there was no evidence that Patient A came to any harm as a result of Dr Mayombwe Lutaaya's actions. However, it did consider that the remaining three factors as set out in Dame Janet Smith's test, above, were engaged in this case.

26. The Tribunal was of the opinion that, whilst dishonesty can be difficult to remediate, the dishonesty found in this case was limited to one patient on one occasion and occurred under extenuating circumstances, namely XXX.

27. Although the Tribunal determined that Dr Mayombwe Lutaaya's dishonesty was capable of remediation, he provided limited evidence of insight and remediation. The Tribunal did not receive any relevant CPD course certification or detailed reflections from Dr Mayombwe Lutaaya, setting out how he has addressed the issues identified. The Tribunal considered that without evidence that Dr Mayombwe Lutaaya has reflected on the circumstances of his dishonesty, which he maintains was a mistake rather than intentional, it cannot be fully satisfied that he has explicitly identified the triggers for his behaviour or put in place appropriate coping mechanisms to ensure his dishonesty is not repeated. The Tribunal was of the view that whilst the exact circumstances which led to Dr Mayombwe Lutaaya's dishonesty are unlikely to reoccur, XXX.

28. The Tribunal acknowledged the steps that Dr Mayombwe Lutaaya has taken, including openly discussing these events as part of his appraisal (covering the period January 2021 to January 2022), his expressions of remorse and regret XXX. It also bore in mind that he recently stood down from a post once his supervisor left the practice, demonstrating his focus on adequate supervision and support, something he felt he lacked at the Priory in the run up to events. It also received evidence that there have been no similar concerns raised since the events in question, and noted that Dr Mayombwe Lutaaya has been complying with Interim Order Tribunal conditions on his registration.

29. The Tribunal determined that, although it had been provided with limited evidence of insight and remediation, it should conclude that Dr Mayombwe Lutaaya's remorse, his engagement with his regulator, his demeanour and his evidence in these proceedings indicated that there is a low risk of repetition. It also noted that extraordinary circumstances prevailed at the relevant time.

30. In light of the low risk of repetition and the fact that Dr Mayombwe Lutaaya did not put patient safety at risk, the Tribunal concluded that a finding of impairment was not necessary in order to protect patient safety.

31. In considering the overarching objective, the Tribunal considered that Dr Mayombwe Lutaaya's dishonesty was a serious breach of GMP and of a fundamental tenet of the profession. It concluded that these proceedings alone would not be sufficient to mark the seriousness of Dr Mayombwe Lutaaya's misconduct and that a finding of impairment was therefore necessary in order to promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for the members of the profession.

32. The Tribunal has therefore determined that Dr Mayombwe Lutaaya's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 21/12/2022

1. This determination will be handed down in private. However, as this case concerns Dr Mayombwe Lutaaya's misconduct, a redacted version will be published at the close of the hearing with those matters relating to XXX removed.

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

The Evidence

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

Submissions

On behalf of GMC

4. On behalf of the GMC, Mr Breen submitted that the appropriate sanction to impose in this case is that of suspension, referring the Tribunal to the relevant paragraphs of the Sanctions Guidance (November 2020) ('the SG').

5. Mr Breen submitted that the Tribunal has already set out what it considers to be mitigating factors at the impairment stage. He submitted that it should consider these findings when reaching its determination on sanction, as well as its determination as to the degree of insight and the risk of Dr Mayombwe Lutaaya repeating his misconduct.

6. Mr Breen submitted that there are no exceptional circumstances in this case which would warrant taking no action, and that this is not a case for conditions in light of the fact that the misconduct in question essentially related to dishonesty. He submitted that a suspension order was the appropriate sanction as it can have a deterrent effect and may be used to send a signal to the profession that misconduct of this nature is not acceptable. Although it may also have a punitive effect, as it would prevent Dr Mayombwe Lutaaya from practising medicine for a period of time, it was the proportionate order in the context of the seriousness of the misconduct.

Dr Mayombwe Lutaaya

7. Dr Mayombwe Lutaaya submitted that the Tribunal should determine to take no action on his registration. He submitted that he continues to remediate through his practice, and that he has been practising for many years without any similar concerns or events.

8. Dr Mayombwe Lutaaya submitted that, as set out in his submissions on impairment, he has taken steps to ensure he practises at an organisation which provides oversight and support for practitioners, something which he did not have at the Priory at the time of the events in question. He reiterated his regret for his actions and submitted that the Tribunal can be assured that he does not pose any ongoing risk to patient safety.

9. Dr Mayombwe Lutaaya submitted that suspending him as a deterrent would not help him as a doctor and that the witness statements/testimonials provided on his behalf attest to his otherwise good practice.

10. He submitted that he has a family and four children to look after and that a period of suspension would seriously affect his ability to provide for them. He asked the Tribunal to exercise compassion in this regard when reaching its determination.

The Tribunal's Determination on Sanction

11. The decision as to the appropriate sanction to impose, if any, is a matter for the Tribunal exercising its own judgment. In reaching its decision, the Tribunal has taken into account the Sanctions Guidance and the statutory overarching objective.

12. The Tribunal bore in mind that the main reason for imposing sanctions is to protect the public and that sanctions are not imposed to punish or discipline doctors, though they may have a punitive effect. The Tribunal has taken a proportionate approach, balancing Dr Mayombwe Lutaaya's interests with the public interest. It bore in mind that the reputation of the profession as a whole is more important than the interests of any individual doctor, as explained in *Bolton v Law Society [1994] 1 WLR 512*.

13. The Tribunal has also borne in mind that in deciding what sanction, if any, to impose, it should consider all the sanctions available, starting with the least restrictive and then consider each sanction in ascending order.

14. The Tribunal has already set out its decisions on the facts and impairment and it took those determinations into account during its deliberations on sanction. It first considered the aggravating and mitigating factors in this case and then moved on to consider the appropriate sanction, starting with whether to take no further action.

Aggravating and Mitigating Factors

15. The Tribunal did not identify any relevant aggravating factors.

16. The Tribunal considered the following to be mitigating factors:

- Dr Mayombwe Lutaaya's dishonesty was a single, isolated incident;
- He self-referred these matters to the GMC;
- There were extenuating personal circumstances at the time;
- There has been a lapse of time since the incident with no repetition;
- Dr Mayombwe Lutaaya has fully cooperated and engaged with the GMC investigation and these proceedings;
- He has kept his knowledge and skills up to date;

- He resigned from a post where it became clear that he would have no supervision or oversight of his work;
- The supportive testimonials from his Responsible Officer and the Associate Medical Director of CGL.

No action

17. The Tribunal determined that there were no exceptional circumstances which could justify it taking no action in this case, in light of the misconduct and impairment found.

Conditions

18. The Tribunal determined that conditions would neither be workable nor proportionate to address the misconduct found in this case. Moreover, it considered that they would be insufficient to mark the seriousness of the findings made against Dr Mayombwe Lutaaya. It noted that the SG does not state that conditions might be appropriate in a case of dishonesty.

Suspension

19. The Tribunal then went on to consider whether to impose a period of suspension.

20. The Tribunal determined that paragraphs 91, 92, 93 and 97(a),(e),(f) and (g) of the SG are applicable, which state:

91 *Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.*

92 *Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor*

should not practise again either for public safety reasons or to protect the reputation of the profession).

93 *Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions...*

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.

...

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor’s unwillingness to engage.

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.

21. The Tribunal considered that all of the factors indicating a period of suspension set out above were present in this case.

22. The Tribunal concluded that Dr Mayombwe Lutaaya’s dishonest conduct, whilst constituting a breach of a fundamental tenet of the profession, was not fundamentally incompatible with continued registration. It reminded itself of its finding that there is a very low risk of repetition and that Dr Mayombwe Lutaaya has demonstrated a degree of insight during the course of his oral evidence and submissions to this Tribunal. It also bore in mind

that, whilst there has been no evidence of remediation in the form of relevant courses, Dr Mayombwe Lutaaya has reflected on his misconduct, and the Tribunal accepted his submission that he has remediated in the workplace.

23. The Tribunal therefore determined that the appropriate and proportionate sanction to impose in this case is one of suspension.

Duration

24. The Tribunal then went on to consider what length of suspension would be appropriate and proportionate.

25. It reflected that the purpose of a period of suspension in this case was to uphold the second and third limbs of the overarching objective, namely to promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for the members of the profession. It considered that any period of suspension would send a signal to members of the profession, patients, members of the public, and to Dr Mayombwe Lutaaya himself that dishonest behaviour is wholly unacceptable. The Tribunal noted that Dr Mayombwe Lutaaya has recognised that his behaviour was not acceptable. He has taken steps to ensure that it would not be repeated including resigning from a position where there was no longer any supervision available. In his current workplace, he has the ability to raise any issues or difficulties during the course of regular monthly meetings.

26. On this basis, the Tribunal determined that a short period of suspension would reflect the seriousness of the Tribunal's findings and uphold the overarching objective. In light of the mitigating factors, the Tribunal determined that a period of one month's suspension would be proportionate and send the necessary message.

27. The Tribunal was mindful that the reputation of the profession is more important than the interests of any individual doctor, but determined that a longer period of suspension would be disproportionate and unnecessarily punitive.

Review

28. The Tribunal determined that a review was not necessary in the circumstances of this case. The Tribunal was satisfied that Dr Mayombwe Lutaaya will continue to address his

shortcomings through his employment by availing himself of support mechanisms and avoiding difficult situations, and that he would continue to remediate without a review. As there are no ongoing patient safety concerns, the period of one month's suspension without a review is sufficient to uphold the overarching objective.

Determination on Immediate Order - 21/12/2022

1. Having determined to suspend Dr Mayombwe Lutaaya's registration, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Mayombwe Lutaaya's registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Mr Breen submitted that the GMC does not seek the imposition of an immediate order in this case.

The Tribunal's Determination

3. The Tribunal has taken account of the relevant paragraphs of the SG, in particular paragraphs 172, 173 and 178 which state:

172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.

173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.

178 Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.

4. The Tribunal determined that an immediate order was not necessary in this case. It concluded that Dr Mayombwe Lutaaya does not present an ongoing risk to patient safety and considered that in light of the suspension it imposed to mark the seriousness of Dr Mayombwe Lutaaya's misconduct, public confidence and standards within the profession would not be undermined should Dr Mayombwe Lutaaya be allowed to practise unrestricted before the substantive order comes into effect. The Tribunal also determined that an immediate order would not be in the interests of Dr Mayombwe Lutaaya himself.

5. The Tribunal considered that, having determined to impose a one-month suspension, an immediate order of suspension would effectively double that period, thereby resulting in a disproportionate period of suspension.

6. This means that Dr Mayombwe Lutaaya's registration will be suspended 28 days from the date on which written notification of this decision is deemed to have been served, unless he lodges an appeal. If Dr Mayombwe Lutaaya does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

7. The interim order is hereby revoked.

ANNEX A – 20/12/2022

1. At the outset of the hearing, Dr Mayombwe Lutaaya admitted that he recorded that he had heard Patient A's heart sounds, breathing sounds and bowel sounds, and that he had assessed his vibration sense. He also said that he knew he had not heard those sounds, nor assessed the patient's vibration sense. He said twice that he had been dishonest in so doing. Accordingly, the Tribunal accepted that he had admitted paragraphs 3(a) and 3(b) of the Allegation.

2. In his oral evidence, Dr Mayombwe Lutaaya explained that when he was trying to input his notes from his consultation with Patient A, the electronic system crashed. Dr Mayombwe Lutaaya said that as a result of the system crashing, his entry attributing the results recorded in respect of his physical examination to the notes which he had received concerning Patient A from Blackburn had been lost. As he was rushing, he was unaware that this was the case. In consequence he had left out of the notes this important information.

3. Dr Mayombwe Lutaaya said that he was shocked when he saw the notes. He said he was unaware that it appeared that he had falsified the notes. He said he admitted his mistake and never denied it. He said his mistake was not intentional.

4. Once Dr Mayombwe Lutaaya had concluded his evidence in chief, the Tribunal asked him whether he wished to maintain or change his admissions to paragraphs 3.a and 3.b of the Allegation based on the oral evidence he had given.

Submissions

5. In answer to questions of clarification from the Tribunal about his state of mind at the time, Dr Mayombwe Lutaaya said he understood the outcome was dishonest but that he was not consciously being dishonest in the way he completed his notes for Patient A.

6. On behalf of the GMC, Mr Breen submitted that the timing of this change to Dr Mayombwe Lutaaya's admissions was a surprise because the GMC had already closed its case. However, Mr Breen submitted that it was a matter for the Tribunal to determine whether to permit Dr Mayombwe Lutaaya to change his admissions to paragraph 3.a and 3.b of the Allegation.

The Relevant Legal Principles

7. The Tribunal recognised that the matter which should govern the Tribunal’s decision was fairness to Dr Mayombwe Lutaaya. However it should be careful about allowing the amendment if that would cause unfairness to the GMC’s presentation of the case.

The Tribunal’s Decision

8. The Tribunal considered that whilst the GMC had closed its case, the way it had put its case would not be significantly or unfairly impacted if the Tribunal permitted Dr Mayombwe Lutaaya to retract his admissions in respect of his dishonesty. It confirmed with Mr Breen that the GMC did not disagree with this assessment.

9. The Tribunal considered that the evidence which Dr Mayombwe Lutaaya gave indicated that his case was that he was not dishonest when making the entries in the notes to which paragraph 1(h) and 1(i) of the Allegation refer.

10. The Tribunal bore in mind that whilst the GMC had closed its case, it still had an opportunity to cross-examine Dr Mayombwe Lutaaya on his state of mind and put its case that he had acted dishonestly.

11. Accordingly, the Tribunal determined that, in the circumstances, the fairest course of action was to allow Dr Mayombwe Lutaaya to retract his admissions of paragraphs 3.a and 3.b of the Allegation, as his evidence was that he had not intended to be dishonest.