

PUBLIC RECORD

Dates: 07/03/2022 - 22/03/2022

Medical Practitioner's name: Dr Ronald JAMES
please note at least one other Medical Practitioner faced allegations at this hearing

GMC reference number: 6121825

Primary medical qualification: MD 1999 University of Prepetual Help

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

Summary of outcome

Suspension, 12 months.
Review hearing directed

Immediate order imposed

Tribunal:

Legally Qualified Chair	Mrs Julia Oakford
Medical Tribunal Members:	Professor Irving Benjamin, Dr Matthew O'Meara
Tribunal Clerk:	Miss Hinna Safdar

Attendance and Representation:

Medical Practitioner:	Present and not represented
GMC Representative:	Mr Ciaran Rankin, 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.

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 - 15/03/2022

Background

1. Dr James qualified in 1999 from the University of Perpetual Help in the Philippines. Prior to the events which are the subject of the hearing, Dr James was employed to carry out medical examinations of drivers to enable them to submit a completed Medical Report in order to obtain certain licences.
2. Dr James was employed by Doctors on Wheels (DoW) from early April 2018. DoW was a company who offered drivers medical examinations such that they could apply to the DVLA for various licences or to a local authority for a Hackney Carriage licence. By the time Dr James joined the company it was offering medical assessments at certain fixed premises and as a remote service from a DoW vehicle which covered various parts of the country. The procedure in these circumstances, was that a nurse would carry out a medical examination under the supervision of a doctor who would attend remotely. If the driver passed the medical assessment, the nurse was authorised to stamp the D4 form with the Doctor's name, the GMC number and the Doctor's signature using a stamp prepared and provided by DoW. The allegation that has led to Dr James' hearing can be summarised as that he failed, on three occasions, to connect with a nurse virtually (usually via Skype) in order to supervise medical examinations and to permit the nurse to authorise the application form with his name, GMC number and his signature stamp to be given to the driver. Therefore, Doctor James was permitting the applications to be authorised in his absence. The drivers were then submitting their assessments as a duly

authorised medical examination. It was also alleged that Dr James was acting dishonestly.

3. Between 2018 and 2019, the DVLA, Trading Standards and a competitor firm (D4 Drivers) undertook a series of exercises which uncovered the fact that drivers were able to obtain a D4 medical certificate after a short, remote consultation, apparently without the involvement of a doctor in that consultation. The initial concerns were raised with the GMC on 6 February 2020 by Mr K, the Director of DoW Limited.

The Outcome of Applications Made during the Facts Stage

4. The Tribunal granted the GMC's application, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to amend the Allegation. The Tribunal's full decision on the application is included at Annex B.

The Allegation and the Doctor's Response

5. The Allegation made against Dr James is as follows:

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

1. At one or more of the appointments set out in Schedule 1 ('the Appointments'):
 - a. you permitted a Medical Examination D4 Report to be completed which:
 - i. indicated that you were the doctor who carried out the examination;
To be determined
 - ii. contained a stamp bearing your:
 1. name; **To be determined**
 2. GMC number; **To be determined**

- iii. ~~contained a pre-printed copy of your signature, was pre-signed or pre-stamped with your signature~~

Amended under Rule 17(6)

To be determined

2. You knew that at one or more of the Appointments:
- a. you had not carried out any examination; **To be determined**
 - b. by permitting the use of your details as set out paragraph 1a.ii. and 1.a.iii., you were giving the false impression that you were the doctor who carried out the examination; **To be determined**
 - c. you did not dial into the Appointment and so took no part in it; **To be determined**
 - d. an unqualified person carried out the examination. **To be determined**
3. Your actions as described at paragraph 1 were dishonest by reason of the matters described in paragraph 2. **To be determined**

Witness Evidence

6. The Tribunal received evidence on behalf of the GMC from the following witnesses:
- Mr K, the Director of Doctors on Wheels;
 - Mrs A, an Enforcement Officer, at the Driver and Vehicle Licensing Agency in Swansea;
 - Mr B, an Operations Manager for Ryminster Medical Services Limited (D4Drivers);
 - Mr C, who at the time was a Sales/Marketing Manager for Ryminster Medical Services Limited (D4Drivers);
 - Dr N, the Medical Director of Ryminster Medical Services Limited (D4Drivers);
 - Ms O, a nurse working for Doctors on Wheels;

7. Dr James gave oral evidence at the hearing and, following this, provided a written summary of his evidence.

Documentary Evidence

8. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:
 - Fitness to Practise concerns form, dated 6 February 2020;
 - Dr James' Employment Contract dated 23 March 2018;
 - Emails between Mr K and Dr James and Dr L, dated 14 September 2018, and 20 February 2019;
 - Notes of questions and responses from a disciplinary meeting with Dr James, dated 25 June 2019;
 - Dr James' Payslip, dated June 2019;
 - Screenshots of the online appointment portal, dated 28 July 2018 and 27 March 2019;
 - Statement from Mrs A to Trading Standards, dated 28 May 2019;
 - Email from Mrs A to GMC, dated 14 January 2021;
 - Statement from Mr B to Trading Standards, dated 25 September 2019;
 - Email from Mr B to GMC, dated 15 January 2021;
 - Statement from Mr C to Trading Standards, dated 25 September 2019;
 - Email from Mr C to GMC, dated 15 January 2021;
 - Statement from Dr N to Trading Standards, dated 25 September 2021;
 - Employment Contract from Ms O, dated 5 September 2017;
 - Letter from DoW to Ms O, dated 26 June 2019.

The Tribunal's Approach

9. 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 James 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.

10. The Legally Qualified Chair reminded the Tribunal that, when considering the issue of dishonesty, the Tribunal would need to adopt the following approach:

- Firstly, the Tribunal would need to determine the state of Dr James' knowledge or belief as to the facts at the relevant time. The reasonableness or otherwise of his stated belief may be relevant to determining whether it was genuinely held but it is not an additional requirement that his belief should have been a reasonable one.
- Secondly, once the Tribunal has determined Dr James' state of knowledge or belief as to the facts at the relevant time, it should determine whether, in the light of his knowledge or belief, his actions would be regarded as dishonest by the standards of ordinary decent people. There is no additional requirement that Dr James should have appreciated that his conduct was dishonest by those standards.

The Tribunal's Analysis of the Evidence and Findings

11. The Tribunal has considered each Allegation separately across the three appointments and has evaluated the evidence in order to make its findings on the facts. These appointments were for Mrs A, on the 4 July 2018; Mr B, on 27 March 2019; and Mr C, on 27 March 2019.

Paragraph 1(a)(i)

12. In his oral evidence, Dr James accepted that he was the Doctor responsible for the virtual medical examinations for the three appointments as set out above. He also accepted that the Medical Examination Reports, which the Tribunal has had sight of and taken into consideration, indicated that he was the doctor who carried out the examination.

13. The Tribunal considered the evidence of all three witnesses, who they found to be credible, and accepted their evidence that Dr James had not communicated virtually or by telephone during the medical examinations. It accepted the evidence of Mr K that only a doctor could have authorised the application forms to have been stamped and handed over to the drivers. The Tribunal accepted Dr James' evidence and the evidence of the witnesses and therefore found Paragraph 1(a)(i) of the Allegation proved.

Paragraph 1(a)(ii)

14. In his oral evidence, Dr James further told the Tribunal that he did not dispute that his name and GMC number had been stamped onto the Report Forms.
15. The Tribunal accepted the evidence of Ms A, Mr B, and Mr C, who stated that the Report Forms had been authorised by a stamp bearing Dr James' name and his GMC number.
16. The Tribunal accepted Dr James' and the witnesses' evidence, and therefore found Paragraph 1(a)(ii) of the Allegation proved.

Paragraph 1(a)(iii)

17. The Tribunal considered Dr James' evidence that he expected to be consulted on every occasion when the form was being stamped with his signature. He advised that this was his '*default position*' and he could not have known that the form was pre-stamped prior to his approval.
18. Mrs A stated that "*nobody stamped it while I was there*" and it was already on the report when she arrived. She emphasised that she was "*certain*" about this.
19. On the balance of probabilities, the Tribunal found that Dr James had not permitted and had not known that the documents were pre-stamped with his signature at the relevant

time. As the Tribunal accepted Mrs A's and Dr James' evidence on Paragraph 1(a)(i) and 1(a)(ii), the Tribunal further accepted their evidence on Paragraph 1(a)(iii) and therefore found it not proved.

Paragraph 2(a)

20. The Tribunal considered that Dr James had admitted to knowing that he had not carried out any examinations on the appointment dates in question.
21. The Tribunal has already accepted as set out above the evidence of the three witnesses that Dr James did not attend their medical examinations. It therefore found Paragraph 2(a) of the Allegation proved.

Paragraph 2(b)

22. The Tribunal bore in mind that Dr James had not contested Paragraph 1(a)(ii) of the Allegation and had accepted that it gave a false impression that he was the doctor carrying out the examinations when he was not.
23. The Tribunal considered the contents of the D4 form and found that it gave a false impression that Dr James was the Doctor who had carried out the examinations as his name and GMC number were stamped on the forms and this implied that Dr James was involved in the examinations.
24. The Tribunal therefore found Paragraph 2(b) of the Allegation proved as it refers to 1(a)(ii).

Paragraph 2(c)

25. In Dr James' evidence, he accepted that he knew that he did not dial into the appointments which were assigned to him.

26. The Tribunal therefore found Paragraph 2(c) of the Allegation proved.

Paragraph 2(d)

27. Dr James told the Tribunal that he did not know whether the nurses he was working with were registered or qualified. The Tribunal considered that he had a reasonable assumption that they were both registered and qualified as they were employed as nurses by DoW. He had no reason to believe that they were not.

28. Mr K told the Tribunal that the nurses had undertaken all of the training necessary to perform the examinations and that meant that they were qualified to do them. Following Mr K's assurances to Dr James at the time of the events, Dr James advised the Tribunal that he was satisfied that the nurses were qualified.

29. The Tribunal accepted Dr James' evidence that he was not aware that the nurses were not qualified. Therefore, the Tribunal found Paragraph 2(d) of the Allegation not proved.

Paragraph 3

30. The Tribunal found that Dr James knew that he had not carried out the examinations and that he had permitted the use of his name and GMC number to be used on the D4 form. It has also found that that Dr James knew that this would have created a false impression namely, that he was involved with carrying out the consultations, despite the fact he did not dial in or take part in the three examinations.

31. The Tribunal accepted Dr James' evidence that he considered, on reflection, what he had done was dishonest.

32. The Tribunal considered that ordinary decent people would consider his conduct to be dishonest.

33. The Tribunal therefore found Paragraph 3 of the Allegation proved.

The Tribunal's Overall Determination on the Facts

34. The Tribunal has determined the facts as follows:

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

1. At one or more of the appointments set out in Schedule 1 ('the Appointments'):
 - a. you permitted a Medical Examination D4 Report to be completed which:
 - i. indicated that you were the doctor who carried out the examination;
Determined and found proved
 - ii. contained a stamp bearing your:
 1. name; **Determined and found proved**
 2. GMC number; **Determined and found proved**
 - iii. ~~contained a pre-printed copy of your signature. was pre-signed or pre-stamped with your signature~~
Amended under Rule 17(6)
Determined and found not proved
2. You knew that at one or more of the Appointments:
 - a. you had not carried out any examination; **Determined and found proved**

- b. by permitting the use of your details as set out paragraph 1a.ii. and 1.a.iii., you were giving the false impression that you were the doctor who carried out the examination; **Determined and found proved in relation to 1.a.ii only**
 - c. you did not dial into the Appointment and so took no part in it; **Determined and found proved**
 - d. an unqualified person carried out the examination. **Determined and found not proved**
3. Your actions as described at paragraph 1 were dishonest by reason of the matters described in paragraph 2. **Determined and found proved**

Determination on Impairment - 17/03/2022

35. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr James' fitness to practise is impaired by reason of misconduct.

Submissions

36. On behalf of the GMC, Mr Rankin referred the Tribunal to the relevant authorities and submitted that Dr James' fitness to practise is currently impaired. He referred the Tribunal to Good Medical Practice (2013) (GMP):

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

b promptly provide or arrange suitable advice, investigations or treatment where necessary

c refer a patient to another practitioner when this serves the patient's needs.

34 *When you are on duty you must be readily accessible to patients and colleagues seeking information, advice or support.*

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. 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.

37. Mr Rankin submitted that while Dr James' actions had not necessarily posed any direct risk to patients, his actions had, in the past, brought the profession into disrepute and breached a fundamental tenet of the profession. Mr Rankin acknowledged that Dr James had made admissions in his evidence and had fully engaged with these proceedings. However, Mr Rankin submitted that, taken as a whole, Dr James' actions of participating in a practice that he knew was dishonest was unacceptable for a member of the profession and must be marked by a finding of impairment.

38. Dr James submitted that he did not wish to project himself as defending his actions, as he understood that he had not kept the standards expected of the profession, and he further understood that his actions had put the public interest at risk.

39. Dr James submitted that he knew full well the implications of his actions and that he has had sufficient time to reflect upon his behaviour.

The Relevant Legal Principles

40. 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.

41. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to serious misconduct, and then whether the finding of that misconduct could lead to a finding of impairment.
42. Further if it was to find misconduct, the Tribunal must determine whether Dr James' 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.
43. The Tribunal also bore in mind the case of *Professional Standards Authority for Health and Social Care v GMC and Uppal [2015] EWHC 1304 (Admin) ('Uppal')*. It considered that there may be a perception that a finding of impairment must be found in circumstances where dishonesty is concerned. However, the case of 'Uppal' reminded the Tribunal that this is not the case.
44. The Tribunal reminded itself of the statutory overarching objective which is 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.

The Tribunal's Determination on Impairment

Misconduct

45. The Tribunal first considered whether the facts found proved are a sufficiently serious departure from the standards of conduct reasonably expected of a registered medical practitioner, so as to amount to misconduct which was serious.
46. The Tribunal considered Dr James' dishonesty, which occurred on 3 separate instances, over 2 different dates. In doing so, it agreed that paragraph 1, 15(a), 34, 65, and 71 (a) and (b) were engaged.

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

34 When you are on duty you must be readily accessible to patients and colleagues seeking information, advice or support.

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. 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.

47. The Tribunal bore in mind that Dr James was 8 weeks into his role at DoW, at the time of the first instance of dishonesty, and may have had concerns around the practice of virtual examinations but may not have had the confidence to take any positive action regarding these concerns. He acknowledged that he needed the work. However, the Tribunal drew a distinction between committing and omitting, and found that Dr James' dishonesty was sustained through his passivity and by omission.

48. Further, Dr James' conduct was a breach of one of the fundamental tenets of the profession and would be considered deplorable by fellow practitioners. Furthermore, his conduct fell seriously short of the standards expected of him in these circumstances. There was no doubt that, overall, the misconduct was serious.

Impairment

49. The Tribunal, having found that the facts found proved amounted to serious misconduct, went on to consider whether, as a result of that misconduct, Dr James’ fitness to practise is currently impaired.
50. The Tribunal had regard to the case of ‘Uppal’. The Tribunal agreed ‘Uppal’ illustrated that not every case of dishonesty necessitated a finding of impairment. ‘Uppal’ involved a trainee GP being dishonest to her employers as to whether or not she had spoken to the mother of a patient. The Tribunal in Dr Uppal’s case had accepted that she “felt uncomfortable and unhappy” at the practice at which she was working. In this case, Dr James had failed to authorise D4 medical forms that were consequently being authorised in his absence and in his name. The drivers were then submitting their assessments as duly authorised medical examinations. It was also found that Dr James had acted dishonestly on three occasions. These failures had been a breach of his duty of integrity and honesty. The Tribunal had regard to the explanation put forward by Dr James for his behaviour – namely that he was new to the role and, even after bringing this up with his managing doctor, was encouraged to go ahead– but found nevertheless that Dr James’ dishonesty was significantly more serious than Dr Uppal’s dishonesty. This was also not an isolated incident unlike in the case of Dr Uppal.
51. The Tribunal looked at whether or not the misconduct was remediable, whether it had been remedied and if there was any likelihood of repetition. The Tribunal accepted that dishonesty is difficult to remediate. However, the Tribunal considered that, as Dr James’ had accepted the findings of the Tribunal, there might be capacity for him to remediate his misconduct. The Tribunal bore in mind that Dr James had not provided any evidence of remediation at this time. It might have assisted the Tribunal if he had provided evidence such as any relevant courses or further reflection.
52. The Tribunal went on to consider whether Dr James had shown any insight into his misconduct. It took into consideration the limitation that Dr James was not represented, and that he had admitted to all of the facts that the Tribunal had subsequently found

proved. However, he had not demonstrated to the Tribunal any significant steps he had taken to gain insight. The Tribunal concluded that Dr James has the potential to gain sufficient insight.

53. The Tribunal considered whether it was likely or not that the misconduct would be repeated having regard to his lack of remediation and limited insight and determined that it could not be confident that the misconduct will not be repeated.
54. The Tribunal went on to consider the wider public interest in this case which includes upholding trust and confidence in the medical profession and upholding proper standards of behaviour.
55. The Tribunal considered that, if a finding of impairment were not made in the case of Dr James, the need to uphold proper professional standards and public confidence in the profession would be seriously undermined.
56. The Tribunal considered that Dr James did not directly put the clients of DoW at risk of harm. However, it found that an issue in this case was the potential consequences and risks to the public by driving licences being issued without properly authorised D4 forms.
57. The Tribunal considered the overarching objective. It determined that all three limbs were engaged and that a finding of impairment was required in order to protect and promote the health, and 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.
58. The Tribunal determined that Dr James' fitness to practise is impaired by reason of his misconduct.

Determination on Sanction - 22/03/2022

59. Having determined that Dr James' 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.

Submissions

60. Mr Rankin, on behalf of the GMC, submitted that that the only appropriate and proportionate sanction in Dr James' case would be one of erasure from the Medical Register. He directed the Tribunal's attention to the Sanctions Guidance (November 2020 edition) ('SG') when making its determination. He referred the Tribunal to paragraph 108 (amongst others) of the SG:

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

61. Mr Rankin submitted that erasure was necessary to maintain public confidence in the profession. He stated that that the dishonest conduct was so serious that it was fundamentally incompatible with continued registration.
62. Mr Rankin stated that his submissions were largely based not only on the serious departure from GMP which the Tribunal found at the impairment stage, but that the Tribunal considered that it could not be certain that the misconduct would not be repeated. He also submitted that there were no timely steps made to remediate and no significant steps taken with regard to insight.

63. Dr James submitted that he accepted Mr Rankin’s submissions due to the seriousness of the Allegation. However, he requested that the Tribunal consider that he may not have been as culpable as Dr L, and should therefore receive a lesser sanction.

The Tribunal’s Determination on Sanction

64. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken the SG into account and borne in mind the overarching objective.

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

Aggravating and Mitigating Factors

66. The Tribunal has already set out its decision on the facts and impairment which it took into account during its deliberations on sanction. Before considering what action, if any, to take in respect of Dr James’ registration, the Tribunal considered and balanced the aggravating and mitigating factors in this case.

67. The Tribunal identified the following aggravating factors:

- Lack of full insight
- Remediation not fully achieved

68. Having identified aggravating factors in this case, the Tribunal identified the mitigating factors to be:

- Raised concerns with Dr L

- Cooperated with formal inquiries
- Struggled with his own mental health following the receipt of the Allegation
- Gained some insight into the risk to the public caused by his actions
- No previous history of regulatory proceedings
- Engaged with the regulatory proceedings
- Made admissions to all the paragraphs of the Allegation that were found proved
- Apologised to the Tribunal for his misconduct
- Provided reflection, both written and in his oral evidence

69. The Tribunal, having considered the aggravating and mitigating factors identified in this case, determined that the mitigating factors were more significant. However, the Tribunal was conscious that it was less able to take mitigating factors into account when dealing with public confidence in the profession, as raised by this case.

70. The Tribunal went on to consider each sanction in turn, starting with the least restrictive.

No action

71. The Tribunal first considered whether to conclude the case by taking no action. It considered that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that there are no exceptional circumstances in this case and that, given the seriousness of its findings, it would not be sufficient nor in the public interest to conclude this case by taking no action.

Conditions

72. The Tribunal next considered whether to impose conditions on Dr James' registration.

73. The Tribunal would have found it difficult to formulate conditions which would address the issues of this case, and in any event, was of the view that imposing conditions on Dr James' registration would not sufficiently mark the seriousness of his misconduct.

Suspension

74. In considering whether to impose a period of suspension, the Tribunal had regard to paragraphs 97a, e, f and g of the SG.

'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.'

75. The Tribunal was satisfied all of paragraph 97 of SG cited above applied to Dr James' case. It considered the steps Dr James has taken in relation to insight and remediation, and concluded that his misconduct could be remediated, and is unlikely to be repeated.

Erasure

76. The Tribunal considered relevant parts of paragraph 109 of the SG:

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

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

77. The Tribunal was under no doubt that doctors acting in a dishonest manner is a serious matter, and providing false D4 forms as part of an authorisation process is a serious breach of GMP. Actions of this kind could be fundamentally incompatible with continued registration. However, in light of the mitigating factors identified and the insight demonstrated by Dr James during the hearing, the Tribunal did not consider that the misconduct was 'fundamentally incompatible with continued registration'.

78. However, other aspects of paragraph 109 were less applicable:

'h Dishonesty, especially where persistent and/or covered up (see guidance below at paragraphs 120–128).

j Persistent lack of insight into the seriousness of their actions or the consequences.'

79. Dr James had not been the architect of the system in which he was working, had been labouring under a misapprehension, and had not attempted to cover up his dishonesty. The Tribunal considered that Dr James' dishonesty was not persistent as there were only three instances over two dates.

80. Dr James had tried to raise his concerns with the system to Dr L, even though his efforts were unsuccessful. Dr James had cooperated with the regulatory proceedings.

81. Dr James had also demonstrated that he understood the gravity of his actions and was working his way toward remediating them, and therefore it fell short of being

fundamentally incompatible with continued registration. The Tribunal was satisfied paragraph 92 of the SG applied to the circumstances of this case:

'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).'

82. The Tribunal considered that Dr James' misconduct was unacceptable but that the overarching objective would be satisfied by a period of suspension rather than erasure.
83. Therefore, in all the circumstances, the Tribunal was satisfied that a sanction of suspension would properly reflect the gravity of Dr James' misconduct and send out a clear message to Dr James, the profession and the wider public that such misconduct is unbecoming of, and unacceptable in, a registered medical practitioner.

Duration of Suspension

84. The Tribunal went on to consider the length of suspension, taking into account paragraphs 99 and 100 of SG in that regard:

'99 The length of the suspension may be up to 12 months and is a matter for the tribunal's discretion, depending on the seriousness of the particular case.

100 The following factors will be relevant when determining the length of suspension:

a the risk to patient safety/public protection

b the seriousness of the findings and any mitigating or aggravating factors (as set out in paragraphs 24–60)

c ensuring the doctor has adequate time to remediate.'

85. The Tribunal determined that the upholding of proper standards and of maintaining public confidence in the profession would be achieved by a period of suspension of 12 months. A lesser period of suspension based on personal mitigation factors would render the totality of the sanction disproportionate.
86. Accordingly, the Tribunal concluded that the period of suspension of 12 months was the appropriate and proportionate sanction in this case.

Review Hearing Directed

87. The Tribunal determined to direct a review of Dr James' case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought. The Tribunal wishes to emphasise that at the review hearing, the onus will be on Dr James to demonstrate how he has remediated and developed his insight. He may also wish to provide appropriate documentary, testimonial and CPD evidence to show the progress he has made and how he has maintained his skills and competence.

Determination on Immediate Order - 22/03/2022

88. Having determined to suspend Dr James' registration for a period of 12 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

Submissions

89. On behalf of the GMC, Mr Rankin submitted that an immediate order would be appropriate in this case given the seriousness of Dr James' misconduct.
90. Mr Rankin submitted that due to the public interest and in order to protect confidence in the profession, an immediate order would be necessary.

91. Dr James submitted that he had no preference whether an immediate order was imposed or not.

The Tribunal's Determination

92. The Tribunal had regard to paragraphs 172 and 178 of the SG.

“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.

...

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.”

93. The Tribunal has considered, given the seriousness with which it viewed Dr James' misconduct, it is in the public interest to suspend his registration with immediate effect.
94. The substantive period of suspension to be imposed on Dr James' registration will take effect 28 days from when notice is deemed to have been served upon Dr James, unless he lodges an appeal in the interim. If Dr James lodges an appeal, the immediate order for suspension will remain in place until such time as the outcome of any appeal is determined.

95. The interim order of conditions currently imposed on Dr James' registration will be revoked when the immediate order takes effect.

96. That concludes the case.

ANNEX B – 09/03/2022

Application to amend the Allegation

97. Mr Rankin made an application to amend paragraph 1(a)(iii) of the Allegation to the following:

4. “At one or more of the appointments set out in Schedule 1 (‘the Appointments’):
 - a. you permitted a Medical Examination D4 Report to be completed which:
 - i. indicated that you were the doctor who carried out the examination;
 - ii. contained a stamp bearing your:
 1. name;
 2. GMC number;
 - iii. ~~contained a pre-printed copy of your signature~~ **was pre-signed or pre-stamped with your signature.**

98. This application was made in accordance with Rule 17(6) of the Rules:

“Where, at any time, it appears to the Medical Practitioners Tribunal that—

(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and

(b) the amendment can be made without injustice, it may, after hearing the parties, amend the allegation in appropriate terms.”

99. Mr Rankin submitted that this amendment could be made without injustice to Dr James or Dr L as it is simply changing of the wording, but does not change the essence of that

which the Allegation is trying to establish in relation to that portion of the heads of charge remains the same.

Relevant Legal Principles

100. The Tribunal reminded itself that it is entitled to make an amendment at any stage, but that its overriding consideration was whether the proposed amendments could be made without injustice.
101. The Tribunal has borne in mind the question of fairness to both parties and the statutory overarching objective.

Tribunal's Decision

102. The Tribunal had regard to Rule 17(6) of the Rules and was mindful that the suggested amendments did not amount to a new allegation.
103. The Tribunal therefore granted the GMC's application to allow the proposed amendments as it was satisfied that these amendments can be made without unfairness or injustice to Dr James & Dr L.

SCHEDULE 1

<u>Date</u>	<u>Person</u>
4 July 2018	Mrs A
27 March 2019	Mr B
27 March 2019	Mr C