PUBLIC RECORD

Dates: 05/05/2023 - 19/05/2023 (non-sitting day 08/05/2023)
07/07/2023
30/10/2023 – 02/11/2023

Medical Practitioner's name:	Dr Samuel HARTLEY
GMC reference number:	6103285
Primary medical qualification:	BM BS 2004 University of Nottingham

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

Summary of outcome

Suspension, 8 months.

Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Christopher Harper
Lay Tribunal Member:	Mrs Anita Hargreaves
Medical Tribunal Member:	Dr Bryn Davies

Tribunal Clerk:	Mr Sewa Singh 05/05/2023 - 19/05/2023 (non-sitting day 08/05/2023) & 07/07/2023 Ms Hinna Safdar 30/10/2023 – 02/11/2023

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Christopher Hopkins, Counsel, instructed by Hempsons Solicitors
GMC Representative:	Ms Kathryn Johnson, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 07/07/2023

Overarching Objective

1. Throughout the decision-making process the Tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 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.

Background

2. Dr Hartley graduated from the Nottingham University Medical School with an intercalated BMedSci in 2002 and a BMBS degree in 2004. He passed his Royal College of Paediatrics and Emergency Medicine (MRCPCH) exam in 2010 and the RCPCH Start, achieving an 'outcome 6' to general paediatric run-through training in July 2017. Dr Hartley currently works as a Locum Paediatric Registrar at Milton Keynes University Hospital NHS Trust.

3. The Allegation is set out in full below, but in brief it is alleged that, between January 2018 and March 2019, Dr Hartley submitted job applications to three separate hospital trusts: University Hospitals of Leicester NHS Trust (UHLT), Sheffield Children's NHS Foundation Trust (SCH), and Oxford University Hospitals NHS Foundation Trust (OHFT) in which he provided false or misleading information regarding his previous GMC investigation and completion of training courses. It is alleged that during his interview at SCH Dr Hartley

informed the interview panel that he had been subject to a GMC investigation but this had been closed without any restrictions being placed upon his registration.

4. It is alleged that Dr Hartley's actions in doing so were dishonest.

The Outcome of Applications Made during the Facts Stage

5. The Tribunal granted an application made by Mr Christopher Hopkins, Counsel for Dr Hartley, pursuant to Rule 34(1) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'), to admit the draft statement of Dr A as hearsay evidence. Arising from this application, the Tribunal granted in part, an application made by Ms Kathryn Johnson, Counsel for the GMC, to redact sections of Dr A's draft statement. The Tribunal's reasons are set out in Annex A and D.

6. The Tribunal granted applications made by Mr Hopkins, pursuant to Rule 34(13) of the Rules, to allow Ms B, Ms C and Mr M to give evidence via video-link. The applications were not contested by Ms Johnson. The Tribunal's reasons are set out in Annex B.

7. The Tribunal granted an application made by Ms Johnson, pursuant to Rule 17(6) of the Rules, to amend paragraphs 4(e) and 7 of the Allegation. The Tribunal's reasons are set out in Annex C.

The Allegation and the Doctor's Response

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

University Hospitals of Leicester NHS Trust

1. On 3 January 2018, you submitted an application for the post of Locum Consultant in General Paediatrics with a Subspecialty at Leicester Royal Infirmary ('Application 1') in which you:

    a. stated on page 4 of Application 1 that you had attended the 'Hands on Course in Basic Paediatric Echocardiography' at 'UCL GOSH ICH' for 2 days in 2017; **Admitted and found proved**

    b. stated on page 8 of Application 1 that you had 'recertified in APLS/NLS instructor' between 3 August 2016 and 31 January 2017.
    Admitted and found proved

2. As at the date of Application 1 you knew that you:

   a. had not attended the course specified at paragraph 1a above; **Admitted and found proved**

   b. had not recertified as a APLS/NLS instructor between 3 August 2016 and 31 January 2017. **Admitted and found proved**

3. Your actions as set out at paragraphs 1a to 1b above were dishonest by reason of paragraphs 2a and 2b respectively. **To be determined**

Sheffield Children's NHS Foundation Trust

4. Between 23 April and 4 June 2018, you submitted an application for the post of Specialty Doctor in Paediatric Emergency Medicine at Sheffield Children's NHS Foundation Trust ('SCH') ('Application 2') in which you:

   a. answered 'No' to the question on page 5 of Application 2 'Have you ever been removed from the register, or have conditions or sanctions been placed on your registration, or have you been issued with a warning by a regulatory or licencing body in the UK or any other country?'; **Admitted and found proved**

   b. stated on page 4 of Application 2 that you had attended the following two day courses:

      i. GIC General Instructor Course in 2018; **Admitted and found proved**

      ii. Hands-on.. Basic Paed Echocardiography in 2018; **Admitted and found proved**

   c. stated on page 9 of Application 2 that you had 'recertified in APLS/NLS instructor' between February and August 2017; **Admitted and found proved**

   d. stated on page 23 of Application 2:

i. 'I'm completing ALSG GIC instructor training';
Admitted and found proved

ii. 'I'll be qualified in the ALSG General Instructor Course but hold no further formal qualifications in teaching yet';
Admitted and found proved

e. cited on page 26 of Application ~~1~~ 2 a publication XXX. Admitted and found proved
(Amended under Rule 17(6))

5. As at the date of Application 2 you knew that you:

a. had been suspended by the GMC from 19 September 2012 until 18 October 2012; Admitted and found proved

b. had not attended the courses set out at 4bi and 4bii above;
Admitted and found proved

c. had not recertified as a APLS/NLS instructor between February and August 2017; Admitted and found proved

d. were not completing the ALSG GIC Instructor training at the time of Application 2 nor were you due to be qualified in the ALSG General Instructor Course; Admitted and found proved

e. were not the author of the Publication nor cited within it as an author.
Admitted and found proved

6. Your actions as set out at paragraphs 4a – e above were dishonest by reason of paragraphs 5a – e respectively. To be determined

7. On 19 ~~May~~ June 2018, you were interviewed for the position of Specialty Doctor in Paediatric Emergency Medicine at SCH at which time you confirmed that you had been the subject of a previous GMC investigation but that it had been closed without ongoing restrictions being placed on your practise, or words to that effect. To be determined (Amended under Rule 17(6))

8. You knew that your previous GMC investigation had not been closed and that you had received a one-month suspension from 19 September 2012 until 18 October 2012 following a fitness to practise hearing.
Admitted and found proved

9. Your actions as set out at paragraph 7 above demonstrated a lack of candour by reason of paragraph 8. **To be determined**

Oxford University Hospitals NHS Foundation Trust

10. On 11 March 2019, you submitted an application for the post of Consultant in Paediatric Emergency Medicine at Oxford University Hospitals NHS Foundation Trust ('Application 3') in which you:

    a. answered 'No' to the question on page 4 of Application 3 'Have you ever been removed from the register, or have conditions or sanctions been placed on your registration, or have you been issued with a warning by a regulatory or licencing body in the UK or any other country?'; **Admitted and found proved**

    b. stated on page 3 of Application 3 that you had attended the following two-day courses:

        i. GIC General Instructor Course in 2018;
        Admitted and found proved

        ii. Hands-on.. Basic Paed Echocardiography in 2018;
        Admitted and found proved

    c. stated on page 10 of Application 3 that you had 'recertified in APLS/NLS instructor' between February 2017 and August 2017;
    Admitted and found proved

    d. stated on page 26 of Application 3:

        i. 'I'm completing ALSG GIC instructor training';
        Admitted and found proved

ii. 'I'll be qualified in the ALSG General Instructor Course but hold no further formal qualifications in teaching yet';
Admitted and found proved

e. cited on page 29 of Application 3 the Publication as set out at paragraph 4e above. Admitted and found proved

11. As at the date of Application 3 you knew that you:

a. had been suspended by the GMC from 19 September 2012 until 18 October 2012; Admitted and found proved

b. had not attended the courses set out at 10bi and 10bii above; Admitted and found proved

c. had not recertified as a APLS/NLS instructor between February 2017 and August 2017; Admitted and found proved

d. were not completing the ALSG GIC Instructor training at the time of Application 3 nor were you due to be qualified in the ALSG General Instructor Course; Admitted and found proved

e. were not the author of the Publication nor cited within it as an author. Admitted and found proved

12. Your actions as set out at paragraphs 10a – e above were dishonest by reason of paragraphs 11a – e respectively. To be determined

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

The Admitted Facts

9. At the outset of these proceedings, Dr Hartley admitted the following paragraphs of the Allegation: 1(a) and (b), 2(a) and (b), 4(a) – 4(e), 5(a) – 5(e), 8, 10(a) – 10(e), and 11(a) – 11(e). The Tribunal announced these paragraphs of the Allegation as admitted and found proved, in accordance with Rule 17(2)(e) of the Rules.

The Facts to be Determined

10. In light of the above, the Tribunal had to determine the disputed elements of the Allegation, as set out above.

Witness Evidence

11. The Tribunal received oral evidence on behalf of the GMC from the following witnesses, together with their witness statements and exhibits:

- Dr D, witness statements dated 5 February 2020 and 27 May 2022;
- Dr E, witness statement dated 16 December 2019;
- Dr F, witness statement dated 4 July 2020;
- Dr G, witness statement 9 October 2020;
- Dr H, witness statement dated 1 June 2020.

12. The Tribunal also received, on behalf of the GMC, the witness statements of Dr I, dated 13 November 2023, and Dr J, dated 26 February 2020.

13. The Tribunal received oral evidence on behalf of Dr Hartley from Ms B, witness statement dated 26 March 2023, and Ms C, witness statement dated 28 March 2023. It also received oral evidence from Dr L, Mr M and Dr N on behalf of Dr Hartley, and from Professor O, as an expert witness, alongside his report dated 8 March 2023.

14. The Tribunal was provided with testimonials, on behalf of Dr Hartley, from Mr P, Mr Q and Mr R.

15. The Tribunal also had regard to the written evidence provided, in draft form, from Dr A, Dr Hartley's educational supervisor, who has since passed away. That evidence was the subject of the application addressed in Annex A.

Dr Hartley's Evidence – General Background

16. Dr Hartley described significant personal, familial and financial stresses from 2014 onwards due to XXX. He also described XXX, financial and other difficulties, XXX.

17. XXX.

18. He stated that these direct family demands began to build up on him and he found the period between late 2017 and the middle of 2020 stressful for him XXX. Dr Hartley stated

'I always choose to give the best of myself and my focus to my clinical work, to patients and their families/careers; and to my own family. It was some of the background non-clinical administrative tasks that always seemed to sink further down my 'priority pile', and that I had always had to push myself to keep up to date with.'

19. XXX.

20. Dr Hartley told the Tribunal that despite the difficulties in his personal life, a busy work schedule, and his fitness to practise proceedings in 2012, he managed to complete his paediatric run-through training with an 'outcome 6' in July 2017. He added that he failed to submit all of the necessary paperwork to obtain his CCT within a year of obtaining the 'outcome 6' with personal circumstances very much at the forefront, XXX.

21. Dr Hartley told the Tribunal that amidst all that was going on, together with feedback he had received that the first draft of his application form for the role at UHLT and his CCT application were too disorganised, lengthy and unclear, he *'felt like it was an Everest to climb to get this CCT application done adequately'*. He said that he shared this concern with Dr A who was his educational supervisor at the time. Dr Hartley went on to say that the matters relating to XXX became urgent and there was not much opportunity to rearrange meetings, and it took a long time to hear back when he submitted or clarified pertinent CCT information to the relevant people. He said that the deadline for the CCT application expired following which he then had to make the choice, given his personal circumstances, to work as a locum paediatric registrar. Dr Hartley said that he spoke openly for almost five years about everything that was going on in his personal life with Dr A. Dr Hartley said Dr A was very supportive, always available, and was keen for him to apply to become a locum paediatric consultant at UHLT whilst he applied for his CCT registration.

<u>The Application for UHLT</u>

22. Dr Hartley told the Tribunal that he had made appointments to see Dr A in advance of submitting his UHLT application, however these meetings were cancelled due to several legal meetings in late 2017, his family demands, and at times, Dr A had to cancel. Dr A was the consultant advertising the post, as well as Dr Hartley's mentor. Dr Hartley stated *'I made the foolish judgment error of trying to ask my key 'job application' questions only by telephone with Dr A, in or around December 2017 / January 2018 and I asked him how I should answer the question "have you been removed from the register or have conditions been made on your registration by a fitness to practise committee or the licensing or regulatory body in the UK or in any other conversation".* Dr Hartley said he recalled Dr A advising him that he could state he had not been removed from the register or had any conditions imposed upon his registration. He went on to say that Dr A advised him to make it clear that he had a one-

month suspension and to set out the background to it. Dr Hartley said that later in 2020, Dr A provided a draft witness statement in which he confirmed the discussion he had with Dr Hartley. That statement was not finalised before Dr A's death.

23. Dr Hartley stated that in 2018, he genuinely thought the question 'Have you been removed from the register or have conditions been made on your registration by a fitness to practice committee or the licensing or regulatory body in the UK or in any other country?' referred either to being struck off or to having ongoing conditions (restrictions determining how when and where you can work). He said it never occurred to him that being 'removed from the register' included being temporarily suspended for one month. As such, he said that he did not consider the specific question applied to him, though he knew that he needed to inform potential employers and relevant persons of his previous GMC history. He added that this was the type of misunderstanding XXX, which he deeply regretted and sought to quickly correct as soon as he realised his mistake.

24. Dr Hartley also stated that he passed his APLS (Advanced Paediatric Life Support Course) and NLS (Neonatal Life Support Course) in 2017, and on both courses did well enough to be recommended to go on to train as an instructor. He said that at the time of answering the question about courses either he or Ms B had applied for him to attend a General Instructor Course, and a Hands-On Paediatric Echocardiography course. He said his understanding was that he could include courses he would soon complete in the form, and that he had not intended to suggest he had already completed those courses by writing "2018" in the "date completed" column.

25. Dr Hartley explained that, due to his personal circumstances, XXX, he had to postpone the courses, so he did not go on to complete them in 2018.

26. Dr Hartley said that in January 2018, he independently contacted the majority of the UK paediatric major trauma centres. He said he had several telephone conversations and email correspondence with Dr D at SCH. He informed Dr Hartley that the hospital could create a post as a paediatric emergency registrar to cover a period of absence for one member of staff for about a year, but that Dr Hartley would need to formally apply for the position. Dr Hartley explained that he wanted to work at SCH because he considered their paediatric emergency department to be one of the top units in the country. XXX.

The Application for SCH

27. Dr Hartley explained that the job application to SCH was originally due around the end of March 2018 but due to his two emergency hospital admissions he was unable to complete

the form. He said that the job application was completed between 8 and 15 April 2018 XXX. He felt that his focus and concentration was not as good as normal. He said that Ms B assisted him in completing a "job template" on NHS jobs for the SCH application and she downloaded or printed it as a single sided document.

28. Dr Hartley stated that there was significant dispute with XXX. XXX. The pressure of this, XXX, affected his ability to complete and review the detailed administrative forms.

29. Dr Hartley said that he asked Ms B to help and she largely completed the fact-based part of the application form. Dr Hartley said that Ms B completed the form on an NHS jobs website template, based partly on his application for the UHLT post in January 2018. Dr Hartley said that he recognised now that this was inappropriate, given that Ms B was not medically trained. He said he believed he also approached consultant colleagues to review his application but could not recollect now who he approached.

30. Dr Hartley said that during completion of the form, Ms B asked him about the question relating to whether he had been removed from the register, or had conditions or sanctions placed upon his registration. He said he told her what Dr A had advised him at the time when he completed the UHLT application form. Dr Hartley said that at the time he thought 'sanctions' related to financial sanction. XXX. He said he was under the impression at the time that the GMC had the ability to fine doctors found guilty of financial wrongdoing in fraud related cases. Dr Hartley said that he, Ms B, and XXX, Ms C, had a conversation together and collectively felt that none of the terms set out in the question related to a one-month suspension. He accepted that the responsibility for completing the form correctly lay with him.

31. Dr Hartley said that he considered it appropriate to disclose his suspension to Dr D, as the advertising consultant, prior to any shortlisting, then independently to bring it up in interview. He said he felt that showed he was being open and honest.

32. Dr Hartley stated that he was late submitting the application XXX. He said he thought they sent the application form in around 8 to 15 April 2018, possibly up to 19 April 2018. Upon contacting Human Resources immediately after submitting the application form, Dr Hartley said he was advised that shortlisting would not take place until the end of April 2018. He said he met up with Dr D within days, and had further communication with him prior to 21 April 2018 though he could not recollect whether this was face to face, or via video or telephone call. He said Dr D responded via email. Dr Hartley said he followed up with a further email, dated 23 April 2018, in which he advised Dr D that he had already submitted his application albeit late, to HR and to specifically tell him that he had been subject to a previous GMC suspension for one month, and that he was keen to meet up with Dr D in

person to discuss this and other things. Dr Hartley indicated that he met Dr D a few days later. The Tribunal was provided with a copy of the email dated 23 April 2018. Dr Hartley said that this email showed that he genuinely did not think that the application form "asked fully regarding past referrals to the GMC and outcomes". He said that this email demonstrated XXX as this email was unedited by Ms B and others. He went on to say that he later attempted to explain that the outcome of the GMC proceedings was a suspension for one month due to issues with probity and a lack of clear communication.

33. Dr Hartley completed a separate "Candidate Declaration Form" dated 5 June 2018 for the SCH application. Question five of the Candidate Declaration for Application 2 states: *'Have you ever been dismissed by reason of misconduct from any employment, office or other position held by you?'* Dr Hartley answered *'No'* but provided some detail as follows:

> *'Note: I did have a one month suspension from 19/9/12 to 18/10/12 which was largely due to significant personal / family stresses leading to non-attendance at MRCPCH Clinical Exam Sittings in 2009-10. No clinical harm occurred to any patient; I can provide further details. I am happy to discuss these events and my personal learning from it, in interview or afterwards. I was not disqualified, neither had any limitations specified.'*

34. Question six states *'Have you ever been disqualified from the practice of a profession, or required to practice subject to specified limitations following fitness to practice proceedings, by a regulatory or licensing body in the United Kingdom or in any other country?'* In response to question six, Dr Hartley again answered 'No' and he pointed by the drawing of an arrow to his explanation in respect of question five.

35. In relation to the section about courses attended, Dr Hartley said he believed there was guidance alongside the application form, in similar terms to the Oxford form contained in the papers for the case, which asked candidates to list "courses in progress or approved for attendance in the near future and the expected date of completion".

36. Dr Hartley said that he was still due to book on to the General Instructor Course ('GIC') within a year of being recommended for it. He had cancelled previous bookings for the GIC and the Hands-On Paediatric Echocardiography course. Dr Hartley stated that he could not recall whether he or Ms B sent the applications in for the courses or when they cancelled the applications, but that Ms B often took charge of bookings and XXX finances. He said that Ms B said she would reapply on his behalf for both the GIC and the Echocardiography courses in 2018. He felt he could therefore answer the question properly with an anticipated completion date in 2018. He said, however, that with XXX, Ms B said that XXX would need to *'XXX cancel / postpone courses and further degree applications until XXX'*.

37. In relation to the question about publications, Dr Hartley emphasised that his answer stated that he was not one of the listed authors. He said that he had been involved significantly in the research which led to the published article. He said he had written up the case study part of the article, about the first treatment of a neonate with MRSA with daptomycin. Dr Hartley went on to say that he moved posts shortly after forwarding the written case study part to colleagues in 2011, and had been given the impression that he would be included in authorship, but was not. He said he had received a "light apology" when he had discussed that matter with Dr S subsequently.

38. Dr Hartley stated that he was not trying to falsely claim involvement. He now realised that this type of situation happened often, and that it was up to him to have had better ongoing communication to ensure that he was listed among authorship. He said that it was extremely naive and also inappropriate for him to have mentioned it on a job application. He said he had not done so since these events, and would not do so again. Dr Hartley told the Tribunal that he had discussed the matter with Ms B, and she thought he should mention his involvement, given she had seen how much effort he had put into preparing the case study. Dr Hartley said, however, that he now appreciated that he should have spoken to a doctor who had published in medical journals, rather than Ms B who was not medically trained, and that it was his responsibility to answer accurately.

The Application for OHFT

39. Dr Hartley stated *'becoming a paediatric emergency consultant XXX, seemed like a "pinnacle achievement" to me personally.'* He said Ms B agreed to help him with completing the job application and largely focussed on the fact-based portion, which she copied from the application he submitted for the SCH post. He said that he worked on updating his personal statement to show how he considered he met the needs of the role, and how he would uphold Oxford University Hospitals NHS trust vision and values. He said he also updated his job history and some other points.

40. Dr Hartley told the Tribunal that he believed some updates to the form had been lost due to a computer error. He highlighted that in a number of areas the job application form referred to courses "due to attend in 2018", and a Paediatric Emergency Masters "due to start in September 2018", adding that the form contained incorrect dates for his post at UHLT as a locum consultant (the post initially being for twelve months from February 2018 to February 2019 but he left early in August 2018). That, he said, showed that the content was from an older application. He stated *'XXX* Ms B *and I did update these details, again with her going over the fact-based portion of the application, and myself going over later parts of the form. We thought we'd saved updates as we went, but at least part of the updates weren't*

saved properly, reading very much as the previous Sheffield application did. We feel that in reading the job application as whole, this does not really reflect deliberate dishonestly; these seem to us to be obvious errors in a 2019 application, effectively saying on a 2019 application, "I'm still due to attend and due to start things that were back in 2018". But we do absolutely accept that the effect of this was to make the job form unclear, confusing, so potentially misleading.'. He also pointed out that the application finished "I feel I could greatly both benefit and contribute to joining and working with you in Sheffield…" suggesting that the form was an incompletely updated version of his Sheffield application.

41. In relation to the 'Teaching experience' section of the form, Dr Hartley said that it stated that *'I would (in the future) be 'qualified in the ALSG General Instructor Course but hold no further formal qualifications in teaching yet.' even though this referred to attending a course in 2018. We had not realised there were unsaved changes when the application from was sent through.'* He said that for these reasons, the answers regarding previous GMC case, courses and publications were the same as those contained in the application form for SCH, with the same explanations. Dr Hartley stated that as he had never been challenged regarding these issues whilst he was employed at SCH, he was not aware the information had not been updated nor had he been accused of any falsification in his Sheffield application before he applied to Oxford. Dr Hartley went on to say that it was a matter of great regret that the two courses he was ultimately unable to secure and attend in 2018 - the GIC course and the Echocardiography course - had not been deleted prior to this application form being submitted.

42. Dr Hartley stated that prior to the interview at OHFT, he met with Dr H on 11 March 2019 where he spoke about the role, and he told her that he had been subject to a GMC investigation which resulted in him being suspended. He added that he recalled being asked at the interview about any significant or critical learning events in his training, and he chose to bring up the GMC suspension *'independently and of myself*'. He said he hoped this would have been reflected in interview notes, but that despite speaking with relevant HR staff, he had not been able to get hold of any interview notes.

43. In respect of all three applications, Dr Hartley went on to say that he did not anticipate that giving information about his one-month suspension before and during an interview would affect his prospects of securing suitable employment, so there was no reason for him to be anything but open. He said that he did have a conversation with the relevant persons at each of the trusts to which he applied ahead of shortlisting.

Documentary Evidence

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

- Dr Hartley's completed job application forms to UHLT, to SCH and to OHFT;
- Candidate Declaration Form from the SCH application process;
- Email correspondence between Dr Hartley and Dr D, and Human Resources at SCH;
- Email correspondence between Dr Hartley's senior colleagues at SCH and also their email correspondence with colleagues at the other Trusts where Dr Hartley had worked, concerning the information Dr Hartley had included in his application forms;
- Handwritten notes of the meeting between Dr F and Dr Hartley on 28 June 2019;
- Dr J's handwritten notes of Dr Hartley's interview at OHFT;
- Minutes of the Fitness to Practise Panel Hearing dated 13 – 21 August 2012;
- Report of Professor O, dated 8 March 2023;
- XXX;
- Testimonial letters from Dr Hartley's clinical colleagues;
- Witness statement of Dr S, dated 15 May 2023;
- Witness statements of Dr N, dated 27 March 2023 and 2 May 2023;
- Dr A's redacted and unsigned and undated draft statement;
- Copies of certificates for course Dr Hartley had completed in November and December 2021;
- GMC referral;
- Copies of Dr Hartley's Curriculum Vitae (CV) as attached to the relevant application forms and the current version for the purpose of these proceedings;
- Certificates for APLS course.

The Tribunal's Approach

45. The Tribunal accepted the Legally Qualified Chair's advice.

46. In reaching its decision on facts, the Tribunal bore in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation - Dr Hartley does not need to prove anything. The standard of proof applied is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

47. The Tribunal reminded itself that it must form its own judgment about the witness evidence it heard and the reliability of each witness, including Dr Hartley, and about what weight to apply to the hearsay evidence of Dr A.

48. The Tribunal noted the test for dishonesty as set out in *Ivey v Genting Casinos (UK) Limited (t/as Crockfords Club) [2017] UKSC 67* ('Ivey') is that it must,

> '…first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts…[and] 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 had done is, by those standards, dishonest'

The Tribunal's Analysis of the Evidence and Findings

49. In respect of the outstanding paragraphs of the Allegation, the Tribunal considered them separately and evaluated all the evidence in relation to each element to make its findings on the facts. For ease of reference as to which matters remain disputed, those paragraphs of the Allegation admitted and found proved have been included below.

50. Throughout its assessment of the evidence, the Tribunal bore in mind that when applying for any post, candidates will want to present themselves, their experience and learning, in the best possible light. Candidates in a recruitment process need to balance presenting themselves positively with the need to accurately and honestly describe their skills and experience. The Tribunal therefore considered whether Dr Hartley's entries on the forms were dishonest in this context.

University Hospitals of Leicester NHS Trust

1. On 3 January 2018, you submitted an application for the post of Locum Consultant in General Paediatrics with a Subspecialty at Leicester Royal Infirmary ('Application 1') in which you:

a. stated on page 4 of Application 1 that you had attended the 'Hands on Course in Basic Paediatric Echocardiography' at 'UCL GOSH ICH' for 2 days in 2017; **Admitted and found proved**

b. stated on page 8 of Application 1 that you had 'recertified in APLS/NLS instructor' between 3 August 2016 and 31 January 2017.

Admitted and found proved

2. As at the date of Application 1 you knew that you:

a. had not attended the course specified at paragraph 1a above;
Admitted and found proved

b. had not recertified as a APLS/NLS instructor between 3 August 2016 and 31 January 2017. Admitted and found proved

3. Your actions as set out at paragraphs 1a to 1b above were dishonest by reason of paragraphs 2a and 2b respectively.

51. Paragraphs 1 – 3 relate to matters at UHLT. As Dr Hartley has already admitted paragraphs 1(a), 1(b), 2(a) and 2(b), the Tribunal needed to consider, as set out in paragraph 3 of the Allegation, whether his actions were dishonest.

52. The Tribunal had regard to Dr Hartley's completed online application form (Application 1). It noted under the section headed 'Training Courses Attended' the question 'Training courses that you have attended or details of courses that you are currently undertaking, together with the date completed or to be completed.' Under this question, Dr Hartley listed *'Hands-on Course in Basic Paediatric Echocardiography' at 'UCL GOSH ICH' for '2 days' in '2017'*.

53. The Tribunal also noted that in another part of Application 1, under the section headed 'Brief description of your duties and responsibilities', Dr Hartley stated 'Recertified in APLS/NLS instructor'.

54. Dr Hartley's evidence, which he maintained throughout, was that he started the application process in or around October 2017 to December 2017. He stated at paragraph 28 of his witness statement, dated 12 April 2023:

> *'I started applying for the post of Locum Consultant Paediatrician in Leicester in or around October to December 2017. It was in the middle of all these busy events in my private / family life, and the first time I had completed a job application in 10 years, since commencing run-through training in 2007. I had said to* [Ms B] *that I should try to complete this application. Ms B would normally have checked my application, but at the time she was too busy XXX.'*

55. As set out in paragraph 28 of his witness statement, Dr Hartley told the Tribunal that *'I tried to meet with Dr A in or around December 2017 / January 2018 to discuss my application to University Hospitals Leicester NHS Trust. He was the main short lister and he knew all about my 2012 GMC case from many previous discussions as he was my supervisor, however I wanted to formally discuss it and ask the right way to highlight my GMC case, and my learning from it.'*

56. Application 1 was submitted on 3 January 2018. It was Dr Hartley's evidence, as set out above, that at the time of completing the Application 1 between September and December 2017, he had booked on to the Echocardiography course in late 2017, and that he intended to complete the course. However, due to having to deal with matters relating to XXX, he did not. Dr Hartley said that, given the length and the detail contained within Application 1, he forgot to amend this information in his application form before he submitted it, though he still intended to complete the course in the near future.

57. The Tribunal took into account that under the section, there were a number of courses listed, some completed and some to be completed. Dr Hartley had completed this section as follows:

Course Title	*Training Provider*	*Duration*	*Year obtained*
APLS – recommended for instructor training on the Generic Instructor Course	*Walsall Healthcare NHS Trust*	*2 days*	*2017*
NLS - recommended for instructor training on the Generic Instructor Course	*Isle of Wight NHS Trust*	*1 day*	*2017*
ALSG Generic Instructor Course	*Walsall Healthcare NHS Trust*	*2 says*	*For Feb 2018*

and then further down the table

Hands-on Course in Basic Paediatric Echocardiography	*UCL GOSH ICH*	*2 days*	*2017*
Induction to Quality Improvement and Patient Safety (QIPS)	*UHL NHS Trust*	*1 day*	*For Feb 2018*
Exploitation and Vulnerable Children	*Royal College of Physicians, London*	*1 day*	*For Feb 2018*

58. The Tribunal noted that for other courses which Dr Hartley had not completed, he stated 'For Feb 2018'. It was therefore reasonable to expect that for the Hands-on Course in Basic Paediatric Echocardiography, he would have done the same. The Tribunal took into account Dr Hartley's evidence that he intended to have completed the course in December 2017.

59. The Tribunal also took into account, from Dr Hartley's evidence, that the deadline for the appeal against the decision of XXX in relation to XXX was 4 April 2018. It was therefore likely that the XXX process would have commenced and been ongoing some months before the application was submitted in January 2018. It accepted Dr Hartley's evidence that he or Ms B cancelled the course due to XXX.

60. The Tribunal took into account that Application 1 was for a post at Dr Hartley's current employer. Dr A was also one of the interviewers on the interview panel. It considered that it was unlikely that Dr Hartley would deliberately put information into the form which was false, when he was being interviewed in a setting where his experience, training and educational needs would have been known. The Tribunal also took into account Professor O's report dated 8 March 2023 and Dr A's draft statement mentioning Dr Hartley's difficulties XXX. There was no evidence before the Tribunal, nor was it suggested by the GMC, that attendance or completion of the course was a requirement of the post for which Dr Hartley had applied to lead him to include it in his application form.

61. Based on the evidence before it, the Tribunal considered, on the balance of probabilities, that Dr Hartley was registered to attend the course by December 2017 but had cancelled it due to issues concerning XXX. It concluded that Dr Hartley had forgotten to amend the date for completion in Application 1 or to remove it all together. The Tribunal therefore determined that Dr Hartley's actions were not dishonest, and it found paragraph 3 in relation to paragraphs 1(a) and 2(a) of the Allegation not proved.

62. The Tribunal then went on to consider paragraph 1(b) of the Allegation. It noted that on page 8 of Application 1, Dr Hartley stated 'Recertified in APLS/NLS instructor and recommended from both to take GIC course. The Tribunal also had regard to the table of courses which Dr Hartley completed, as set out above, which reads:

ALSG Generic Instructor Course	*Walsall Healthcare NHS Trust*	*2 says*	*For Feb 2018*
APLS – recommended for instructor training on the Generic Instructor Course	*Walsall Healthcare NHS Trust*	*2 days*	*2017*

NLS - recommended for instructor training on the Generic Instructor Course	*Isle of Wight NHS Trust*	*1 day*	*2017*

63. The Tribunal noted that Dr Hartley had stated against the ALSG Generic Instructor Course ('GIC') course, the completion date as 'For Feb 2018'. In his evidence, Dr Hartley maintained that he had passed both the APLS and NLS courses in 2017 and that he had been recommended for instructor training on the GIC course. He submitted that his understanding was that he was booked on to the GIC course in February 2018, and that he had begun to prepare for the course from October 2017, around the same time he commenced completing his application form. Preparation involved studying course and other reading material, as well as speaking to consultants who had already completed the course. However, his evidence was that he had to cancel this course for similar reasons to the echocardiography course, and failed to update the form in the same way.

64. During cross examination, it was accepted by a number of GMC witnesses that it did not make sense for Dr Hartley to have put in the table that he was to complete the GIC course in February 2018 and then to state under the section headed 'Brief description of your duties and responsibilities' that he recertified in APLS/NLS Instructor. When questioned, they accepted that a doctor must have passed the GIC exam first before they could recertify as an Instructor. As Dr Hartley had not passed the GIC course, there was no way he could have recertified as an instructor and a suitably qualified person reading the form would be likely to know that the entry could not be right.

65. The Tribunal reflected on the reasons for finding no dishonesty in respect of paragraphs 1a and 2a, and noted that they applied equally to these paragraphs. The Tribunal had heard that being an Instructor would not impact on Dr Hartley's day-to-day role, nor would it make him more suitable, in itself, for appointment, and noted that a qualified reader would be unlikely to be misled by the content of this section of the form as a whole, as it relates to these courses.

66. Based on the evidence before it, the Tribunal considered, on the balance of probabilities, that Dr Hartley had intended to complete the course in February 2018 but did not. It concluded that Dr Hartley had forgotten to amend the date for completion in Application 1 or to remove it all together. It was not logical for him to have stated that he intended to complete the course in February 2018 and then later state that he had recertified on the course. The Tribunal therefore accepted that the wording "recertified in APLS/ NLS instructor" was a genuine error and was not intended to mislead, nor would it be likely to have that effect. The Tribunal therefore determined that Dr Hartley's actions were

not dishonest, and it found paragraph 3 in relation to paragraphs 1(b) and 2(b) of the Allegation not proved.

Sheffield Children's NHS Foundation Trust

4. Between 23 April and 4 June 2018, you submitted an application for the post of Specialty Doctor in Paediatric Emergency Medicine at Sheffield Children's NHS Foundation Trust ('SCH') ('Application 2') in which you:

a. answered 'No' to the question on page 5 of Application 2 'Have you ever been removed from the register, or have conditions or sanctions been placed on your registration, or have you been issued with a warning by a regulatory or licencing body in the UK or any other country?'; Admitted and found proved

b. stated on page 4 of Application 2 that you had attended the following two day courses:

i. GIC General Instructor Course in 2018;
Admitted and found proved

ii. Hands-on.. Basic Paed Echocardiography in 2018;
Admitted and found proved

c. stated on page 9 of Application 2 that you had 'recertified in APLS/NLS instructor' between February and August 2017;
Admitted and found proved

d. stated on page 23 of Application 2:

i. 'I'm completing ALSG GIC instructor training';
Admitted and found proved

ii. 'I'll be qualified in the ALSG General Instructor Course but hold no further formal qualifications in teaching yet';
Admitted and found proved

e. cited on page 26 of Application 1 2 a publication 'XXX. Admitted and found proved

(Amended under Rule 17(6))

5. As at the date of Application 2 you knew that you:

a. had been suspended by the GMC from 19 September 2012 until 18 October 2012; Admitted and found proved

b. had not attended the courses set out at 4bi and 4bii above; Admitted and found proved

c. had not recertified as a APLS/NLS instructor between February and August 2017; Admitted and found proved

d. were not completing the ALSG GIC Instructor training at the time of Application 2 nor were you due to be qualified in the ALSG General Instructor Course; Admitted and found proved

e. were not the author of the Publication nor cited within it as an author. Admitted and found proved

6. Your actions as set out at paragraphs 4a – e above were dishonest by reason of paragraphs 5a – e respectively.

67. Paragraphs 4 – 9 relate to matters at SCH. Given that Dr Hartley has already admitted paragraphs 4(a) – 4(e) and 5(a) – 5(e), the Tribunal needed to consider, as set in paragraph 6 of the Allegation, whether his actions were dishonest in respect of each of the preceding paragraphs of that section of the Allegation.

Paragraph 6 in relation to paragraphs 4(a) and 5(a)

68. The Tribunal was provided with a copy of Dr Hartley's completed online application form (Application 2). It noted that against the question 'Have you ever been removed from the register, or have conditions or sanctions been placed on your registration, or have you been issued with a warning by a regulatory or licencing body in the UK or any other country?', Dr Hartley had stated *'No'*.

69. Dr Hartley has admitted that he knew at the date of Application 2 that he had been suspended by the GMC from 19 September 2012 until 18 October 2012.

70. The Tribunal noted that the wording for this question in Application 2 differed to the wording in Application 1.

71. Dr Hartley told the Tribunal during his oral evidence that he now recognised that he should have answered 'Yes' to this question. The Tribunal was of the same view. The form question was framed with sufficient clarity to reasonably avoid any alternative interpretation.

72. Dr Hartley told the Tribunal that Ms B assisted him in completing the application form. Dr Hartley's evidence was that he thought that 'sanctions' related to financial sanctions, and he also thought that the GMC was capable of imposing financial sanctions, although none had been imposed in his case. Ms B and Ms C both gave evidence of a conversation to that effect.

73. At paragraphs 32 and 33 of his statement, Dr Hartley stated:

> *'32. We did not have long to discuss this, but I recall that Dr A advised me that I could put that I had not been removed from the register, or that I had not had conditions imposed on my registration.*
>
> *33. Dr A advised me that I should make clear that I had a one-month suspension and the background in relation to this. ..'*

74. In paragraph 34 he stated:

> *'Back in 2018, I had genuinely thought that the question, 'Have you been removed from the register or have conditions been made on your registration by a fitness to practice committee or the licensing or regulatory body in the UK or in any other country?' meant either being struck off or having ongoing conditions (restrictions determining how when and where you can work) on one's GMC registration only. It genuinely never occurred to me that being 'removed from the register' included being temporarily suspended for one month. I therefore thought that that specific question did not apply to my former GMC case; yet I knew I absolutely, crucially needed to let people know formally about my previous case.'*

75. The Tribunal was provided with an email dated 23 April 2018, timed at 14:51, some twenty minutes after Dr Hartley submitted Application 2 online. In the email Dr Hartley wrote:

'I sent the application, transcribed from my NHS jobs draft, to Ms T. She'll forward the relevant parts to you. (I'd been trying to get someone to review it before I was admitted to hospital).

I'll await your update toward the end of the week. I hope at least my application can show a little more about my background experience, passions and plans for the future.

If its not possible to apply late this time I'd still like to keep in touch with you as I will do for other PEM colleagues & departments across the UK. And if similar posts come up, at Sheffield or elsewhere, I always appreciate frank feedback regarding this application and suggestions to improve career chances.

The application form does not appear to ask fully regarding past referrals to the GMC and outcomes. There was one I had, essentially from a consultant in 2007/2009 whom I found overbearing in conversation and not great at listening. It had largely been triggered around not attending an MRCPCH Clinical sitting; and other accusations re: communication which I disagreed with and where context was ignored. No patient care was compromised in any way. I had been taking on a lot at the time, and thought simply that apology would be the best way forward. I did learn improved work-church-life balance, and improved communication from this experience. I prefer to speak about details face to face if asked. All this in the interest of transparency, despite being from events a decade ago.'

76. In her statement at paragraph 5, Ms C stated:

'Whilst I was XXX, I heard Ms B and Dr Hartley talking about his Sheffield job application. I showed an interest, wishing him good luck with it. They showed me a question on his job application form:

> *"Have you ever been removed from the register, or have conditions or sanctions been placed on your registration, or have you been issued with a warning by a regulatory or licencing body in the UK or any other country?"*

I knew Dr Hartley had had a one month suspension with the GMC prior, but the word 'removed' sounded permanent. Dr Hartley explained that he thought the word 'conditions' meant ongoing limits plus supervision on how and where a doctor can practice. He though the word 'warning' meant a five year written warning on his GMC record'. We agreed that we did not think these applied to him. He thought the word

'sanctions' meant financial sanctions. He was aware of NHS fraud and embezzlement cases previously. XXX.

Ms B and I both suggested answering 'no' to the question above. We both agreed with Dr Hartley that he should also write, email, phone, meet up, with the relevant doctor before applications were finally looked at. He should tell them about the GMC one month suspension and its background. Also if he got a face to face interview, he should talk about the GMC one month suspension.'

77. In her oral evidence, Ms C stated that she clearly recollected the exact question that was asked on page five of the application form, and when asked whether a copy of an application form had been shown to her at the time she completed her witness statement she replied *'No'*. The Tribunal noted in her evidence generally she did not have a clear recollection of even broad detail. When asked about events around six weeks before the hearing Ms C responded by stating words to the effect 'I honestly can't remember'. The Tribunal considered that, given the state of Ms C's memory it was not plausible that she could recollect the precise words of the question more than four years before. The Tribunal took the view that her answer to that question was designed to assist Dr Hartley and was not an accurate reflection of the state of her memory. It therefore could not place much weight on her evidence.

78. At the time of completing Application 2, Dr Hartley had been through fitness to practise proceedings in 2012 which resulted in his registration being suspended for a period of one month. Dr Hartley was legally represented at those proceedings. The Tribunal considered that Dr Hartley's legal representative would likely have explained the meaning and purpose of 'sanctions' to Dr Hartley during the 2012 proceedings. Regardless of that, Dr Hartley was present through the "sanction" stage of proceedings, throughout which there must have been reference to the Indicative Sanctions Guidance, and he received the Tribunal's written determination outlining the sanction to which he was subject. The Tribunal was therefore satisfied that Dr Hartley knew what "sanctions" meant in a fitness to practise context. The Tribunal concluded that Dr Hartley had looked for a way in which he could interpret the question to answer "no". Having discussed it with others, he was able to justify it to himself, but the Tribunal concluded he did not genuinely believe that answer to be accurate.

79. The Tribunal took into account Dr Hartley's evidence that he contacted Dr D on several occasions with a view to meeting with him face to face. Whilst no evidence was available to the Tribunal of the several emails, Dr D in his oral evidence confirmed Dr Hartley had contacted him on more than one occasion. It was Dr Hartley's evidence that he tried to meet with Dr D and the purpose of that meeting was to make him aware of the detail of the

one month's suspension. Dr Hartley's evidence was that when he did finally meet with Dr D, Dr D was busy with ward rounds and other clinical matters, such that he was unable to explain the full detail to Dr D.

80. The Tribunal noted that in an email to Dr D, dated 23 April 2018, Dr Hartley stated:

> *The application form does not appear to ask fully regarding past referrals to the GMC and outcomes. There was one I had, essentially from a consultant in 2007/2009 whom I found overbearing in conversation and not great at listening. It had largely been triggered around not attending an MRCPCH Clinical sitting and other accusations re: communication, which I disagreed with and where context was ignored. No patient care was compromised in any way. I had been taking on a lot at the time, and thought simply that apology would be the best way forward. I did learn improved work-churchlife balance, and improved communication from this experience. I prefer to speak about details face to face if asked. All this is in the interest of transparency, despite being from events a decade ago.*

81. The Tribunal considered the information which Dr Hartley included in his email of 23 April 2018 was incomplete. Dr Hartley did not provide adequate detail in the email such that the recipient of the email could question or query the events referred to. The Tribunal was of the view that the email minimised the seriousness by reference to an "overbearing" consultant and omitting the fact that he had been suspended. It was the Tribunal's view that Dr Hartley had not been open and transparent in his email.

82. The Tribunal heard evidence that completion of the Declaration Form was a separate action in the application process and was usually done some days after an application form had been submitted. Dr Hartley would have known by the time he received the Declaration Form to complete that his application for the post at SCH was being progressed to interview. The Tribunal considered that Dr Hartley's answer on the Candidate Declaration Form did not provide adequate detail or the full extent of the concerns which led to his registration being suspended for one month.

83. The Tribunal was mindful of the explanations Dr Hartley did provide in various ways, but took the view that they did not negate the effect of answering "no" when clearly Dr Hartley should have said "yes". In all the circumstances, the Tribunal concluded that his actions were dishonest in this regard.

84. It therefore found paragraph 6 in relation paragraphs 4a and 5a of the Allegation proved.

Paragraph 6 in relation to paragraphs 4(b) and 5(b)

85. The Tribunal noted that in Application 2, under the heading 'Relevant Training Courses Attended', Dr Hartley stated:

Course Title	*Training Provider*	*Duration*	*Year obtained*
GIC General Instructor Course	*Walsall Healthcare NHS Trust*	*2 days*	*2018*
Hands-on, Basic Paed Echocardiography	*UCL GOSH ICH*	*2 days*	*2018*

86. Dr Hartley's evidence in respect of this entry was, to some extent, similar to his evidence of the equivalent allegation in the Application 1 form.

87. The Tribunal accepted Dr Hartley's evidence outlined at paragraph 35 above, that he had read guidance indicating he could refer to courses he was soon to complete.

88. Across his evidence Dr Hartley outlined his intention to complete both courses, and his belief that he had booked on them for completion in 2018, though he did not go on to complete them.

89. As to why he did not go on to complete those courses as he had indicated in the form, in paragraph 103 of his statement, Dr Hartley stated:

> *'103. For allegations part 4b, sections i and ii, and part c, I had felt that the title of that section of the job application referred to courses I had attended, but crucially, also courses I would be attending that year. When we completed the form, I meant that I was fully intending at the to do both the ALSG General Instructor course and the Hands-on Basic Paed Echocardiography course later in 2018, and I believed that Ms B had booked the course at the time of the Sheffield application, though shortly afterwards the courses were cancelled or postponed.'*.

90. The Tribunal noted that further in the application form under the heading 'Teaching', Dr Hartley states in relation to 'Please provide details about your teaching experience':

> *'I am faculty teaching on the upcoming APEM trainees' conference. I'm completing ALSG GIC instructor training.'*

And further in relation to Do you hold any particular qualifications in teaching?

'I'll be qualified in the ALSG General Instructor Course but hold no further formal qualifications in teaching yet.'

91. The Tribunal notes that Dr Hartley was keen to secure a post in paediatric emergency medicine and sought to secure a position at SCH, as set out in paragraphs 38 and 39 of his statement:

'38. Even before I started in Leicester as a consultant, I was keen to do further training in paediatric emergency medicine, as I was passionate about my expertise. In January 2018, I independently contacted the majority of the UK paediatric major trauma centres, and in conversations by telephone and email with Dr D at Sheffield Children's Hospital, he kindly indicated that they could create a post as a paediatric emergency registrar covering a staff member on leave, for about a year, though I would have to apply formally as anyone else.

39. One of the reasons I hoped to obtain the job in Sheffield, apart from my having genuinely regarded their paediatric emergency departments as one of the top paediatric emergency departments in the country;'

92. At paragraph 64, Dr Hartley stated:

'64. I was aware that there was a deadline in which I had to apply for the GIC course, for the ALSG Advanced Life Support group, after which I would not be able to apply. I asked Ms B to again complete the course applications for me at the same time as the Sheffield job applications, being very tied up in XXX. She kindly said she would do so. Within a few days (by 9th April to 20th April); XXX, she had later felt we XXX and cancel / postpone courses and further degree applications XXX. I do not remember specific dates that she spoke with me about this, but I believe it was in April 2018.'

93. The Tribunal had regard to the witness statement of Ms B, in which at paragraph 9 she states:

'9 I did ask [Dr Hartley] to postpone his plans to do a Masters in Paediatric Emergency medicine, and to postpone/cancel courses XXX. XXX, I then phoned the relevant organisers of the courses and cancelled them and asked for a refund. However we agreed that he would attend the courses on a later date. It may be that one course was fully booked when I rang. XXX. The courses were placed on the

application form since the question, as I remember it, read "courses you have taken or will be taking".'

94. The Tribunal noted that Application 2 was completed and submitted in April 2018. It had regard to Dr Hartley's evidence in relation to his personal and financial circumstances, XXX. It also accepted Dr Hartley's evidence that Ms B had completed the SCH application form by copying and pasting sections of the information contained within the application for UHLT.

95. The Tribunal considered that leaving the information in Application 2, as set out, may be misleading. However, taking into account that in the form Dr Hartley states that *I'm completing ALSG GIC instructor training.'* and *'I'll be qualified in the ALSG General Instructor Course but hold no further formal qualifications in teaching yet.'*, it was the Tribunal's view that his actions were not dishonest. It accepted that he had genuinely believed he had rebooked to go on the course later in 2018 and that was what he was attempting to convey in his entries in the form.

96. It therefore found paragraph 6 in relation to paragraphs 4(b)(i – ii) and 5(b) of the Allegation not proved.

Paragraph 6 in relation to paragraphs 4(c) and 5(c)

97. The Tribunal had regard to Dr Hartley's completed Application 2 and noted his answers regarding his lack of formal teaching qualifications.

98. The Tribunal noted that the response is similar to that contained within Application 1 for UHLT. It would appear that the response was copied from Application 1 and pasted into Application 2 with the addition of the words *'(General Instructor Course)'*.

99. Based on the evidence before it, as well as its findings in respect of paragraph 3 in relation to paragraphs 1(b) and 2(b), as set out above, the Tribunal determined that Dr Hartley's actions were not dishonest. It therefore found paragraph 6 in relation to paragraphs 4(c) and 5(c) of the Allegation not proved.

Paragraph 6 in relation to paragraphs 4(d)(i – ii) and 5(d)

100. The Tribunal noted that in Application 2, under the heading 'Relevant Training Courses Attended', Dr Hartley stated:

Course Title	*Training Provider*	*Duration*	*Year obtained*
GIC General Instructor Course	*Walsall Healthcare NHS Trust*	*2 days*	*2018*

101. Under the heading 'Please provide details about your teaching experience', Dr Hartley stated *'I'm completing ALSG GIC instructor training.'* And under the heading 'Do you hold any particular qualifications in teaching?' Dr Hartley stated *'I'll be qualified in the ALSG General Instructor Course but hold no further formal qualifications in teaching yet.'*.

102. The Tribunal was mindful of Dr Hartley's earlier evidence in relation to his personal and financial circumstances. There was no objective evidence before the Tribunal to support Dr Hartley's assertion that he had re-booked to undertake the course in 2018. The Tribunal was mindful that a candidate presenting themselves in the best light would want to include a course they thought they would soon complete if it could be justified. The Tribunal concluded the entry had the potential to be misleading but had to be read in the context of the other answers on the form which indicated Dr Hartley had not completed the course. The Tribunal did not therefore consider that this answer was dishonest.

103. In the circumstances, it found paragraph 6 in relation to paragraphs 4(i – ii) and 5(d) not proved.

Paragraph 6 in relation to paragraphs 4(e) and 5(e)

104. The Tribunal had regard to Dr Hartley's completed Application 2. Under the Publications in Peer Reviewed Journals Dr Hartley has stated 'Yes' to having been involved in publications. He set out the details of the publication as *'XXX*.

105. In paragraph 69 of his statement, Dr Hartley stated:

> *'69. I did clearly state that I was not one of the listed authors but had been involved significantly in the research which led to the published article. Having successfully had presentations at medical conferences, I had not at the time of my Sheffield application, successfully published in medical journals, and yet for this article in 2011 I had written up the case study part of the article, about the first treatment of a neonate with MRSA with daptomycin.'*

106. Dr Hartley explained that he had been involved in undertaking research for several research projects for which the papers were never published. However, in relation to this publication he stated at paragraph 70-71 of his statement:

'70. I moved posts shortly after forwarding the written case study part to colleagues in 2011 and had been told that I would be included in authorship, but sadly I was not.'

'71. I was not trying to falsely claim involvement in a publication I had no part in, but now I realise that this type of situation happens often; that it was up to me to have had better ongoing communication to ensure that I was listed among authorship. It is both extremely naive, and also inappropriate for me to have mentioned it on a job application.'

107. Further, during his evidence, Dr Hartley told the Tribunal that he had been involved in producing a poster for the conference at which the publication was to be discussed. He told the Tribunal that his name appeared on the poster as he had been involved in research for the case study paper which was used to inform the content of the publication. The Tribunal received and had regard to email correspondence between Dr Hartley and Dr U co-author of the publication mentioned in the allegation, dated 9 October 2013. In this Dr Hartley wrote to Dr U stating:

'Hello Dr. U,
My name is Sam Hartley - I'm a paediatric registrar at Leicester Royal Infirmary.

In 2009 on NICU we had a case of a preterm neonate with MRSA who was treated with daptomycin. I wrote up the case study details initially. Yourself and Drs. S/Dr V had the study later published: XXX.

I understand you presented a poster at a national conference re: infectious diseases/medical microbiology and I believe you included my name and Dr W on the poster, as neonatal registrars working with Dr S, NICU consultant.

Would you mind sending me either a copy of the poster; or the title, conference details and date presented please?'

108. Dr U responded on the same date:

'Thanks for your email. I'll look into this.
Kind regards,'

109. Dr Hartley told the Tribunal that this correspondence supported his assertion that he had some involvement in the publication of the paper. In relation to the case study, Dr

Hartley said that he had undertaken research which informed the publication. When asked, he said he could identify parts of the case study which he wrote. The Tribunal was provided with a copy of the paper (exhibit D8) and Dr Hartley advised the Tribunal of those sentences and the paragraphs which he said had been written by him.

110. The Tribunal was also provided with a copy of an email, dated 9 April 2009, from Dr W, a ST3 grade trainee doctor who was also involved in research for the publication. In the email, Dr W stated:

> *'Hello, I have made some changes to the abstract which is attached. Any further suggestions??'*

111. The Tribunal noted that Dr Hartley was copied into this email, suggesting that he was involved in the process which led to the publication.

112. It was Dr Hartley's evidence that when he noticed his name was not included in the list of authors of the publication, he raised the matter with Dr S, consultant in neonatology and co-author of the publication. He said that he raised his concerns with Dr S during a ward round. During the conversation, Dr Hartley stated that Dr S gave a "light apology" to him for his name being missed off the list of authors.

113. The Tribunal heard from Dr S. In his oral evidence, he told the Tribunal that it was not unusual for trainee colleagues to undertake research and other project work to assist those writing papers, but unusual for them to be named as authors for that work. He said that although Dr U was also a trainee doctor, he instigated the research which led to the paper being produced and had done a large part of the work on the paper. It was for this reason that Dr U's name appeared in the list of authors on the paper.

114. Dr S told the Tribunal that, given the passage of time, he could not recollect meeting with Dr Hartley or what was said between the two of them. He acknowledged that it may be possible that he did meet with him. However, when asked specifically whether he had apologised to Dr Hartley for the fact his name was not included in the list of authors of the paper, Dr S said that he could not recall this. He said that if he did apologise, it would probably have been in relation to Dr Hartley feeling disappointed as to his name being left out.

115. The Tribunal noted that, at the time of completing the application, Dr Hartley knew he was not named as an author on the paper. The Tribunal accepted that Dr Hartley had qualified the inclusion of the publication to some extent, but it did not consider "I was mistakenly left off the authorship list" to be a fair description of the circumstances. It took

into account Dr S's evidence, in particular, that he would not have apologised to Dr Hartley about his name not being included.

116. The Tribunal took into account that Dr Hartley had listed the presentation on the application on the same page as he listed the publication. The Tribunal noted that meant that the work he had done was reflected elsewhere in the form and could be discussed at interview. The Tribunal concluded that Dr Hartley's inclusion of the publication in the application form was misleading. Even in the context of a candidate seeking to present themselves as positively as possible, the Tribunal did not accept that Dr Hartley's entry was an accurate description of his role in the production of the publication. It presented a misleading impression of his level of involvement in the publication and the qualifying words did not mitigate that impression sufficiently. The Tribunal, therefore, determined his actions were dishonest. It found paragraph 6 in relation to paragraphs 4(e) and 5(e) proved.

Paragraph 7

> 7. On 19 May June 2018, you were interviewed for the position of Specialty Doctor in Paediatric Emergency Medicine at SCH at which time you confirmed that you had been the subject of a previous GMC investigation but that it had been closed without ongoing restrictions being placed on your practise, or words to that effect. (Amended under Rule 17(6))

117. At paragraph 110 of his statement, Dr Hartley stated:

> *'When I was interviewed, I clearly said I was given a one-month suspension and was in tears about telling the account at that time, showing that I took it seriously. I did say that there were no ongoing conditions, or restrictions, placed upon my practice after the one-month suspension has been completed, and I had returned to work. I thought that after the suspension, the GMC could impose conditions and I recall mentioning this in the interview and to Dr D, that I did not have any conditions imposed after the one-month suspension. I apologise if this was unclear, however I did not intend any lack of candour and as such, I do not accept the allegation of lack of candour. In fact, I went into some detail about the previous GMC case, the allegations and the outcomes of the case, and my personal learning from this.'*

118. In his oral evidence, Dr Hartley maintained that he wrote to Dr D on 23 April 2018 requesting to meet with him specifically so that he could discuss his one month suspension. Dr Hartley stated that he eventually did meet with Dr D and, whilst accompanying him, told him about the suspension, though Dr Hartley accepted it was a very busy day in the hospital and Dr D was very busy. Dr Hartley said that at the interview he was open and honest about

his one month suspension raising the matter himself with the interview panel. He emphasised that he had requested the notes from the interview, and would not do so if they would demonstrate that he had not been candid.

119. The Tribunal noted that no notes of the interview were available.

120. At paragraph 112 of his statement, Dr Hartley stated:

> *'I talked about the case specifically and in detail in the interview on the 19 May 2018. I recall that there was a HR representative Ms X, present for the interview and I recall that I became quite tearful when discussing the suspension, especially that I regretted my actions and my poor judgment and communication at the time. I know that Ms X took notes at the interview, however I have been informed that the records cannot be found.'*

121. The Tribunal had regard to Dr D's statement, dated 5 February 2020. At paragraphs 7 and 9 he states:

> *'Prior to the interview Dr Hartley sent me an email in which he stated that he was aware it would become apparent that he was subject of a previous GMC investigation and wanted to inform me of such. I no longer have access to this email but from my memory Dr Hartley seemed to indicate that it was more of a misunderstanding and that he didn't think it was a big issue. I do not recall responding to this email.'*
>
> and
>
> *'During the interview Dr Hartley brought up the issue of him being subject to a previous investigation by the GMC. This was brought up in the context of a question relating to his strengths and weaknesses. Dr Hartley stated that he had been referred by one [of] the doctors in his previous hospital due to a misunderstanding. Dr Hartley stated that he was supposed to be somewhere and he was not and that the hospital felt he had not been open and honest with them and that there was potential probity issue and concerns that his actions were fraudulent. From my memory I think it related to Dr Hartley being scheduled to be sitting an exam which he did not attend, nor did he attend work and did not phone in to explain his absence. I do recall Dr Hartley stating that the incident occurred at a time when everything was being referred to the GMC and nobody treated incidents like this as training issues or low level concerns.'*

122. At paragraph 10, Dr D stated:

'Dr Hartley stated that the investigation had been closed without ongoing restrictions placed in his practise. Dr Hartley went on to explain that the situation occurred as he had overstretched himself by taking too many things on. Dr Hartley brought the issue back to the question and stated that his weakness was over committing and going over his limits.'

123. The Tribunal noted an email, dated 15 October 2019, from Dr D to Dr F at SCH. In the email, Dr D stated:

'I have searched the Groupwise archive for the correspondence between myself and Dr Hartley before and around the time of his interview. Unfortunately the relevant emails do not seem to be there. The switchover to NHS mail has resulted in a lot of difficulties in locating old emails.

What I can say is that Sam emailed me before the interview to inform me of his previous GMC investigation. Sam definitely has that email. I know because he referred to having it when he spoke to me in July 2019.

I can also vouch for the fact that Sam gave a detailed (though inevitably personal) account of his previous GMC investigation when he came for interview.

I'm sorry that I can't give you any paperwork or old emails but am happy to make a statement.'

124. In another email to Dr F, dated 21 October 2019, Dr D stated:

'My recollection is that Sam emailed me beforehand to give me warning that he had been the subject of a GMC enquiry when he was a trainee. My recollection is that he framed it as a misunderstanding. He was supposed to attend training or a course and it was cancelled I believe. He then didn't go to work that day and says he had legitimate reason for not going to work. However he failed to communicate this at the time, leading to a question about probity. I remember him stating that "it was at that time where everything was being referred to the GMC" and that it could equally have been dealt with as a training issue. He told me that the investigation did not end with any restriction to his practice.

At interview he discussed the matter at length in the context of "worst things about himself" – he was saying that he has a tendency to overcommit himself and that the event that led to the GMC investigation was an example of a time where he had overcommitted and learned from the outcome.'

125. In his evidence to the Tribunal, Dr D said that he did look at the GMC website to ascertain any further details about the investigation and any restrictions on Dr Hartley's registration. However, the information on the website stated that the case was closed.

126. The Tribunal noted that the word 'closed' is used by Dr D in his written and oral evidence. There is no evidence before the Tribunal that Dr Hartley used the word 'closed'. The email correspondence between Dr D and Dr F referred to 'restrictions'.

127. The Tribunal notes that Dr Hartley has not provided a full account of the matters which led to his registration being suspended for a period of one month in various written documents. However, in the absence of any persuasive evidence to suggest that Dr Hartley used the word 'closed', or words with that meaning at the interview on 19 June 2018, the Tribunal determined that the GMC had not discharged the burden on it. It therefore found paragraph 7 of the Allegation not proved.

Paragraph 8

> 8. You knew that your previous GMC investigation had not been closed and that you had received a one-month suspension from 19 September 2012 until 18 October 2012 following a fitness to practise hearing.
> Admitted and found proved
>
> 9. Your actions as set out at paragraph 7 above demonstrated a lack of candour by reason of paragraph 8.

128. Paragraph 8 of the Allegation has already been admitted and found proved.

129. The Tribunal considered whether Dr Hartley's actions demonstrated a lack of candour. The Tribunal was informed that any notes taken by the interviewers at the interview were not available. However, it was provided with a copy of Dr J's notes, one of the interviewers at Dr Hartley's interview at OHFT.

130. The evidence before it is ambiguous as to whether or not Dr Hartley used the word 'closed', hence the Tribunal's finding in respect of paragraph 7 of the Allegation. It took into account that the only time the word 'closed' was used was by Dr D in his statement at paragraph 10 and in his oral evidence to the Tribunal. The Tribunal considered that Dr Hartley had provided limited information about his suspension as to the background and matters leading to it. However, whilst he did not appear to have been fully open and transparent about those matters, it was the Tribunal's view that he had provided some details, certainly

enough to allow potential employers to inquire about Dr Hartley's fitness to practise history on the GMC website, which Dr D said they did and the details showed the case against Dr Hartley was closed.

131. In light of its findings in respect of paragraph 7 of the Allegation and the absence of any persuasive or objective evidence to support the assertion that Dr Hartley had demonstrated a lack of candour with regard to the SCH application, the Tribunal found paragraph 9 of the Allegation not proved.

Oxford University Hospitals NHS Foundation Trust

10. On 11 March 2019, you submitted an application for the post of Consultant in Paediatric Emergency Medicine at Oxford University Hospitals NHS Foundation Trust ('Application 3') in which you:

a. answered 'No' to the question on page 4 of Application 3 'Have you ever been removed from the register, or have conditions or sanctions been placed on your registration, or have you been issued with a warning by a regulatory or licencing body in the UK or any other country?'; Admitted and found proved

b. stated on page 3 of Application 3 that you had attended the following two-day courses:

i. GIC General Instructor Course in 2018;
Admitted and found proved

ii. Hands-on.. Basic Paed Echocardiography in 2018;
Admitted and found proved

c. stated on page 10 of Application 3 that you had 'recertified in APLS/NLS instructor' between February 2017 and August 2017;
Admitted and found proved

d. stated on page 26 of Application 3:

i. 'I'm completing ALSG GIC instructor training';
Admitted and found proved

ii. 'I'll be qualified in the ALSG General Instructor Course but hold no further formal qualifications in teaching yet'; Admitted and found proved

e. cited on page 29 of Application 3 the Publication as set out at paragraph 4e above. Admitted and found proved

11. As at the date of Application 3 you knew that you:

a. had been suspended by the GMC from 19 September 2012 until 18 October 2012; Admitted and found proved

b. had not attended the courses set out at 10bi and 10bii above; Admitted and found proved

c. had not recertified as a APLS/NLS instructor between February 2017 and August 2017; Admitted and found proved

d. were not completing the ALSG GIC Instructor training at the time of Application 3 nor were you due to be qualified in the ALSG General Instructor Course; Admitted and found proved

e. were not the author of the Publication nor cited within it as an author. Admitted and found proved

12. Your actions as set out at paragraphs 10a – e above were dishonest by reason of paragraphs 11a – e respectively.

132. Paragraphs 10 - 11 relate to matters at OHFT. Given that Dr Hartley has already admitted paragraphs 10(a) – 10(e) and 11(a) – 11(e), the Tribunal needed to consider, as set out in paragraph 12 of the Allegation, whether his actions were dishonest by reason of paragraphs 11(a) – 11(e) of the Allegation.

133. The Tribunal considered paragraph 12 of the Allegation against the respective allegations under paragraphs 10 and 11 of the Allegation.

Paragraph 12 in relation to paragraphs 10(a) and 11(a)

12. Your actions as set out at paragraphs 10a – e above were dishonest by reason of paragraphs 11a – e respectively.

10. On 11 March 2019, you submitted an application for the post of Consultant in Paediatric Emergency Medicine at Oxford University Hospitals NHS Foundation Trust ('Application 3') in which you:

a. answered 'No' to the question on page 4 of Application 3 'Have you ever been removed from the register, or have conditions or sanctions been placed on your registration, or have you been issued with a warning by a regulatory or licencing body in the UK or any other country?';

11. As at the date of Application 3 you knew that you:

a. had been suspended by the GMC from 19 September 2012 until 18 October 2012;

134. The Tribunal was provided with a copy of Dr Hartley's completed online application form (Application 3). It noted that against the question 'Have you ever been removed from the register, or have conditions or sanctions been placed on your registration, or have you been issued with a warning by a regulatory or licencing body in the UK or any other country?', Dr Hartley had stated *'No'*.

135. Dr Hartley has admitted that he knew at the date of Application 3 that he had been suspended by the GMC from 19 September 2012 until 18 October 2012.

136. The Tribunal noted that the wording for this question in Application 3 was the same as for Application 2. Dr Hartley's explanation for his answer was the same as for Application 2.

137. Dr Hartley told the Tribunal that prior to the interview, he met with Dr H and that he had mentioned his one month suspension to her at that meeting. At paragraph 81 of his statement Dr Hartley states:

'81. Prior to my Oxford interview, I met with Dr H, a consultant in paediatric emergency medicine at the trust on 11 March 2019. We spoke about the role, and one of the first things I said upon meeting her after introducing myself briefly, was that I had been subject to an investigation by the GMC in 2012 which had resulted in me being suspended.'

138. The Tribunal noted that, as set out in his written evidence, Application 3 was submitted late and was handed in by hand on 12 March 2019. It noted an email from Dr H to her colleagues, including Dr J, in which she stated:

> *'I know that Dr Hartley dropped his CV and application off with you yesterday, I was wondering when it might be available for us to see either on Job Trac or by having a scanned copy?*
> *Also, might you know whether the other two shortlistable candidates been offered an interview?'*

139. On 14 March 2019, Dr J responded stating:

> *'I have spoken with Ms Y this afternoon.*
>
> *Now that he is in the application pack we are obliged to shortlist and rank him based on his application. He would be entitled to ask why he was not shortlisted and also entitled to see any email trail pertaining to his assessment. We cannot refuse to assess his application though.*
>
> *Ms Y has confirmed that he is within 6 months of CCT and so on that basis he should be ranked. Shortlistability will be determined by the MDO.*
>
> *Therefore please complete his shortlisting as you see fit but it must be validated and defensible.'*

140. The interview took place on 26 April 2019. Whilst there were no contemporaneous notes of the interview available to the Tribunal, it was provided with a copy of the notes made by Dr J. The Tribunal noted that Dr J recorded:

> *'Open discussion re 2012 GMC notice.*
> *stress, pressure, XXX [arrow] misrepresentation.*
> *Hesitant + anxious in some questions (understandably)'*

141. The Tribunal has noted that there is no mention of the word 'suspension' at the interview. However, it appreciates that these are Dr J's notes and that they were not intended as a transcript of all that was said.

142. It was Dr Hartley's evidence that he brought up the matter of his suspension himself at the interview. In paragraph 82 of his statement, Dr Hartley states:

> *'82. During my Oxford interview, I recall that I was asked about any significant or critical learning events in my training, and I chose to bring up the GMC suspension independently and of myself. I would hope that this would have been reflected more fully in the interview notes, as per my Sheffield interview, but again despite speaking with relevant HR staff, I have not been able to get hold of any interview notes.'*

143. In paragraph 120 of his statement, he states:

> *'As mentioned above, I had previously mentioned about the GMC suspension verbally prior to my interview. I would say at this point that I also began to get tearful in the 2019 Oxford interview for the very same reason, and in both situations had chosen independently to speak up about these past experiences, unprompted.'*

144. The Tribunal went on to consider an email from Dr Hartley to Dr E, dated 5 August 2020, in which he stated:

> *'We met in your office in March 2019 & I told you (probably somewhat unusually!) all about the fact that I'd had a GMC 1 month suspension in 2012, before discussing my clinical experience and hopes for the future. I have an answerphone message from you dated 9th March 2019 where you very kindly persuaded HR to accept my late application. Shortlisting followed, and the job interview was 09:30 on Thurs 26th April 2019, not involving yourself directly.*
>
> *It may sound like an odd request, but I was hoping that simply, you would be willing to provide in writing that:*
>
> *- I did discuss my previous GMC case with you.*
> *- or whatever you feel is your summary of that face-to-face meeting.'*

145. In his oral evidence he described the motivation for that email as his gathering "provable evidence" that he had disclosed his suspension. The Tribunal notes that by 5 August 2020 at the latest, he was aware he might need to demonstrate the extent of his attempts to be open and honest.

146. The Tribunal considered, based on this, that there appeared to be some evidence that Dr Hartley had provided additional information to OHFT about the circumstances leading to

his registration being suspended, beyond that which was on the form. However, it concluded that Dr Hartley had not provided the full details when he had the opportunity to do so. The Tribunal considered that this was another opportunity for Dr Hartley to be completely open and transparent about the circumstances which led to his registration being suspended but he had not taken it. Reference to his registration being suspended appears to have been on Dr Hartley's own terms.

147. The Tribunal noted that in her email to colleagues, Dr H commented on the lack of clarity in the information provided by Dr Hartley around his suspension. It was the Tribunal's view that this was consistent with Dr Hartley's attempts to explain his suspension throughout the applications, and that he had not been fully open and transparent in his communications regarding this.

148. In respect of the answer "no", the Tribunal concluded that the same considerations applied to this paragraph of the Allegation as did to paragraph 6 in relation to paragraph 4a) and 5a). Again, the Tribunal concluded that the steps he did take, did not offset the misleading nature of that response sufficiently and that overall his actions in this regard were dishonest.

149. It therefore found paragraph 12 in relation to paragraphs 10a and 11a of the Allegation proved.

Paragraph 12 in relation to paragraphs 10(b) and 11(b)

12. Your actions as set out at paragraphs 10a – e above were dishonest by reason of paragraphs 11a – e respectively.

10. On 11 March 2019, you submitted an application for the post of Consultant in Paediatric Emergency Medicine at Oxford University Hospitals NHS Foundation Trust ('Application 3') in which you:

b. stated on page 3 of Application 3 that you had attended the following two-day courses:

i. GIC General Instructor Course in 2018;
Admitted and found proved

ii. Hands-on.. Basic Paed Echocardiography in 2018;
Admitted and found proved

11. As at the date of Application 3 you knew that you:

b. had not attended the courses set out at 10bi and 10bii above;
Admitted and found proved

150. The Tribunal has already found that Dr Hartley submitted Application 3 late and that he did so by hand. This is supported by Dr H's email of 12 March 2019 to her colleagues.

151. It was Dr Hartley's written and oral evidence that he completed Application 3 with the assistance of Ms B. He said that Ms B would have copied and pasted the information from Application 2 over to Application 3. The Tribunal noted Dr Hartley's evidence that, by the time he completed Application 3, he had already cancelled the General Instructor Course and the Hands on Basic Paediatric Echocardiography Course on two separate occasions.

152. The Tribunal noted that in Application 3, under the heading 'Relevant Training Courses Attended', Dr Hartley stated:

Course Title	*Training Provider*	*Duration*	*Year obtained*
GIC General Instructor Course	*Walsall Healthcare NHS Trust*	*2 days*	*2018*
Hands-on, Basic Paed Echocardiography	*UCL GOSH ICH*	*2 days*	*2018*

153. In his oral evidence, Dr Hartley told the Tribunal that he believed that he or Ms B had applied to an ALSG General Instructor Course to be completed in 2019. In addition, Dr Hartley said that he also believed that they had applied to GOSH / ICH for the Hands on, Basic Paediatric Echocardiography course. Dr Hartley stated that these courses had already been cancelled twice before due to XXX and other family pressures. He said that in the process of copying and pasting the information from Application 2, he did not realise that these details had been left in unchanged. He said he should have updated the year of completion because he anticipated completing those courses in 2019.

154. The Tribunal noted that information contained within Application 1 appeared in Application 3. For example, *'I'll be qualified in the ALSG General Instructor Course but hold no further formal qualifications.'* This, based on Dr Hartley's evidence, and the Tribunal's findings in respect of the information relevant to Application 1 would suggest that this statement should now have been in the past and not something to be done in the future. The Tribunal

accepted therefore that the list of courses Dr Hartley had completed and those he intended to undertake had not been updated.

155. At paragraphs 121 and 122 of his statement, Dr Hartley states:

> *'121. In relation to the courses, I accept that I asked [Ms B] to assist with this section. It was often the case that [Ms B] would book me on to courses historically. And I refer to the fact that she, we, thought that details had been updated to the 2019 job application online template, that in retrospect evidently had not been saved, before the application was sent.*
>
> *122. In relation to the GIC course, I am aware that this is an invitation only course and you therefore have to be recommended to take the course. I had worked very hard in 2017 to perform well in the neonatal life support and advanced paediatric life support courses and as a result, I was recommended to undertake the GIC course. A copy of the report following my attendance at the APLS/NLS course is at* ***Exhibit SH7****.'*

156. The Tribunal bore in mind Ms B evidence, and in particular paragraph 9 of her statement where she states:

> *'9 I did ask [Dr Hartley] to postpone his plans to do a Masters in Paediatric Emergency medicine, and to postpone/cancel courses XXX. XXX, I then phoned the relevant organisers of the courses and cancelled them and asked for a refund. However we agreed that he would attend the courses on a later date. It may be that one course was fully booked when I rang. XXX. The courses were placed on the application form since the question, as I remember it, read "courses you have taken or will be taking".'*

157. The Tribunal had regard to Dr Hartley's evidence in relation to his personal and financial circumstances, as well as in relation to XXX. It also accepted Dr Hartley's evidence that Ms B had completed the Application 3 by copying and pasting sections of the information contained within the application for OHFT.

158. The Tribunal has already found that Dr Hartley intended to undertake the courses during 2018 but was unable to do so due to his personal circumstances at that time. It concluded that Dr Hartley did not intend to purposely mislead OHFT by stating that he had completed the courses in 2018. Whilst there is no objective evidence before the Tribunal that these courses had been rebooked again, to be undertaken in 2019, the Tribunal concluded that Dr Hartley continued to intend to complete the courses. The Tribunal took the view that he should have been more cautious about listing the courses in light of the previous

cancelled bookings but, on the balance of probabilities, it was not persuaded that he had intended to mislead OHFT given the content of other parts of the application. It therefore found his actions were not dishonest in this regard and found paragraph 12 in relation to paragraph 10(b) and 11(b) of the Allegation not proved.

Paragraph 12 in relation to paragraphs 10(c) and 11(c)

12. Your actions as set out at paragraphs 10a – e above were dishonest by reason of paragraphs 11a – e respectively.

10. On 11 March 2019, you submitted an application for the post of Consultant in Paediatric Emergency Medicine at Oxford University Hospitals NHS Foundation Trust ('Application 3') in which you:

c. stated on page 10 of Application 3 that you had 'recertified in APLS/NLS instructor' between February 2017 and August 2017; Admitted and found proved

11. As at the date of Application 3 you knew that you:

c. had not recertified as a APLS/NLS instructor between February 2017 and August 2017; Admitted and found proved

159. The Tribunal had regard to Dr Hartley's completed Application 3. It noted that on page ten of the form, under the heading 'Brief description of your duties and responsibilities' Dr Hartley stated *'Recertified In APLS/NLS Instructor and recommended from both to take GIC (General· Instructor Course). Attended RCPCH Conference, other courses.'*

160. The Tribunal noted however, that later in the form, under the heading 'Do you hold any particular qualifications in teaching?', Dr Hartley stated *'I'll be qualified in the ALSG General Instructor Course but hold no further formal qualifications in teaching yet.'*.

161. The Tribunal noted that it is now some two years since Application 1 was completed. It has already accepted that in some respects Dr Hartley had failed to update the information once it had been copied and pasted from one application form to another. It was of the view that the same thing has happened here. This is because, again, if Dr Hartley intended to mislead and thereby be dishonest, it made no sense for him to claim to have recertified in a course which he had not yet completed, and to state that he would be qualified in the course but held no further formal qualifications in teaching yet.

162. Based on the evidence before it, the Tribunal determined that Dr Hartley's actions were not dishonest. It therefore found paragraph 12 in relation to paragraphs 10(c) and 11(c) of the Allegation not proved.

Paragraph 12 in relation to paragraphs 10(d) and 11(d)

12. Your actions as set out at paragraphs 10a – e above were dishonest by reason of paragraphs 11a – e respectively.

10. On 11 March 2019, you submitted an application for the post of Consultant in Paediatric Emergency Medicine at Oxford University Hospitals NHS Foundation Trust ('Application 3') in which you:

d. stated on page 26 of Application 3:

i. 'I'm completing ALSG GIC instructor training';
Admitted and found proved

ii. 'I'll be qualified in the ALSG General Instructor Course but hold no further formal qualifications in teaching yet';
Admitted and found proved

11. As at the date of Application 3 you knew that you:

d. were not completing the ALSG GIC Instructor training at the time of Application 3 nor were you due to be qualified in the ALSG General Instructor Course; Admitted and found proved

163. The Tribunal had regard to Dr Hartley's completed Application 3. On page twenty six of the form, under the heading 'Please provide details about your teaching experience, he stated *'I'm completing ALSG GIC instructor training.'* Later in the form, under the heading 'Do you hold any particular qualifications in teaching?', Dr Hartley stated *'I'll be qualified in the ALSG General Instructor Course but hold no further formal qualifications in teaching yet.'*.

164. The Tribunal noted that the response is similar to that contained within Applications 1 and 2. It would appear that the response was copied from those applications and pasted into Application 3.

165. It was mindful of Dr Hartley's evidence at paragraph 64 of his statement where he stated:

> *'64. I was aware that there was a deadline in which I had to apply for the GIC course, for the ALSG Advanced Life Support group, after which I would not be able to apply. I asked Ms B to again complete the course applications for me at the same time as the Sheffield job applications, being very tied up in XXX. She kindly said she would do so. Within a few days (by 9th April to 20th April); XXX, we XXX and cancel / postpone courses and further degree applications XXX. I do not remember specific dates that she spoke with me about this, but I believe it was in April 2018.'*

166. The Tribunal took into account that Dr Hartley had begun to complete Application 1 some two years earlier. Information contained within Application 1 had been copied and pasted into Application 2 and then into Application 3. Dr Hartley had, in the Tribunal's view, failed to update the information to reflect the position at the time of completing Application 3. The Tribunal was not provided with any objective evidence from Dr Hartley that he had booked onto the courses to demonstrate he intended to undertake them. Equally, however, the GMC has not provided any objective evidence to disprove his account that he had.

167. In the circumstances, based on the evidence before it, the Tribunal found paragraph 12 in relation to in relation to paragraph 10(d) and 11(d) of the Allegation not proved.

Paragraph 12 in relation to paragraphs 10(e) and 11(e)

12. Your actions as set out at paragraphs 10a – e above were dishonest by reason of paragraphs 11a – e respectively.

10. On 11 March 2019, you submitted an application for the post of Consultant in Paediatric Emergency Medicine at Oxford University Hospitals NHS Foundation Trust ('Application 3') in which you:

e. cited on page 29 of Application 3 the Publication as set out at paragraph 4e above. **Admitted and found proved**

11. As at the date of Application 3 you knew that you:

e. were not the author of the Publication nor cited within it as an author. **Admitted and found proved**

168. The Tribunal was mindful of its findings on paragraph 6 in relation to paragraphs 4(e) and 5(e), as set out in the paragraphs above.

169. The Tribunal took into account Dr Hartley's evidence that he now realised he should not have claimed authorship of the publication. It was mindful of Dr S's evidence. It considered that all of the consideration it applied when considering the evidence in relation to paragraphs 4(e) and 5(e) of the Allegation, as set out above, applied in considering this paragraph of the Allegation.

170. In the circumstances, it determined that Dr Hartley's actions in stating that he was to be listed as an author or co-author of the publication but was mistakenly left out of the authorship list cited in Application 3 was dishonest. It therefore found paragraph 12 in relation to paragraphs 10(e) and 11(e) of the Allegation proved.

171. The Tribunal made the following findings:

University Hospitals of Leicester NHS Trust

1. On 3 January 2018, you submitted an application for the post of Locum Consultant in General Paediatrics with a Subspecialty at Leicester Royal Infirmary ('Application 1') in which you:

a. stated on page 4 of Application 1 that you had attended the 'Hands on Course in Basic Paediatric Echocardiography' at 'UCL GOSH ICH' for 2 days in 2017; Admitted and found proved

b. stated on page 8 of Application 1 that you had 'recertified in APLS/NLS instructor' between 3 August 2016 and 31 January 2017. Admitted and found proved

2. As at the date of Application 1 you knew that you:

a. had not attended the course specified at paragraph 1a above; Admitted and found proved

b. had not recertified as a APLS/NLS instructor between 3 August 2016 and 31 January 2017. Admitted and found proved

3. Your actions as set out at paragraphs 1a to 1b above were dishonest by reason of paragraphs 2a and 2b respectively.

Determined and found not proved in relation to paragraphs 1(a) and 1(b), and 2(a) and 2(b).

Sheffield Children's NHS Foundation Trust

4. Between 23 April and 4 June 2018, you submitted an application for the post of Specialty Doctor in Paediatric Emergency Medicine at Sheffield Children's NHS Foundation Trust ('SCH') ('Application 2') in which you:

a. answered 'No' to the question on page 5 of Application 2 'Have you ever been removed from the register, or have conditions or sanctions been placed on your registration, or have you been issued with a warning by a regulatory or licencing body in the UK or any other country?'; **Admitted and found proved**

b. stated on page 4 of Application 2 that you had attended the following two day courses:

i. GIC General Instructor Course in 2018;
Admitted and found proved

ii. Hands-on.. Basic Paed Echocardiography in 2018;
Admitted and found proved

c. stated on page 9 of Application 2 that you had 'recertified in APLS/NLS instructor' between February and August 2017;
Admitted and found proved

d. stated on page 23 of Application 2:

i. 'I'm completing ALSG GIC instructor training';
Admitted and found proved

ii. 'I'll be qualified in the ALSG General Instructor Course but hold no further formal qualifications in teaching yet';
Admitted and found proved

e. cited on page 26 of Application 1 2 a publication 'XXX'.
Admitted and found proved
(Amended under Rule 17(6))

5. As at the date of Application 2 you knew that you:

a. had been suspended by the GMC from 19 September 2012 until 18 October 2012; Admitted and found proved

b. had not attended the courses set out at 4bi and 4bii above;
Admitted and found proved

c. had not recertified as a APLS/NLS instructor between February and August 2017; Admitted and found proved

d. were not completing the ALSG GIC Instructor training at the time of Application 2 nor were you due to be qualified in the ALSG General Instructor Course; Admitted and found proved

e. were not the author of the Publication nor cited within it as an author. Admitted and found proved

6. Your actions as set out at paragraphs 4a – e above were dishonest by reason of paragraphs 5a – e respectively.
Found proved in relation to 4(a) and 5(a), and 4(e) and 5(e)
Determined and found not proved in relation to 4(b) and 5(b), 4(c) and 5(c) and 4(d) and 5(d)

7. On 19 May June 2018, you were interviewed for the position of Specialty Doctor in Paediatric Emergency Medicine at SCH at which time you confirmed that you had been the subject of a previous GMC investigation but that it had been closed without ongoing restrictions being placed on your practise, or words to that effect. To be determined (Amended under Rule 17(6))
Determined and found not proved

8. You knew that your previous GMC investigation had not been closed and that you had received a one-month suspension from 19 September 2012 until 18 October 2012 following a fitness to practise hearing.

Admitted and found proved

9. Your actions as set out at paragraph 7 above demonstrated a lack of candour by reason of paragraph 8.

Determined and found not proved

Oxford University Hospitals NHS Foundation Trust

10. On 11 March 2019, you submitted an application for the post of Consultant in Paediatric Emergency Medicine at Oxford University Hospitals NHS Foundation Trust ('Application 3') in which you:

a. answered 'No' to the question on page 4 of Application 3 'Have you ever been removed from the register, or have conditions or sanctions been placed on your registration, or have you been issued with a warning by a regulatory or licencing body in the UK or any other country?'; Admitted and found proved

b. stated on page 3 of Application 3 that you had attended the following two-day courses:

i. GIC General Instructor Course in 2018;
Admitted and found proved

ii. Hands-on.. Basic Paed Echocardiography in 2018;
Admitted and found proved

c. stated on page 10 of Application 3 that you had 'recertified in APLS/NLS instructor' between February 2017 and August 2017;
Admitted and found proved

d. stated on page 26 of Application 3:

i. 'I'm completing ALSG GIC instructor training';
Admitted and found proved

ii. 'I'll be qualified in the ALSG General Instructor Course but hold no further formal qualifications in teaching yet';
Admitted and found proved

e. cited on page 29 of Application 3 the Publication as set out at paragraph 4e above. **Admitted and found proved**

11. As at the date of Application 3 you knew that you:

a. had been suspended by the GMC from 19 September 2012 until 18 October 2012; **Admitted and found proved**

b. had not attended the courses set out at 10bi and 10bii above; **Admitted and found proved**

c. had not recertified as a APLS/NLS instructor between February 2017 and August 2017; **Admitted and found proved**

d. were not completing the ALSG GIC Instructor training at the time of Application 3 nor were you due to be qualified in the ALSG General Instructor Course; **Admitted and found proved**

e. were not the author of the Publication nor cited within it as an author. **Admitted and found proved**

12. Your actions as set out at paragraphs 10a – e above were dishonest by reason of paragraphs 11a – e respectively.
Found proved in relation to 10(a) and 11(a), and 10(e) and 11(e)
Determined and found not proved in relation to 10(b) and 11(b), 10(c) and 11(c) and 10(d) and 11(d)

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 - 31/10/2023

172. 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 Hartley's fitness to practise is impaired by reason of misconduct.

The Evidence

173. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received a further defence bundle, which included:

- Witness Statement of Dr Samuel Hartley (redacted, with some previously redacted paragraphs unredacted), dated 12 April 2023;
- Statement of Dr Z, dated 20 April 2023;
- Dr Hartley's reflections;
- Letter from Ms AA, dated 21 October 2023;
- Letter from Dr BB, dated 23 October 2023;
- Letter from Dr CC, dated 27 October 2023;
- Appraisal Certificate, dated 10 June 2023;
- Appraisal input form, dated 10 June 2023
- Appraisal output form, dated 24 July 2023
- Imperial College London Medical Ethics Course Outline, undated;
- CPD Certificates, dated 26 and 27 October 2023.

Submissions

174. On behalf of the GMC, Ms Kathryn Johnson submitted that Dr Hartley's conduct represented a serious breach of fundamental principles outlined in *Good Medical Practice* (2013) (GMP), specifically the principles of honesty and integrity. She referred to paragraphs 65 and 71 of good medical practice, which highlight the necessity for doctors to act with honesty:

> *'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.'*

175. Ms Johnson contended that Dr Hartley's admitted conduct, as well as the proven facts in the case, were sufficiently serious that they could only be described as misconduct. She added that his was a breach of a fundamental tenet of the medical profession, and that doctors need to ensure that documents they write or sign are always accurate and truthful, as mandated by paragraph 71 of GMP.

176. Ms Johnson submitted that, during the hearing, Dr Hartley admitted that the forms contained false information. He included incorrect details on three different forms over a 14-month period, falsely claiming to have completed courses or being in the process of completing them. This failure to complete forms accurately is viewed as a serious transgression, one that fellow practitioners would deem deplorable. Ms Johnson stated that it was crucial for a Trust shortlisting candidates for interviews to be able to rely on the accuracy of the information provided by candidates.

177. Moreover, Ms Johnson submitted that Dr Hartley was found to have included false information in two specific forms, the Sheffield and Oxford forms, regarding his involvement in a publication when he was not the author nor named within it. This misrepresentation was an attempt to exaggerate his contribution to the publication.

178. Ms Johnson submitted that another concerning aspect was Dr Hartley's failure to disclose his previous suspension on two separate occasions. This, she added, was a particularly serious failing, especially in the context of his response when asked about sanctions. Dr Hartley's explanation that he interpreted "sanction" as a financial penalty was rejected, primarily because the wording of the question in the Sheffield form was considered clear and because of his experience in 2012. Ms Johnson invited the Tribunal to find that Dr Hartley had lied in presenting his evidence of his belief that “sanctions” meant financial penalties.

179. Ms Johnson also submitted that Dr Hartley's insight into his actions is limited, and despite expressing regret, he does not fully accept responsibility. She stated that the GMC acknowledged his attempt to reflect on his previous suspension, but it has been deemed unsuccessful given the circumstances of the current case.

180. Ms Johnson submitted that, despite some efforts at remediation, very little evidence of substantial progress in this regard has been presented. Dr Hartley's completion of 7 1/2 hours of Continuous Professional Development (CPD) in the last week is notable. However, there is a lack of reflection on how the courses relate to him, the lessons learned, and their application in the future.

181. In summary, Ms Johnson submitted that Dr Hartley's failure to adhere to fundamental principles of honesty and integrity in *Good Medical Practice*, his actions, including misrepresentations on forms, dishonesty in relation to previous suspension, and a lack of transparency, should lead the Tribunal to a finding of misconduct. Furthermore, Ms Johnson asserted that Dr Hartley’s limited insight and remediation efforts necessitate a finding of impairment to protect the public, uphold professional standards, and maintain public

confidence in the medical profession. She highlighted the fundamental principle of honesty, and that the failure to maintain it could undermine public confidence in the profession.

182. Mr Christopher Hopkins, on behalf of Dr Hartley, submitted that the severity of the misconduct and its implications have been addressed, with the acknowledgment that Dr Hartley is well aware of the concerns arising from his previous case in 2012 and the current proceedings. His understanding of the situation is evident, as well as his appreciation of the negative findings against him.

183. Mr Hopkins conceded that the primary issue of contention surrounds the interpretation of the word “sanction”, particularly whether it pertains solely to financial sanctions or has a broader connotation.

184. Mr Hopkins submitted that the timeline of the allegations is a crucial factor. He invited the Panel to conclude that, while the issues at hand are far from minor, it is essential to consider the dates of both the current and previous allegations. He submitted that the timeline is important to understanding the facts of this case, where the earliest 2012 allegations arose in 2008, and the facts in the present case come from conduct in 2019.

185. Mr Hopkins submitted that the argument for impairment centres on several key factors. Firstly, the obligation to protect the public and the public interest is emphasised. He argued that there have been no patient safety risks in the current proceedings, and this perspective is supported by the medical director at Sheffield. This was also true of the 2012 case, where there were no issues directly related to Dr Hartley's clinical practice.

186. Mr Hopkins submitted that, while dishonesty is generally viewed as challenging to remediate, the presentation of the CPD certficates and reflective piece demonstrate Dr Hartley's commitment to remediating going forward, and his insight. Mr Hopkins submitted that the unredacted version of Dr Hartley’s statement provides evidence of Dr Hartley’s reflection and willingness to remediate at an early stage in proceedings, and before the Tribunal’s finding on facts were announced.

187. Mr Hopkins submitted that insight is a critical aspect of assessing impairment, and the evidence suggests that Dr Hartley has shown some level of insight both before, during, and after the May hearing. He added that the Tribunal can recognise that, during the hearing, Dr Hartley realised he should not have claimed authorship of the publication, indicating some level of insight.

188. Further, Mr Hopkins submitted that efforts and steps taken by Dr Hartley since 2019 have been presented to the Tribunal, showing his awareness of the mistakes made and a

commitment to remediation. The testimony of colleagues at Milton Keynes, especially Dr BB, highlighted Dr Hartley's remorse and determination not to repeat his actions. In addition, Dr Hartley's 2023 appraisal documents, dated before the Tribunal's findings, demonstrate his commitment to self-improvement. Mr Hopkins submitted that Dr Hartley's efforts to XXX.

189. Mr Hopkins submitted that the final element for the Tribunal to consider is evidence from others, Dr BB and Dr CC emphasise Dr Hartley's skills and demonstrate his current fitness to practice.

190. In conclusion, Mr Hopkins submitted that the determination of impairment is a complex judgment that requires an assessment of the evidence provided. The evidence put forward on behalf of Dr Hartley emphasises his willingness to remediate, his growing insight, and the absence of patient safety risks.

The Relevant Legal Principles

191. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision on impairment is a matter for the Tribunal's judgement alone. The Tribunal had regard to its determination on facts, submissions from both parties, and the Legally Qualified Chair's ('LQC') advice.

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

193. The Tribunal bore in mind the test in *Grant*. In particular, whether the Tribunal considered its findings of fact in respect of Dr Hartley's misconduct show that his 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 is liable to act dishonestly in the future.'*

The Tribunal's Determination on Impairment

Misconduct

194. The Tribunal had regard to the facts and context of Dr Hartley's admitted conduct and its findings on dishonesty.

195. The Tribunal considered whether each paragraph of the Allegation that had been found proved amounted to misconduct. In doing so, it had regard to the factual findings it had made previously including the reasons for concluding that some paragraphs were, or were not, dishonest as alleged in paragraph 12.

Paragraph 1(a) and 2(a)

196. The Tribunal had found in its determination on the facts that being an Instructor would not impact on Dr Hartley's day-to-day role, nor would it make him more suitable, in itself, for appointment, and noted that a qualified reader would be unlikely to be misled by the content of this section of the form as a whole, as it relates to these courses.

197. It therefore concluded that Paragraph 1(a) and 2(a) of the Allegation did not amount to misconduct.

Paragraph 1(b) and 2(b)

198. The Tribunal had found in its determination on the facts that Dr Hartley had intended to complete the course in February 2018 but did not. It concluded that Dr Hartley had forgotten to amend the date for completion in Application 1 or to remove it all together. The Tribunal further accepted that the wording "recertified in APLS/ NLS instructor" was a genuine error and was not intended to mislead, nor would it be likely to have that effect to a suitably qualified reader. Dr Hartley was not an instructor, as was made clear in other parts of the application, and therefore could not go on to be 'recertified'. The Tribunal had heard evidence that "recertified in APLS/ NLS instructor" was a phrase that made little sense to readers of the form and would stand out as an error.

199. The Tribunal bore in mind Dr Hartley's difficulties with expressing himself and comprehending detailed forms. Regardless of the impact of his particular difficulties, the Tribunal was mindful that typographical errors are not uncommon. Having previously determined this error did not amount to dishonesty, it concluded that Paragraph 1(b) and 2(b) of the Allegation did not amount to misconduct.

Paragraph 4(a) and 5(a)

200. The Tribunal had found in its determination on the facts that Dr Hartley would have known by the time he was due to complete the Declaration Form that his application for the post at SCH was being progressed to interview. The Tribunal concluded that Dr Hartley wrongly justified to himself that there was an interpretation by which he could answer "no".

201. The Tribunal considered that Dr Hartley's answer on the Candidate Declaration Form did not provide adequate detail or the full extent of the concerns which led to his registration being suspended previously.

202. The Tribunal considered that Dr Hartley's explanations to Dr D, and commentary on the Candidate Declaration Form did not negate the effect of answering "no" when clearly Dr Hartley should have said "yes".

203. The Tribunal bore in mind the guidance in *Good Medical Practice* regarding the importance of honesty and integrity. Dishonesty in this context is a serious departure from the standards expected of a doctor. Therefore, the Tribunal found that it amounted to misconduct.

204. The Tribunal considered the submission made on behalf of the GMC that Dr Hartley had lied while giving his evidence in respect of his understanding of the meaning of the word "sanction". The Tribunal does not take that view. It accepts that Dr Hartley was giving a genuine account of his reasoning for completing the form as he did. That reasoning was incorrect and could not be justified. However, the Tribunal accepts Dr Hartley, who wanted to be able to answer "no" and to address the issue of his suspension face-to-face, had justified to himself he could answer the question as he did for the reasons he gave in evidence.

Paragraph 4(b) and 5(b)

205. The Tribunal had found in its determination on the facts that Dr Hartley had genuinely believed he had rebooked to go on the course later in 2018 and that was what he was attempting to convey in the entries in the form.

206. It therefore concluded that Paragraph 4(b) and 5(b) of the Allegation did not amount to misconduct.

Paragraph 4(c) and 5(c)

207. The Tribunal had found in its determination on the facts that Dr Hartley's response for this had been copied from Application 1 and pasted into Application 2 with the addition of the words '(General Instructor Course)'.

208. For the reasons set out above, the Tribunal therefore concluded that Paragraph 4(c) and 5(c) of the Allegation did not amount to misconduct.

Paragraph 4(d) and 5(d)

209. The Tribunal had found in its determination on the facts that this entry had the potential to be misleading but had to be read in the context of the other answers on the form which indicated that Dr Hartley had not completed the course.

210. The Tribunal also noted the evidence from Dr Hartley that there was guidance alongside the Sheffield form, in terms similar to the Oxford form, which the Tribunal had seen, which indicated that courses due to be undertaken could be included. On this basis, the Tribunal had found that Dr Hartley's entry was not clear, but it could be justified and therefore did not amount to dishonesty.

211. The Tribunal therefore concluded that Paragraph 4(d) and 5(d) of the Allegation did not amount to misconduct.

Paragraph 4(e) and 5(e)

212. The Tribunal had found in its determination on the facts that Dr Hartley's description of himself as "mistakenly left off the authorship list" could not be justified. The Tribunal accepted that Dr Hartley had genuinely made a contribution in the early stages of the work that led to publication. It also accepted that Dr Hartley legitimately wanted to ensure his work was reflected on the form. This was therefore a case of him significantly overstating, rather than inventing, his involvement. Having concluded Dr Hartley's actions were dishonest in that respect, and reflecting the importance of honesty and integrity, the Tribunal determined his actions fell far below the standard expected of a doctor in completing a job application.

213. Therefore, the Tribunal concluded that Paragraph 4(e) and 5(e) of the Allegation amounted to misconduct.

Paragraph 10(a) and 11(a)

214. The Tribunal had found in its determination on the facts that Dr Hartley had made some efforts to discuss his previous suspension with Dr H. However, it found Dr Hartley was not fully open and transparent, and that his description of his previous suspension was on his own terms.

215. In respect of the answer "no", the Tribunal concluded that the steps Dr Hartley took, did not sufficiently offset the misleading nature of that response and that overall, his actions

in this regard were dishonest. The same considerations apply as with the Sheffield application.

216. Therefore, the Tribunal concluded that Paragraph 10(a) and 11(a) of the Allegation amounted to misconduct.

Paragraph 10(b) and 11(b)

217. The Tribunal had found in its determination on the facts that Dr Hartley continued to intend to complete the courses. While he should have been more cautious about listing the courses in light of the previous cancelled bookings, the Tribunal did not determine that Dr Hartley had intended to mislead OHFT given the content of other parts of the application.

218. The Tribunal had found that the application form was strewn with errors. Dr Hartley had failed to check the form, had failed to update completion dates, and this had resulted in the form reading as if a course had been completed in the past when it was intended to be booked in the future. The accuracy of the form was a cause for concern. The Tribunal was mindful that doctors must be responsible for the content of their writing, including where errors arise from inattention or accident. The Tribunal took the view that the carelessness in completion of an application is in a different category to similarly careless completion of written work in a clinical context, which might impact on patient safety. The Tribunal bore in mind all the difficulties in Dr Hartley's life at the time of the application, and the time pressure to complete the application. It determined that, while the completion of the form was careless, it did not amount to a serious departure from the standards expected of a doctor such that other members of the profession would consider it deplorable.

219. The Tribunal therefore concluded that Paragraph 10(b) and 11(b) of the Allegation did not amount to misconduct.

Paragraph 10(c) and 11(c)

220. The Tribunal had found that the errors in respect of the NPLS/ ALS recertification had carried over from the Sheffield application. While it is another example of inattention in the completion of the Oxford application, the same considerations apply.

221. The Tribunal previously found no dishonesty in respect of Paragraph 10(c) and 11(c) of the Allegation and, for the same reasons, finds that the errors described did not amount to misconduct.

Paragraph 10(d) and 11(d)

222. The Tribunal had found in its determination on the facts that Dr Hartley failed to update the information to reflect the position at the time of completing Application 3. However, it appeared that information contained within Application 1 had been copied and pasted into Application 2 and then into Application 3.

223. This, the Tribunal found, was another example of careless completion of an application, but it had previously found dishonesty not proved. The reasons for that decision also apply to the question of misconduct in respect of these paragraphs, therefore the Tribunal concluded that Paragraph 10(d) and 11(d) of the Allegation did not amount to misconduct.

Paragraph 10(e) and 11(e)

224. The Tribunal had found in its determination on the facts that Dr Hartley had intentionally stated that he was to be listed as an author or co-author of the publication when he should not have claimed authorship of the publication.

225. The Tribunal had determined this had been dishonest and therefore, as with the equivalent acts in the Sheffield form, the Tribunal found Paragraph 10(e) and 11(e) of the Allegation amounted to misconduct.

GMP

226. The Tribunal had regard to GMP. It concluded that Dr Hartley's dishonest conduct had breached the following paragraphs:

> *'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.* (emphasis added)
>
> *65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*
>
> *66 You must always be honest about your experience, qualifications and current role.*
>
> *71 You must be honest and trustworthy when writing reports, and when*

completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.

a *You must take reasonable steps to check the information is correct.*

b *You must not deliberately leave out relevant information.'*

227. The Tribunal concluded that, in the round, Dr Hartley's repeated dishonesty would be considered deplorable by fellow members of the profession. The Tribunal determined that Dr Hartley's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct.

Impairment

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

229. The Tribunal concluded that misconduct of this nature is difficult to remediate, given its dishonest nature and breach of fundamental tenets of the profession, but that remediation is possible.

230. The Tribunal then considered whether Dr Hartley has demonstrated insight into his behaviour. In doing so it bore in mind his evidence at the earlier stage, and the evidence provided on his behalf for the impairment stage and the submissions made on his behalf.

231. The Tribunal noted that Dr Hartley's reflective piece largely addresses the errors in completion of forms, which it is not considering at this stage. There is much less evidence of reflection on dishonesty.

232. Dr Hartley noted at page 53 of the defence bundle for this stage:

'I'm aware that memory and emotion can play tricks on me. I'm aware that I could be subconsciously wanting to remember things in a way that makes me appear more favourable, and that the negative version of pride can do the same thing. I certainly have gone over the events that got highlighted and tried to question myself as to whether I was deliberately, premeditatedly deceitful. I can accept it's possible that maybe my own memories are wrong, from being in strong psychological denial. I think

I've needed to learn that I was more dishonest in the moment, than the way I felt about it afterwards looking back later. I certainly have tried to learn that lesson.

233. That, the Tribunal noted, showed a degree of introspection and insight which provides some evidence Dr Hartley is willing, and able, to remediate. However, that process is at an early stage.

234. The Tribunal also noted that Dr Hartley continues to justify his actions with reference to his circumstances at the time. He also places significant weight on time pressure to justify his errors, including those that have been found to be dishonest. At page 52 he says:

'I genuinely think that if I XXX, and spent a little more time thinking sensibly; then I think it's very likely that I would have just put that I did a have a GMC case in 2012, would have briefly put what it was about, and the dates of suspension. I think this is partly borne out by the Declaration of Honesty form that I immediately returned and sent in to Sheffield Children's Hospital a few weeks before the job interview took place, in which I did exactly that. But I fully accept that that does not absolve me from missing out the information on the original application.

235. The Tribunal notes this assessment is not in line with the determination on facts. There, the Tribunal explicitly found that the entry on the Candidate Declaration Form did not provide adequate detail or the full extent of the concerns which led to his registration being suspended. The Tribunal is of the view this shows that Dr Hartley does not yet recognise the full extent of his dishonesty.

236. On the issue of time, the Tribunal notes that there were occasions when Dr Hartley did have the time to provide a more detailed account than he did. In particular, there were times that he provided information in writing, where he could have said more, even if he struggled to express himself fully orally. It noted that ticking "no" came after a conversation with two people and that it took Dr Hartley time to persuade himself that he could legitimately do that. The Tribunal does not, therefore, agree that lack of time is the cause of Dr Hartley's failures in this case.

237. The Tribunal noted that Dr Hartley had undertaken a number of Probity and Ethics CPD courses in the week before the hearing reconvened. The Tribunal accepts Dr Hartley has shown a degree of willingness to work on his failures. However, the late stage at which those courses were completed has left him with little opportunity to embed any learning from those courses. His reflective statement did not elaborate on what he had learned, nor how he had applied it to the dishonesty in this case.

238. The Tribunal therefore determined that Dr Hartley's willingness to remediate was not yet matched by actions. It accepted Dr Hartley has some insight and a desire to work towards remediation, but that is at an early stage. The misconduct in this case is therefore not substantively remediated yet.

239. The Tribunal is mindful of the fact that this is the second time Dr Hartley has been found to have been dishonest by a tribunal at the MPTS. The Tribunal concluded that in the absence of detailed insight and more extensive remediation, there remains a risk of repetition.

240. The Tribunal also considered the test for impairment proposed by Dame Janet Smith, as set out above. It determined that this was not dishonesty in a clinical setting. While dishonesty always has the potential to lead to patient harm if it exhibits itself in those circumstances, there is nothing before the Tribunal to suggest Dr Hartley has or will put patients at unwarranted risk of harm.

241. The Tribunal, however, did determine that Dr Hartley has in the past and was liable in the future to bring the medical profession into disrepute and breach fundamental tenets of the medical profession.

242. The Tribunal concluded that given its findings of dishonesty, the reputation of the profession was brought into disrepute.

243. In light of the circumstances of the case and its findings as set out above, the Tribunal determined that a finding of impairment was necessary in this case in order to uphold the second and third limbs of the overarching objective and that public confidence in the profession would be undermined were a finding of impairment not made.

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

Determination on Sanction - 02/11/2023

245. Having determined that Dr Hartley's fitness to practise is impaired by reason of his 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

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

247.The Tribunal received a further bundle of evidence at this stage, which included:

- Statement of Ms B (redacted for stage 3);
- Letter from Mr and Mrs EE dated 20 October 2023;
- Letter from Mr FF dated 23 October 2023;
- Letter from Mr P dated 23 October 2023 and original letter dated 27 March 2023;
- Letter from Dr N dated 24 October 2023 and original letter dated 27 March 2023;
- Letter from Mr M dated 25 October 2023;
- Letter from Mr GG dated 25 October 2023;
- Letter from Mr HH dated 26 October 2023;
- Letter from Mr II dated 26 October 2023;
- Letter from Mr JJ dated 26 October 2023;
- Letter from Dr L dated 26 October 2023 and original letter dated 22 April 2023;
- Letter from Ms B, undated, received 26 October 2023;
- RCPCH Workforce Census 2022;
- A further reflective piece produced by Dr Hartley following the determination on impairment.

248. The Tribunal was also provided with relevant case law to consider: *Bakare v GMC [2021] EWHC 3278 (Admin), Giele v GMC [2005] EWHC 2143 (Admin),* and *Ranga v GMC [2022] EWHC 2595 (Admin).*

Submissions

249. On behalf of the GMC, Ms Kathryn Johnson submitted that erasure is the only viable way to address Dr Hartley's repeated dishonesty which is deemed to have fallen significantly short of the standards expected of a medical professional. She maintained that this dishonesty poses a risk to patient safety and undermines public confidence in the medical profession.

250. Ms Johnson reminded the Tribunal that sanctions should not aim to punish, though they may have a punitive effect, but should be appropriate and proportionate. The welfare of the profession as a whole takes precedence over individual interests. She submitted that the benchmark for doctors is to adhere to *Good Medical Practice*, and action is warranted when there is a serious breach of guidelines that jeopardises patient safety or damages public confidence.

251. Ms Johnson submitted that Dr Hartley had engaged in repeated and persistent dishonesty over two separate applications made to different medical trusts in 2018 and 2019. Furthermore, Dr Hartley had failed to be forthcoming during the application process, exacerbating the dishonesty. Ms Johnson submitted that Dr Hartley's lack of proper insight into his actions and his failure to remediate his behaviour are aggravating factors in this case.

252. Ms Johnson highlighted the previous finding of impairment and previous suspension imposed on Dr Hartley in 2012 due to similar misconduct, indicating that the remediation efforts following that sanction were ineffective. Dr Hartley's inability to recognise the full extent of his dishonesty and his tendency to justify it with factors like time pressures could be seen as further aggravating features. This lack of insight and remediation persisted over time, further underscoring the seriousness of the case.

253. Ms Johnson submitted that Dr Hartley did present some mitigating factors, such as personal difficulties XXX during the time of the dishonest applications. However, she argued that these factors do not excuse dishonest behaviour. The passage of time has not led to improved insight or remediation. Testimonials from colleagues, while lauding the doctor's clinical competence, were insufficient to mitigate the severity of the dishonesty.

254. Ms Johnson contended that the most appropriate sanction in this case is erasure, as Dr Hartley's dishonesty is fundamentally incompatible with continued registration. A sanction of erasure, she submitted, is necessary to protect the public and maintain public confidence in the medical profession, given the persistent and serious nature of the dishonesty. Ms Johnson cited the Sanctions Guidance (SG), which highlights that erasure may be necessary even when there is no direct risk to patient safety but when public confidence needs to be preserved.

255. Ms Johnson submitted that the dishonesty in this case was not isolated but occurred repeatedly in various contexts, and the Tribunal has found there is a risk of repetition that could not be deemed negligible. Despite some attempts at remediation by Dr Hartley, Ms Johnson submitted that this has been insufficient to safeguard the public interest with a lesser sanction. She underscored the difficulty of remediating dishonesty, especially in cases like this where it is central to the Allegation.

256. In conclusion, Ms Johnson submitted that, considering the repeated and serious nature of Dr Hartley's dishonesty, as well as the lack of proper insight and remediation, only erasing of Dr Hartley from the medical register can adequately protect public confidence and uphold the standards expected of medical professionals.

257. On behalf of Dr Hartley, Mr Christopher Hopkins referred the Tribunal to the reflective pieces produced by Dr Hartley and the statements and testimonials from other doctors. In his reflective piece produced following the Tribunal's findings on impairment, Mr Hopkins submitted that Dr Hartley is shown to demonstrate insight and a willingness to remediate his actions. While Mr Hopkins acknowledged that remediation in cases of dishonesty can be challenging, he stressed that it is not impossible, and Dr Hartley's efforts indicated progress.

258. Mr Hopkins submitted that Dr Hartley needs an opportunity to align his actions with his willingness to remediate. He argued that there is no evidence of repeated misconduct since 2019 and a suspension would provide time for Dr Hartley to undergo necessary training and receive support from experienced professionals.

259. Mr Hopkins submitted that the public interest lies not only in maintaining high professional standards but also in allowing competent doctors to continue their practice. He suggested that erasure would be disproportionate and unnecessary, as Dr Hartley has shown a level of insight and a commitment to remediation.

260. Mr Hopkins submitted that the severity of dishonesty in Dr Hartley's case, compared to other cases, is not at the highest level. He submitted that it may not constitute persistent dishonesty.

261. Mr Hopkins submitted that a suspension was a flexible and proportionate response, and he emphasised the importance of providing Dr Hartley with an opportunity to address the issues and demonstrating the seriousness of his conduct.

262. Mr Hopkins reiterated Dr Hartley's willingness to remediate, the lack of evidence of repeated misconduct since 2019, and the need for any sanction to reflect the seriousness of the case while allowing for remediation.

The Relevant Legal Principles

263. The Tribunal took into account its earlier findings, Counsel's submissions, the relevant case law and the evidence adduced during the course of these proceedings.

264. The decision as to the appropriate sanction is a matter for this Tribunal's own independent judgment. The sanction must be proportionate and tailored to the specific circumstances of the case. In reaching its decision, the Tribunal took into account the SG and the statutory overarching objective, which includes the need to:

a. Protect, promote and maintain the health, safety and well-being of the public,
b. Promote and maintain public confidence in the medical profession,
c. Promote and maintain proper professional standards and conduct for members of that profession.

265. The Tribunal recognised that the purpose of a sanction is not to be punitive, although it may have a punitive effect and the purpose of imposing any sanction is to protect the public. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Hartley's interests with the public interest.

The Tribunal's Determination on Sanction

Aggravating and Mitigating Factors

266. 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 Hartley's registration, the Tribunal considered and balanced the aggravating and mitigating factors in this case.

267. The Tribunal identified the following aggravating factors:

- Dr Hartley's misconduct related to two application forms almost a year apart;
- Dr Hartley has had previous regulatory findings against him for dishonesty;
- Dr Hartley's dishonesty was in the context of job applications.

268. The Tribunal identified the mitigating factors to be:

- Dr Hartley is held in high regard by his colleagues;
- At the time of his misconduct, Dr Hartley was experiencing challenging personal circumstances;
- Dr Hartley had provided a number of positive testimonials from varied parts of his life;
- Dr Hartley has demonstrated some efforts to remedy his dishonesty however, the Tribunal concluded that these efforts were limited.

269. The Tribunal noted that dishonesty in respect of job applications can have a significant effect. Dishonesty whether related to clinical work or not can seriously undermine the public's confidence in the medical profession. The dishonesty in this case did relate to Dr

Hartley's career and was repeated on more than one form in the context of a previous finding of dishonesty on which Dr Hartley could reasonably be expected to have reflected.

270. The Tribunal was mindful that mitigating personal circumstances carry only limited weight because, unlike sentences in criminal cases, sanctions are not intended as a punishment. Similarly, the pressures on Dr Hartley at the time cannot excuse dishonesty or be said to be the source of dishonesty. However, the Tribunal was mindful that difficult circumstances can push doctors to behave in ways they would not at other times.

271. Dishonesty is always serious. In this case however, the Tribunal was mindful that the dishonesty in respect of the publication comprised of Dr Hartley overstating his involvement rather than inventing it. In respect of the question about previous sanctions, his answer "no" to the binary question was simply wrong. However, Dr Hartley took steps to give some information and both Trusts were aware of previous regulatory actions as he had brought it to their attention. The Tribunal has already found he did so on his own terms. The dishonesty, therefore, allowed him to control how and when information was provided, rather than preventing it from coming out at all. The Tribunal also recognised that Dr Hartley had persuaded himself that he was able to answer questions as he did, largely because he wanted that to be the case, although those decisions could not be objectively justified.

272. On the question of persistence, the Tribunal bore in mind that Dr Hartley has admitted the underlying facts of the Allegation throughout, including when he was challenged in the course of the Oxford application. He did challenge whether it amounted to dishonesty. He has never made efforts to cover-up his conduct. The Tribunal notes that the dishonest entries in the Oxford form repeat the dishonest entries in the Sheffield form. It is a further incident of the same dishonesty. The Tribunal takes the view that a repetition of this sort, particularly where the answers are literally copied across, reflects a failure to reflect and to change the answers, rather than a standalone instance of further, considered, misinformation being composed. Therefore, while dishonesty has occurred on more than one occasion, and in light of a previous finding of dishonesty, the tribunal did not take the view that it is properly described as "persistent".

273. The Tribunal balanced the aggravating and mitigating factors identified in this case and considered them throughout its deliberations on what the appropriate and proportionate sanction to impose would be, if any.

274. The Tribunal then considered each sanction in ascending order of severity, starting with the least restrictive.

No action

275. The Tribunal first considered whether to conclude the case by taking no action. It accepted 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, proportionate, or in the interests of patients and wider public to conclude this case by taking no action.

Conditions

276. The Tribunal next considered whether to impose conditions on Dr Hartley's registration. Neither party had suggested that the imposition of conditions was appropriate in this case. The Tribunal considered the relevant paragraphs of the SG, in particular paragraph 81, where it provides examples of the types of cases where conditions might be most appropriate, which do not apply to this case:

> *'81 Conditions might be most appropriate in cases:*
>
> *a involving the doctor's health*
>
> *b involving issues around the doctor's performance*
>
> *c where there is evidence of shortcomings in a specific area or areas of the doctor's practice*
>
> *d where a doctor lacks the necessary knowledge of English to practise medicine without direct supervision.'*

277. The Tribunal also considered conditions should be appropriate, proportionate, workable and measurable. It concluded that it would not be possible to formulate appropriate and workable conditions which would address the regulatory concern in this case.

278. The Tribunal bore in mind that Dr Hartley had a suspension imposed on his registration in the previous proceedings and it took the view that a less significant sanction would not reflect the public interest. Further, the Tribunal considered that any personal circumstances that Dr Hartley was tackling could not be an excuse for findings as serious as those determined in this case. In any event, the Tribunal concluded that imposing conditions

on Dr Hartley's registration would not be proportionate or sufficiently mark the seriousness with which it viewed his dishonest conduct.

Suspension

279. The Tribunal went on to consider whether to impose a period of suspension on Dr Hartley's registration. The Tribunal accepted that suspension does have a deterrent effect and could be used to send a signal to Dr Hartley, the profession, and the public about what is regarded as behaviour unbefitting a registered doctor. The Tribunal acknowledged the SG provides that suspension may be appropriate where there is an acknowledgement of fault, and it is satisfied that there is no significant risk of repetition.

280. The Tribunal considered that the following paragraphs of the SG were particularly relevant to its consideration of suspension:

> *'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.'

281. The Tribunal considered Dr Hartley's latest reflections, in which he stated:

"I realise it will take me time to enact and demonstrate real and lasting change, and I realise that the panel will have to bear that in mind when they make their final decisions, but I do feel fully, fully committed to completely letting go of any pride and even more fully and truly remediate and embed behaviours and actions that will permanently and provably take away, protect against, my ever being dishonest in the future."

282. The Tribunal also considered the steps that Dr Hartley had set out in his reflective piece to address his misconduct and continue his remediation, including meeting with his peer groups, supervisors, his three listed mentors, and his appraisers. He also expressed his desire to continue with XXX and his monthly meetings with his church organisations.

283. The Tribunal noted that Dr Hartley has developed some insight into his dishonesty and has produced a plan to attempt to remedy it. While the Tribunal considered that these attempts may have been so far untargeted and not given sufficient priority, they demonstrated that he had a willingness to address his mistakes, and that he does recognise them.

284. The Tribunal has had the advantage of assessing Dr Hartley's remorse, self-reflection, openness to criticism and challenge, and desire to improve, across several hours of giving evidence. It bore that in mind. It also put weight on the work Dr Hartley has done to reflect on the determination from the impairment stage. His latest reflection, although produced quickly, demonstrates that he has already begun to develop deeper insight into his failings in this case. It goes further than merely accepting the content of the determination at that stage and is to his credit.

285. The Tribunal had regard to its findings that Dr Hartley's behaviour transgressed various paragraphs of GMP as well as its findings that his conduct breached a fundamental tenet of the profession and brought the medical profession into disrepute. The Tribunal considered the following paragraphs of the SG in regard to dishonesty:

***124** Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor's clinical responsibility (eg providing*

false statements or fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities should be able to trust the integrity of doctors,
and where a doctor undermines that trust there is a risk to public confidence in the profession. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.

125 *Examples of dishonesty in professional practice could include:*

d *inaccurate or misleading information on a CV*

e *failing to take reasonable steps to make sure that statements made in formal documents are accurate.'*

286. The Tribunal noted that this was a second finding of dishonesty and involved two applications. It has already noted that the dishonesty in this case was towards the less serious end of the scale.

287. Given the seriousness of Dr Hartley's misconduct, the Tribunal did consider what factors, if any, might indicate that erasure was the appropriate sanction. It identified the following:

*'**109** Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*
a *A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.*

b *A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety…*

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

288. The Tribunal also had regard to the section of the SG that relates specifically to dishonesty, in particular it considered:

*'**128** Dishonesty, if persistent and/or covered up, is likely to result in erasure'*

289. In considering what sanction to impose, the Tribunal considered the issue of whether Dr Hartley's misconduct was fundamentally incompatible with continued registration.

290. The Tribunal considered that Dr Hartley's dishonesty was not sophisticated. He had embellished his role in the publication. His dishonest denial of previous sanction on the application forms was mitigated to a degree by his subsequent written and oral communications with consultants from each hospital prior to interview.

291. The Tribunal was particularly struck by Dr Hartley's reflection on the impact his conduct could have on the public's perception of the profession. In his most recent reflective piece, he said:

> *"It is perfectly possible, for instance, that my past actions could in theory become popular news, that could reach millions of people and could disaffect their minds and hearts from engaging with health services, in a way that could be extremely detrimental to their own wellbeing. I genuinely wish good and no harm towards everyone and everything on our shared planet. I don't want to be a source of the slightest scintilla of harm toward anyone. Even one individual who has every right to see my GMC public record and sees what I've done across two cases, could feel cynical about doctors, could also be disaffected from engaging with healthcare, and because every person is a precious human being, that happening to just one person is one too many. And I see incredibly clearly I do want to place the reflections that relate to my own life squarely secondary to those wider implications toward the public."*

292. Dr Hartley told the Tribunal in his written reflective statement that this was an entry from his personal diary in October 2019, before dishonesty had been found against him. The Tribunal accepts, and notes, it shows a level of sophistication in his understanding of the impact of dishonesty, then an allegation rather than a determined fact. That gives the Tribunal further confidence that Dr Hartley has the capacity to develop meaningful insight and to continue to contribute positively as a capable and competent doctor, once he has fully remediated.

293. The Tribunal was mindful that Dr Hartley is an otherwise good and competent paediatrician. The Tribunal noted the public interest in ensuring capable clinicians can continue to practise but was mindful that must be balanced against protecting the public. It took the view both are relevant to achieving the overarching objective.

294. The Tribunal gave weight to the testimonial evidence from a number of different sources, all of whom considered that his actions were out of character. It was to Dr Hartley's credit that all those who provided testimonials have been shown a copy of the

determinations in the two cases. That shows a meaningful change in Dr Hartley's approach to transparency as regards the findings against him. That, in itself, is demonstrative of Dr Hartley's commitment to full remediation.

295. The Tribunal concluded that Dr Hartley's dishonest conduct, in circumstances where he has begun to take steps to develop insight and to remediate, was not fundamentally incompatible with continued registration. After considering the mitigating factors it had identified, alongside the relevant paragraphs of the SG, the Tribunal concluded that imposing a sanction of erasure would be disproportionate and that it would not be in the public interest to erase an otherwise good doctor.

296. The Tribunal bore in mind the case law to which it was directed. It took the view that the seriousness of the dishonesty in this case was not such that erasure was necessary and was less serious, persistent, and covered up than the examples set out in the authorities provided.

297. Taking all of the evidence, submissions and its own assessment of Dr Hartley's misconduct into account, the Tribunal was satisfied that a period of suspension would appropriately mark the seriousness with which it viewed Dr Hartley's dishonest conduct. The Tribunal has already found there is a risk of repetition. The Tribunal was satisfied that risk is reducing with the work Dr Hartley is doing. During a period of suspension, Dr Hartley will have the time and opportunity to develop his insight further, remediate his misconduct, and further reduce the risk of repetition.

298. Having determined to suspend Dr Hartley's registration, the Tribunal went on to consider the length of the period of suspension. The Tribunal determined a short period suspension would not be adequate time for Dr Hartley to remediate, nor would it mark the seriousness of his misconduct. This was not, in the Tribunal's view, a case where a declarative suspension would uphold the public interest. Dr Hartley accepts he has work to do to remediate and the Tribunal agrees. It therefore decided to suspend Dr Hartley's registration from the medical register for a period of 8 months. It was satisfied that such a period was proportionate and marked the seriousness of Dr Hartley's misconduct, while giving him time to develop his insight and remediation. The Tribunal was mindful of the impact of any period of suspension on Dr Hartley's family and home life. It concluded a period of 8 months is the least it can impose to achieve the overarching objective.

299. The Tribunal determined to direct a review of Dr Hartley's case. A review hearing will convene shortly before the end of the period of suspension. Whether Dr Hartley is able to follow through on his plan and, thereby or otherwise, to further reduce the risk of repetition, can only be assessed with time. The Tribunal wishes to clarify that at the review hearing, the

onus will be on Dr Hartley to demonstrate how he has developed further insight and remediated his misconduct. It therefore may assist the reviewing Tribunal if Dr Hartley provided:

- Evidence that he has continued his development of insight and remediation;
- Evidence of Continuing Professional Development, which shows how Dr Hartley has maintained his skills and kept his clinical knowledge up to date;
- Any other information which Dr Hartley considers would assist the reviewing Tribunal.

Determination on Immediate Order - 02/11/2023

1. Having determined that Dr Hartley's registration be suspended for a period of 8 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Hartley's registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Ms Johnson submitted that an immediate order was not necessary to protect members of the public.

3. Mr Hopkins on behalf of Dr Hartley agreed with Ms Johnson and submitted that an immediate order was unnecessary in the interests of public safety.

The Tribunal's Determination

4. The Tribunal had regard to paragraph 172 of the SG. It took account of the guidance, the submissions of both parties and the specific basis upon which the Tribunal reached its determination on sanction.

> *"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…"*

5. The Tribunal considered that in the absence of any concerns about patient safety, an immediate order would not be necessary in this case. The Tribunal determined that the substantive order of suspension properly marks the seriousness of Dr Hartley's misconduct. It determined that suspending him for eight months upholds the overarching objective in

maintaining public confidence in the profession and maintaining proper professional standards.

6. The Tribunal therefore determined not to impose an immediate order of suspension on Dr Hartley's registration.

7. This means that Dr Hartley'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 Hartley does lodge an appeal, he will remain free to practise unrestricted until the outcome of the appeal is known.

8. There is no interim order currently in place.

9. That concludes the case.

ANNEX A – 05/05/2023

Admission of Hearsay Evidence and Exclusion of Evidence

300. On 5 May 2023 (Day 1), prior to the case opening, Mr Christopher Hopkins, Counsel, on behalf of Dr Hartley made an application under Rule 34(1) of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004, as amended ('the Rules'), to have admitted as hearsay evidence the draft witness statement of Dr A. He also made an application to exclude parts of the evidence contained within the statements from Dr F, XXX at Sheffield Children's NHS Foundation Trust ('SCH') and Dr H, Consultant in Paediatric Emergency Medicine at Oxford University Hospitals NHS Foundation Trust ('OHFT').

Submissions in relation to Dr A's draft statement

On behalf of Dr Hartley

301. Mr Hopkins submitted that the Tribunal should allow the admission of the draft statement, a copy of which was provided to the Tribunal in advance (labelled as exhibit C3). Mr Hopkins reminded the Tribunal that the admission of evidence is governed by Rule 34(1) and that the Tribunal may admit any evidence they consider fair and relevant to the case before them.

302. Mr Hopkins referred to Dr Hartley's witness statement, in which he indicates that a draft statement bearing Dr A's electronic signature was printed by Dr A and provided to Dr Hartley, in anticipation of being used in this case. Since then, Dr A, who was Dr Hartley's supervisor during his time at the University Hospitals of Leicester NHS Trust, has, sadly, died. Mr Hopkins referred the Tribunal to relevant case law. He told the Tribunal that the draft statement was provided to the GMC by September 2021, and yet no issues were raised about it until recently. Mr Hopkins told the Tribunal that Dr Hartley had made efforts and sought to locate and retrieve communications he had with Dr A such as via Outlook and WhatsApp, but with no success, partly because email communications had been deleted by the hospital due to its retention policy.

303. Mr Hopkins submitted that the allegations against Dr Hartley are serious and include dishonesty and lack of candour, and had the potential for grave adverse consequences for him, if found proved. Mr Hopkins submitted that, if admitted into evidence, the Tribunal will be able to weigh Dr A's draft statement fairly with and against the other evidence before it. Mr Hopkins submitted that Dr A's draft statement was relevant and it was fair to admit it in the circumstances.

On behalf of the GMC

304. Ms Kathryn Johnson, Counsel, accepted in principle that a draft statement of a deceased person would be admissible. She submitted that the Tribunal should first satisfy itself as to the source of the draft statement and whether it had in fact been drafted by Dr A. She drew the Tribunal's attention to the fact that the draft statement was unsigned and undated and there was limited information from Dr Hartley as to how the draft statement had come to be in his possession.

305. Ms Johnson informed the Tribunal that the GMC had requested further information or evidence from Dr Hartley's legal representatives, but none had been received to date. Whilst she accepted the draft statement had been provided to the GMC some time ago, she submitted that it was for Dr Hartley to show that the document was genuine. Ms Johnson submitted that evidence to prove the document was genuine could have included communications Dr Hartley had with Dr A including emails or WhatsApp and/or text messages to satisfy the Tribunal that some discussion in respect of the draft statement had been discussed with Dr A.

306. Ms Johnson submitted, however, that if the Tribunal was minded to admit the draft statement into evidence, only parts of the draft statement were admissible. She drew the Tribunal's attention to highlighted sections within the draft statement which she submitted should be redacted, for example, Dr A's opinion as to whether Dr Hartley had acted dishonestly, she submitted was a matter for the Tribunal to determine. Further, as Dr A was not an expert, any opinions expressed in the document relating to health matters should not be admitted. In concluding, Ms Johnson advised that when making closing submission on the facts, the GMC would make relevant submissions as to the appropriate weight to be attached to the draft statement in the absence of the opportunity to cross examine the evidence.

Submissions in relation to Dr F's and Dr H's statements

On behalf of Dr Hartley

307. Mr Hopkins referred the Tribunal to the statements of Dr F and Dr H, both of which were contained in Part 1 of the hearing bundle. He submitted that the following words in paragraph 14 of Dr F's statement should be redacted:

> *"… In addition I asked him about the MSc course in Paediatric Emergency Medicine that was in the application form to start in 2018. Dr Hartley responded that he had intended to start the course but did not."*

308. Further, Mr Hopkins submitted that the following words should be redacted from paragraph 9 (the fourth bullet point) of Dr H's statement:

> *"… I was not clear whether Dr Hartley had started his MSc in PEM as his application says "to start 2018 …"*

309. Mr Hopkins submitted that the MSc played no part in the final allegations against Dr Hartley. He added that references to the MSc were prejudicial in circumstances where it was alleged by the GMC that the inclusion of other courses not attended by Dr Hartley involved dishonesty. Mr Hopkins submitted that the MSc in PEM could not logically determine any facts relevant to the issue in front of the Tribunal namely, whether the inclusion of the courses expressly pleaded within the allegations was dishonest. He said that this created a satellite issue which detracted from the allegations to be considered. Mr Hopkins submitted the GMC should not be able to use a "back door" route to rely on the evidence relating to the MSc in PEM. Mr Hopkins submitted that no prejudice would be caused to the GMC from the proposed redaction as it would have the opportunity to cross examine Dr Hartley directly on this aspect, and there was no application to redact the entries from the application forms.

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

310. Ms Johnson submitted that the references to the MSc in PEM were relevant to the issue of dishonesty and the way in which Dr Hartley completed the application forms. She said that it was accepted that there was a difference between the entries relating to the MSc and the courses named in the Allegation because of the inclusion of the words 'to start'. Ms Johnson submitted that the fact there was no allegation relating to the course did not mean that the GMC accepted Dr Hartley was honest in the way he dealt with this aspect. Ms Johnson referred the Tribunal to paragraph 14 of Dr F's statement in which he stated that Dr Hartley accepted he had included untrue detail about courses which he had attended, adding that the MSc was a further example of a course included on the application forms but not attended. She submitted that the Tribunal was entitled to take this into account when considering Dr Hartley's overall actions and intentions in the completion of the application forms. She submitted that Dr F's comments about what was said in interview were relevant, and went beyond the content of the application forms.

311. In relation to Dr H's statement, Ms Johnson submitted that Dr H was not expressing an inadmissible opinion, but was only stating that she was unclear. She added that as Mr Hopkins had conceded these areas could be explored during cross examination of Dr Hartley's evidence, it would not be unfair to leave this sentence unredacted.

312. Ms Johnson went on to say that, in assessing Dr Hartley's assertion that he could be too literal (paragraph 14 of Dr Hartley's statement) and be a perfectionist (paragraph 15 of Dr Hartley's statement), the Tribunal would be assisted by considering all the evidence available, including that about the MSc in PEM.

313. Ms Johnson then took the Tribunal through Dr A's draft statement highlighting the parts which she submitted should be redacted, as follows:

(i) The words *'XXX.'* Ms Johnson submitted that that it was not for Dr A to give an opinion given he was not an expert.

(ii) The words *'I never felt he was unsafe nor intentionally dishonest. He frequently had excellent feedback from patients, families, nursing and junior medical colleagues on his clinical work, and his efforts to communicate well and be a 'team player'.'* Ms Johnson submitted that the matter of whether Dr Hartley was intentionally dishonest or not was a matter for the Tribunal to consider and reach a decision on. She accepted that it would be possible for Dr A to provide this evidence as general testimonial evidence, but not by way of a comment on the facts in dispute.

(iii) The words *'such as his XXX job application to Leicester'*. She submitted that this was a central issue for the Tribunal to make a finding on and not for Dr A to comment upon.

(iv) The sentence *'I nor [or "not"] other colleagues brought it up in his interview when again, he personally brought up his learning from the GMC case; nor did we talk about it afterwards.'* Ms Johnson submitted that as Dr A was not present at the interview he could not comment.

(v) The words *'but I hadn't had concerns re: dishonesty and misrepresentation'*. Ms Johnson submitted that this was a matter for the Tribunal and that there was no way of testing the evidence by way of cross examination.

(vi) The paragraph stating *'Sadly, Sam took the stated questions too literally as he understands them, and took from me the cue that it was acceptable to focus on specific answers to specific phrases about previous GMC hearings. He hadn't made any work applications during the previous ten years due to run-through training, and it was in his personality to sometimes take things too literally. Had I realised this, I'd have emphasised that it would be better to always to write about his GMC case in work application sections that discuss fitness to practise, and not*

focus on whether 'removal', 'conditions', 'warnings' or 'sanctions' apply to him.' Ms Johnson submitted that there was no way of testing this evidence by way of cross examination and that it was not for a witness of fact to provide their interpretation of what had happened including conclusions on why the applications were completed in the way they were.

(vii) The words *'I know how Sam could have thought that 'sanctions' meant financial sanctions, as he said to me; when most people would have the common sense to think more broadly.'* Ms Johnson submitted that this was an opinion expressed by Dr A and there was no way of testing the evidence by way of cross examination.

(viii) The words *'I know he regrets these misunderstandings, takes them extremely seriously, and never intended to hide the fact of his previous one month suspension from the GMC.'* Ms Johnson submitted that this evidence was not relevant at the facts stage of the proceedings.

314. Mr Hopkins submitted that only one redaction, as set out (i) above, should be allowed. He said that it was accepted by Dr Hartley that this was Dr A's opinion, Dr A was not an expert, and the section should therefore be redacted.

315. In relation to the other sections, Mr Hopkins submitted the Tribunal was capable of assessing the evidence and applying the appropriate weight to it.

316. In relation to (ii) and (iii) above, Mr Hopkins submitted that it was reasonable for Dr A to express an opinion given he was Dr Hartley's clinical supervisor and mentor, and therefore knew him well.

317. In relation to (iv) above, Mr Hopkins again submitted that as Dr Hartley's supervisor at the time, it was proper and appropriate for Dr A to make such comment. He also submitted that Dr A could speak from his own experience of being on the interview panel at Leicester.

318. Referring to (v) above, Mr Hopkins submitted that it was Dr Hartley's evidence that he himself raised this at the interview. Mr Hopkins submitted that the GMC would have an opportunity to explore this point further with its witnesses and also with Dr Hartley at cross examination.

319. In relation to (vi) and (vii) above, Mr Hopkins submitted that as Dr Hartley's supervisor, it was fair and appropriate for Dr A to comment in the terms he had.

320. Referring to (viii) above, Mr Hopkins submitted that again because Dr A knew Dr Hartley, it was appropriate for him to make the comment.

The Relevant Legal Principles

321. The Tribunal had regard to the principles of fairness and relevance, in accordance with Rule 34(1) of the Rules, which states:

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

322. The Tribunal accepted the advice of the Legally Qualified Chair ('LQC') that it must consider whether the evidence contained within the paragraphs of the statements, referred to above, was fair and relevant to these proceedings. The Tribunal was advised that the concept of fairness extended to the GMC and the doctor as well as witnesses and other stakeholders.

323. In respect of the hearsay evidence of Dr A, the LQC reminded the Tribunal that concepts of admissibility and weight were separate. The Tribunal should determine, at this stage, whether the evidence should be admitted at all. The Tribunal would, only at a later stage, be required to consider and attribute the appropriate weight to the hearsay evidence. The Tribunal had regard to the principles established in the cases of*, R (Bonhoeffer) v GMC [2011] EWHC 1585 (Admin), Thorneycroft v NMC [2014] EWHC 1565 (Admin),* and *El Karout v NMC [2019] EWHC 19 (Admin)*.

324. The Tribunal was mindful as to the reason for Dr A's absence. It considered whether the draft statement was the sole or decisive evidence in relation to the Allegation; the reliability of the evidence and whether there were other means by which the evidence could be tested, including Dr Hartley's evidence and the potential for him to be cross-examined on it; the extent of challenge to the evidence; the seriousness of the Allegation faced by Dr Hartley, taking into account the impact any findings may have on the his career; and whether there was any suggestion that the evidence subject of the application had or may have been fabricated.

325. The Tribunal was advised to bear in mind that this is not an exhaustive list, and the overriding consideration should be the fairness of admitting the evidence, having regard to all the facts and the circumstances of the case.

Tribunal's Decision

Dr A's draft statement

326. The Tribunal first considered whether Dr A's draft statement was relevant to the Allegation and it determined that it was. It addresses questions of fact that go to the Allegation. On its face, it contains the observations of a witness who was involved in one of the application processes and familiar with Dr Hartley.

327. The Tribunal considered the question of whether the statement of Dr A could be admitted fairly. It noted the GMC's submissions that there was a lack of supportive evidence regarding the making of the statement. At this stage, the Tribunal has the witness statement of Dr Hartley, which puts forward an account of how the statement came into his possession. That evidence has not yet been tested. The Tribunal does not have any basis on which to question that evidence at this stage. The Tribunal considered the lack of supportive documentary evidence, but did not find that it undermined Dr Hartley's evidence so significantly as to make the account he gives unreliable at this stage. If he is cross-examined on that point, the Tribunal will then be able to assess any answers he gives.

328. The Tribunal considered the issues in *Thorneycroft*. In the case of a sadly deceased witness, it is clear there is a good reason for them not attending, and that there are no steps the party relying on the evidence could take to secure their attendance. The Tribunal noted that the GMC had been on notice that Dr A would not be able to attend. The Tribunal was mindful that, while Dr A gave relevant evidence, his is not the sole and decisive evidence in the case as a whole, or in respect of any paragraph of the allegation. His evidence can be tested against the documents in this case, and against the oral evidence of the other witnesses attending, including Dr Hartley. The Tribunal was conscious that the allegations in this case are serious, with the potential for a significant impact on Dr Hartley's career in the event of adverse findings.

329. The Tribunal took the view that it was fair to admit the evidence. Dr Hartley could be prejudiced by its exclusion, and the GMC was in a position to test the evidence in the context of the case as a whole, even where Dr A cannot be questioned.

330. The Tribunal therefore found that the hearsay statement was admissible. The Tribunal did not consider the question of weight at this stage.

331. The Tribunal went on to consider the specific areas about which the GMC had raised concerns and considered applications to exclude each of them in turn.

In relation to (i) above

332. The Tribunal considered whether it was fair for these words to remain unredacted. It noted that Dr A is not relied upon as an expert in XXX. He is not able, therefore, to express an opinion on that. Accordingly, the Tribunal determined that the words *'XXX.'* should be redacted. It therefore granted the GMC's application.

In relation to (ii) above

333. The Tribunal took into account that none of the witnesses from whom it was to receive evidence could assist in respect of this part of Dr A's draft statement. In any event, it considered the comments set out in the draft statement were relevant to stage 2 of the proceedings, if this case proceeded to that stage. It therefore determined that the words set out in (ii) above should be redacted and it granted the GMC's application.

In relation to (iii) above

334. The Tribunal noted Mr Hopkins' submissions in relation to Dr Hartley's personal circumstances at the time he completed the applications forms. It was mindful that a witness of fact would not be able to assist the Tribunal in relation to this part of Dr A's draft statement and there was no other way of testing the evidence. It was of the view that this part should be redacted. However, the Tribunal considered that the first part of the sentence which stated *'he had difficulty preparing longer pieces of work …'* should remain. It took into account that Dr A was Dr Hartley's supervisor and, as his supervisor, was able and entitled to comment as he did. It therefore determined to grant the GMC's application to redact the second part of the sentence which included the words *'such as his XXX job application to Leicester'*.

In relation to (iv) above

335. It was unclear to the Tribunal from the evidence before it whether this statement related to the interview at Leicester. There was a lack of clarity as to how the comment actually read or to what it related. In the absence of such clarity, the Tribunal was concerned that the meaning of the sentence could be open to misinterpretation. Given that the evidence could not be explored with any of the witnesses from whom the Tribunal was to receive evidence, it determined that it was fair to redact the comment. It therefore granted the GMC's application.

In relation to (v) above

336. The Tribunal was of the view that the wording which the GMC sought to redact could be relevant to either stage 1 or stage 2. There was no way for the Tribunal to inquire as to whether Dr A had seen or read the application form other than from the evidence of Dr Hartley. However, given that Dr A was Dr Hartley's clinical supervisor, and therefore very likely would have observed Dr Hartley in practice, the Tribunal considered that if Dr A had read the application form referred to in his draft statement, or had had any communication with Dr Hartley in respect of the information contained within it, then it would be reasonable for Dr A to express a view as set out in the statement about any concerns as to the accuracy of the information. The Tribunal therefore determined it was fair and relevant to allow the words to remain and it refused the GMC's application.

In relation to (vi) above

337. The Tribunal noted that there was no information or evidence to demonstrate the basis upon which Dr A provided this comment but it is most likely to be based on information Dr Hartley provided to Dr A. The Tribunal was therefore not satisfied that it constituted the independent observations of Dr A. In the circumstances, the Tribunal determined that that the comment should be redacted and it granted the GMC's application.

In relation to (vii) above

338. For the same reasons as set out in relation to (vi) above, the Tribunal determined to grant the GMC's application.

In relation to (viii) above

339. It was the Tribunal's view that this was Dr A's opinion. As the Tribunal was unable to explore this with any factual witness, it considered that it was not fair for it to remain. It therefore granted the GMC's application.

In relation to Dr F's statement

340. The Tribunal had regard to Dr F's witness statement, dated 4 July 2020. It first considered whether the content redacted within paragraph 14 of Dr F's witness statement was relevant to the Allegation before it.

341. The Tribunal noted the GMC's submission that the comments from Dr F were relevant to how Dr Hartley completed different sections of application forms. However, the Tribunal was conscious that the application forms themselves appear, by agreement, within Part 2 of the hearing bundle, and the MSc in PEM entry does not form the basis of a specific allegation

against Dr Hartley. In those circumstances, the Tribunal determined that Dr F's comment was not relevant. If there are relevant questions about that section of the form, Dr Hartley can be asked them in his evidence. In the circumstances, the Tribunal granted Mr Hopkins' application and excluded the section identified.

In relation to Dr H's statement

342. The Tribunal had regard to Dr H's witness statement, dated 1 June 2020. It noted that this section of Dr H's statement related to the information provided by Dr Hartley in his application form for the post of consultant in paediatric emergency medicine.

343. The Tribunal noted that this did not form the basis of a specific allegation against Dr Hartley. It took into account that the GMC could explore this through questions of the witnesses to be called, and through cross examination of Dr Hartley. It did not consider Dr H's comments added anything to the documentary evidence already available. In the circumstances, the Tribunal determined to grant Mr Hopkins' application.

ANNEX B – 11/05/2023

Rule 34(13) Application to hear evidence via videolink

344. On day 2 (9 May 2023) Mr Christopher Hopkins, Dr Hartley's Counsel, made an application for the evidence of Ms B and Ms C to be heard via videolink under Rule 34(13) of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004, as amended (the Rules). In relation to Ms B, Mr Hopkins submitted that she would feel more comfortable giving her evidence via videolink. In relation to Ms C, Mr Hopkins submitted that it would be difficult for her to attend the MPTS hearing centre in person due to the scheduled rail strike. Mr Hopkins added that it was in the interests of justice to allow their evidence to be given via videolink.

345. On day 4 (11 May 2023) Mr Hopkins submitted a further application under Rule 34(13) for the evidence of Mr M to be heard via videolink. Mr Hopkins submitted that due to his professional commitments, Mr M was unable to travel to the hearing centre to give evidence in person. He added that Mr M was a testimonial witness and not a witness to the facts.

346. Ms Kathryn Johnson, on behalf of the GMC, did not oppose the applications.

The Tribunal's Decision

347. The Tribunal had regard to Rule 34(13) and (14) which states:

'(13) A party may, at any time during a hearing, make an application to the Committee or Tribunal for the oral evidence of a witness to be given by means of a video link or a telephone link.

(14) When considering whether to grant an application by a party under paragraph (13), the Committee or Tribunal must—

(a) give the other party an opportunity to make representations;

(b) have regard to—

(i) any agreement between the parties, or

(ii) in the case of a Tribunal hearing, any relevant direction given by a Case Manager; and

(c) only grant the application if the Committee or Tribunal consider that it is in the interests of justice to do so.'

348. The Tribunal is mindful that the preference is to hear witness evidence in person. It has taken into account the submissions made by Mr Hopkins and has taken into account that the applications are unopposed. The Tribunal considered it was in the interest of justice to allow the evidence of Ms B, Ms C and Mr M to be given via videolink. It therefore determined to grant the applications.

ANNEX C – 07/07/2023

Application to amend the Allegation

Submissions on behalf of the GMC

349. On 10 May 2023 (Day 3), Ms Johnson made an application to amend paragraph 4(e) and paragraph 7 of the Allegation under Rule 17(6) of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004 ('the Rules'). She submitted that in relation to paragraph 4(e), this was to correct a typographical error, and in relation to paragraph 7, this was to correct the date on which Dr Hartley's interview took place at Sheffield. The proposed amendments were as follows:

'4. Between 23 April and 4 June 2018, you submitted an application for the post of Specialty Doctor in Paediatric Emergency Medicine at Sheffield Children's NHS Foundation Trust ('SCH') ('Application 2') in which you:

e. cited on page 26 of Application ~~1~~ 2 a publication 'XXX

and

'7. On 19 ~~May~~ June 2018, you were interviewed for the position of Specialty Doctor in Paediatric Emergency Medicine at SCH at which time you confirmed that you had been the subject of a previous GMC investigation but that it had been closed without ongoing restrictions being placed on your practise, or words to that effect.'

350. Mr Hopkins did not oppose the application.

The Tribunal's Decision

351. The Tribunal considered Rule 17(6) of the Rules which states:

'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.'

352. The Tribunal took into account that Mr Hopkins did not oppose the application. It took into account that the amendments were to correct typographical errors and not to the substance of the actual allegations. The amendment to paragraph 7 was to reflect the correct dates of the interview. The Tribunal was of the view that to grant the amendments would cause no injustice to Dr Hartley. Accordingly, the Tribunal granted the application to amend paragraphs 4(e) and paragraph 7 of the Allegation as set out above in bold under paragraph 1.

ANNEX D – 07/07/2023

Admission of Hearsay Evidence

353. On 15 May 2023 (Day 6), Ms Johnson made an application under Rule 34(1) of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004, as amended ('the Rules'), to admit an email from Dr D, dated 11 May 2023, as hearsay evidence. She submitted that Dr D had provided the email following matters raised during the Tribunal's questions to him on day 2 of the hearing (9 May 2023). She added that the email was relevant to the matters before the Tribunal and that it was fair to admit it.

354. On behalf of Dr Hartley, Mr Hopkins did not oppose the application.

The Relevant Legal Principles

355. The Tribunal had regard to the principles of fairness and relevance, in accordance with Rule 34(1) of the Rules, which states:

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

356. It also had regard to the public interest as set out in the overarching objective in section 1(1A) of the Medical Act 1983.

357. The Tribunal reminded itself that on the question of whether it was fair to admit the evidence, it must balance the public interest in the proper investigation of the Allegation with fairness to Dr Hartley. It reminded itself that the questions of admissibility and weight are distinct.

Tribunal's Decision

358. The Tribunal took into account the submissions made by both Counsel.

359. The Tribunal was mindful that the email adduced by the GMC has been provided arising out of questions raised by the Tribunal during cross examination of Dr D. The Tribunal considered, in the circumstances, that it was relevant to the matters before it. It also considered that it was fair to admit the evidence, and noted that the parties agreed. Dr D could be recalled to adduce the email, but no parties had questions for him, so it would be unnecessary to do so. It therefore granted the application.