

## PUBLIC RECORD

Dates: 24/02/2025 - 26/02/2025

Doctor: Dr Samuel OJO

GMC reference number: 7736341

Primary medical qualification: Doctor of Medicine 2017 Rostov State Medical University

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

**Summary of outcome**  
No warning

## Tribunal:

Legally Qualified Chair	Mr Zia Nabi
Lay Tribunal Member:	Mrs Amanda Webster
Registrant Tribunal Member:	Dr Euan Strachan-Orr
Tribunal Clerk:	Mr Rowan Barrett

## Attendance and Representation:

Doctor:	Present, represented
Doctor's Representative:	Mr Ben Rich, Counsel, instructed by MDDUS
GMC Representative:	Ms Elizabeth Fry, 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 and Impairment - 26/02/2025

### FACTS

1. At the outset of proceedings the Tribunal determined that parts of the hearing relating to XXX be heard in private in accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 as amended ('the Rules'). As such this determination will be read in private. However, as this case also concerns Dr Ojo's misconduct, a redacted version will be published at the close of this hearing.

### Background

2. Dr Ojo qualified in 2017 from the Rostov State Medical University in Russia under a Nigerian federal government overseas scholarship. Following graduation, he completed his Foundation Training Program at the University of Ilorin Teaching Hospital in Nigeria before immigrating to the UK in May 2022. Between June 2022-July 2023, Dr Ojo worked full-time as a Clinical Fellow in an accident and emergency department.

3. At the time of the events that are the subject of this hearing, Dr Ojo was working as a Psychiatry CT1 trainee at Nottinghamshire Healthcare NHS Foundation Trust ('the Trust') at Sherwood Oaks Hospital ('the hospital').

4. In summary, Dr Ojo's case relates to an allegation of impaired fitness to practise by reason of misconduct, namely that on 15 November 2023 Dr Ojo smoked cannabis whilst on shift at the hospital.

### The Allegation and the Doctor's Response

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

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

1. On or around 15 November 2023 whilst on shift at Sherwood Oaks Hospital you:
  - a. were caring for vulnerable mental health patients; **Admitted and found proved**

- b. smoked cannabis. **Admitted and found proved**

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

### The Facts

6. At the outset of these proceedings, through his counsel, Mr Rich, Dr Ojo admitted to the entirety of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced all paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

### IMPAIRMENT

7. 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, Dr Ojo's fitness to practise is impaired by reason of misconduct.

### The Evidence

#### Witness Evidence

8. The Tribunal has taken into account all the evidence received. The Tribunal received evidence on behalf of the GMC in the form of unchallenged statements from the following witnesses who were not required to give oral evidence:

- Ms A, Clinical Team Leader at the hospital
- Ms B, Suite Liaison Officer at the hospital
- Dr C, Speciality Registrar at the hospital

9. Dr Ojo provided his own witness statement dated 20 December 2024 and also gave oral evidence at the hearing on 24 February 2025.

#### Documentary Evidence

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

- XXX
- XXX
- XXX
- XXX

- Testimonial evidence from Dr Ojo’s colleagues as well as patient/colleague feedback relating to Dr Ojo.

## Submissions

### Submissions on behalf of the GMC

11. In summary, Ms Fry submitted that Dr Ojo’s fitness to practise was impaired by reason of misconduct.

12. Ms Fry submitted that on the night in question, Dr Ojo had been responsible for providing clinical care and had been seen by two colleagues to light up what appeared to be a cigarette outside the hospital building. Both colleagues smelt cannabis, including in the reception area, the Doctors’ corridor and the Doctors’ quarters. They contacted the on-call Specialty Registrar who subsequently advised Dr Ojo not to consult with patients.

13. Ms Fry submitted that the misconduct was serious. Dr Ojo smoked cannabis in the middle of his shift and he might have gone on to have patient interactions. She submitted that Dr Ojo’s actions would be considered deplorable by fellow practitioners and it was a matter of luck that he was challenged and that no harm was caused. She submitted that Dr Ojo had acted in such a way as to bring the medical profession into disrepute.

14. Ms Fry submitted that Dr Ojo had breached fundamental tenets of the medical profession. She referred the Tribunal to paragraphs 1, XXX and 65 of the 2013 edition of *Good Medical Practice* (‘GMP’), which was in effect at the time of the events.

15. In respect of paragraph 1 of GMP Ms Fry submitted that by being in possession of and using illegal substances on hospital premises, Dr Ojo had placed his own needs and wants above the consideration of patient safety. XXX. In respect of paragraph 65 she submitted that Dr Ojo had not ensured that his conduct justified patients’ trust in him and the public’s trust in the profession.

16. Ms Fry acknowledged that this was a case in which there was clearly significant mitigation in terms of Dr Ojo’s XXX and personal circumstances at the time. She also told the Tribunal that it was clear that Dr Ojo had taken significant steps XXX to ensure that this misconduct would not happen again and to remediate. However, she stated that the Tribunal may consider that there was a degree of ongoing minimisation of the seriousness of his actions by Dr Ojo. She referred the Tribunal to Dr Ojo’s oral evidence that he had not taken the cannabis to work with intention of smoking it during or after his shift, and that it had only been in his coat pocket as he did not want to leave it lying around the flat he shared with XXX, whom he thought would not approve of his using cannabis. Ms Fry suggested that this explanation was not plausible and may reflect an attempt to minimise the seriousness of his actions on Dr Ojo’s part. She submitted that, as Dr Ojo had said in evidence that the substance did not give off a strong odour when it was unlit, there would not have been a

significant risk of its discovery by XXX, had Dr Ojo left the cannabis at home rather than bringing it to work.

17. Ms Fry submitted that, despite Dr Ojo's attempts to remediate and mitigating circumstances, the public interest demands a finding of impairment.

#### Submissions on behalf of Dr Ojo

18. Mr Rich submitted that Dr Ojo had been very frank in his acceptance of the allegation made against him and had never sought to minimise the seriousness of what had happened. He accepted on behalf of Dr Ojo that his actions amounted to serious misconduct and submitted that Dr Ojo fully recognised the seriousness of what he did, and that there was a risk to patients arising from his actions. He understood that this was undoubtedly a serious event which fell short of the standards expected of a medical professional.

19. Mr Rich submitted that whilst a great deal of weight had been placed by the GMC on the question of whether Dr Ojo would have continued with his shift if his cannabis use had not been discovered, Dr Ojo had never claimed that if the nurses had not reported him then he would have reported his cannabis use himself. He submitted however, that the questions put by the GMC to Dr Ojo carried an assumption that at the time of the events he had been in a rational or calculating state of mind, and that Dr Ojo's evidence was that he had not been thinking clearly enough to know what he would have done in that instance.

20. Mr Rich submitted that the question the Tribunal had to consider was whether Dr Ojo's fitness to practise was currently impaired by reason of misconduct and submitted that it was not. In support he made the following submissions:

- Whilst the misconduct was serious, it was also an isolated 'one off' event from a doctor who is otherwise very well regarded. It represented an impulsive act from someone who was in serious distress.
- The events took place at a time when Dr Ojo was XXX.
- Dr Ojo had developed considerable self-awareness and insight into not only his wrongdoing but how he came to act in this way. Mr Rich referred the Tribunal to the evidence of remediation undertaken by Dr Ojo, XXX.
- The risk of repetition was extremely low. This was a single impulsive act when Dr Ojo was in considerable distress. He had expressed regret, shame and remorse and had demonstrated his awareness of the risk to patients and the risk to public confidence in the medical profession. He had explicitly accepted that XXX did not excuse his misconduct, although it might explain it.
- Dr Ojo had done considerable work to put in place preventive measures. XXX. Mr Rich said these support mechanisms together with the doctor's high level of insight were

very significant protective factors. Dr Ojo had focussed in XXX and in his self-reflection on how he would manage stressful circumstances in the future so as to ensure that they did not have similar harmful effects.

- Dr Ojo had been working since January 2024, after the Trust allowed him to return to work, and there had been no further concerns or any suggestion of repetition of similar conduct. Mr Rich referred the Tribunal to XXX.

21. Mr Rich submitted that there was no current significant public safety issue in this case. He relied on the fact that having been allowed back to work some 6 or 7 weeks after the event, Dr Ojo had worked since without any issues.

22. In respect of the public interest, Mr Rich submitted that a fair-minded member of the public in full possession of the facts of this case would recognise the singular and impulsive nature of this incident. He submitted that a reasonable member of the public would appreciate the level of remorse that Dr Ojo has demonstrated from the start and the significant efforts he has made to ensure that there is no recurrence of his misconduct. He submitted that a reasonable member of the public would also take into account the relatively short time Dr Ojo has been a qualified doctor and the fact that, at the time the events occurred, he was a core trainee. He submitted that the public would be reassured by the very positive testimonial evidence, which was particularly impressive for someone relatively early in their career.

23. Mr Rich further submitted that a fair-minded member of the public, knowing all the circumstances and how Dr Ojo conducts himself in his practice and his dedication to patients, and acknowledging the process of significant remediation he has gone through, would feel he could properly continue in practice without restriction now. Mr Rich submitted that proper professional standards have been declared and upheld through this process and that public confidence in the medical profession would not be damaged if Dr Ojo's fitness to practise was found not to be currently impaired.

### **The Relevant Legal Principles**

24. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for its judgement alone. The Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct which qualifies as serious misconduct, and if so secondly to consider whether Dr Ojo's fitness to practise is impaired.

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

26. The Tribunal must bear in mind the statutory overarching objective as set out in s1 Medical Act 1983 namely 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

### Misconduct

27. There is no statutory definition of misconduct and the decision in every case as to whether the misconduct is serious has to be made by the Tribunal in the exercise of its own skilled judgment on the facts and circumstances in light of the evidence.

28. In approaching the decision, the Tribunal had regard to the case of *Roylance v General Medical Council (No.2)* [2000]1 AC 311 (UKPC) which states:

*“Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [medical] practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word professional which links the misconduct to the profession [of medicine]. Secondly, the misconduct is qualified by the word serious. It is not any professional misconduct which would qualify. The professional misconduct must be serious.”*

### Impairment

29. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the Fifth Shipman Report, as adopted in the High Court in *CHRE v NMC and Paula Grant* [2011] EWHC 297 Admin with regard to commonly occurring features that are likely to be present when impairment is found:

*“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.”*

30. The Tribunal reminded itself that it must consider whether the public interest requires a finding of impairment, for example where the need to uphold proper professional standards and public confidence in the profession would be undermined if it did not do so.

31. The Tribunal reminded itself that not every case of misconduct will result in a finding of impairment. An example might be an isolated error of judgment which is unlikely to recur, and the misconduct is not so serious as to render a finding of impairment necessary. On the other hand, misconduct may be so egregious that, whatever mitigatory factors arise in respect of insight, remediation, unlikelihood of repetition, and the like, any reasonable person would conclude that the registrant should not be allowed to practise on an unrestricted basis, or at all. The Tribunal had regard to the case of *Cheatle v GMC* 2009 EWHC 645 Admin where at paragraph 22, Cranston J stated:

*“...the context of the doctor’s behaviour must be examined. In circumstances where there is misconduct at a particular time, the issue becomes whether that misconduct, in the context of the doctor’s behaviour both before the misconduct and to the present time, is such as to mean that his or her fitness to practise is impaired. The doctor’s misconduct at a particular time may be so egregious that, looking forward, a panel is persuaded that the doctor is simply not fit to practise medicine without restrictions, or maybe at all. On the other hand, the doctor’s misconduct may be such that, seen within the context of an otherwise unblemished record, a Fitness to Practise Panel could conclude that, looking forward, his or her fitness to practise is not impaired, despite the misconduct.”*

32. The Tribunal also had regard to “The duties of a doctor registered with the GMC” as set out in Good Medical Practice in force at the time of the allegation, and in particular paragraphs 1, XXX and 65 of GMP.

### Misconduct

33. In determining whether Dr Ojo’s fitness to practise is impaired by reason of misconduct the Tribunal first considered whether the facts admitted by Dr Ojo and found proved amount to misconduct.

34. Dr Ojo has admitted to using a Class B scheduled drug during an on-call shift at the hospital. The Tribunal bore in mind that Dr Ojo did this at a time when he was responsible for the care of vulnerable mental health patients as the only doctor on site. It also noted that Dr Ojo used the substance in the middle of his shift and that he returned to the on-call room afterwards. In addition to the risk of impairment to his judgement arising from his use of cannabis while at work, the Tribunal had regard to Dr Ojo’s evidence that he agreed that the smell of cannabis could be distressing to patients, particularly in a mental health setting.

35. The Tribunal noted that Dr Ojo accepts that his actions amounted to serious misconduct.



36. It was submitted on behalf of the GMC and the Tribunal agrees that paragraphs 1, XXX and 65 of GMP are engaged in this case, as follows:

*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.*

[XXX]

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

37. The Tribunal considered that paragraph 1 of GMP is engaged in respect of the responsibility for doctors to 'make the care of their patients their first concern', as well as maintaining good relationships with colleagues and acting with integrity and within the law. By using cannabis, Dr Ojo failed to make care of patients his first concern and also adversely impacted his relationship with colleagues who felt compelled to report his cannabis use. Further, in using cannabis, a controlled substance, the Tribunal considered that Dr Ojo had not acted with integrity and within the law.

38. XXX

39. The Tribunal was also satisfied that Dr Ojo's actions were in breach of paragraph 65 of GMP in that he had failed to ensure that his conduct justified patients' trust in him and the public's trust in the profession.

40. Having regard to GMP, the Tribunal was satisfied that Dr Ojo's actions breached fundamental tenets of the medical profession.

41. For the reasons set out above, the Tribunal determined that the conduct found proved did amount to serious misconduct.

### Impairment

42. The Tribunal then considered whether Dr Ojo's fitness to practise is impaired by reason of his misconduct. In so doing, it had regard to the first three questions of the test in *Grant*; it accepted that the fourth question was not applicable.

43. The Tribunal determined that Dr Ojo's misconduct had put patients at unwarranted risk of harm. This was frankly admitted by Dr Ojo who did not seek to argue otherwise. The Tribunal finds that the use of cannabis during the shift would have impacted on Dr Ojo's clinical judgment and the resulting smell, which the Tribunal finds would have been discernible, could have acted as a trigger for patients with mental health issues and put them at risk of harm.

44. The Tribunal also determined that Dr Ojo’s misconduct has brought the medical profession into disrepute. Again, this proposition was not challenged. It is difficult to see how the use of a controlled drug, during a doctor’s shift on a mental health unit, could amount to anything else.

45. The Tribunal also determined that Dr Ojo’s misconduct breached fundamental tenets of the profession in that he had failed to make the care of patients his first concern, he had failed to protect and promote the health of patients, he had not acted with integrity, and he had abused the public’s trust in the profession.

46. However, having regard to all the circumstances, the Tribunal has determined that Dr Ojo’s fitness to practise is not impaired for the following reasons.

47. The Tribunal is satisfied that this was an impulsive and isolated incident in the context of XXX and extreme stressors in Dr Ojo’s personal life, when he was not thinking clearly or rationally and XXX.

48. The Tribunal considered the submission made on behalf of the GMC that Dr Ojo had attempted to minimise the seriousness of his actions to some extent by not accepting the GMC’s suggestion that he had intended to use cannabis at work before he arrived for his shift. The Tribunal rejected this submission and accepted Dr Ojo’s evidence that he did not intend to use cannabis before he arrived for his shift and that his decision was made impulsively. The Tribunal also accepted Dr Ojo’s evidence that the first telephone call with Dr C lasted no more than 10 to 15 seconds and that in the second call he provided details as to what had occurred without seeking to obfuscate his illegal drug use.

49. The Tribunal considered that both Dr Ojo’s witness statement and oral evidence reflected his understanding of the extreme seriousness of his actions and noted his acknowledgement on several occasions that his conduct was completely unacceptable. Whilst Dr Ojo has sought to provide context for his state of mind at the time, he has been clear in his evidence he has put before the Tribunal that he does not seek to excuse or minimise his behaviour in any way.

50. The Tribunal has paid careful regard to Dr Ojo’s detailed written reflections, in which he stated:

*“My conduct on the night was inappropriate and could have potentially compromised my ability to provide safe care to the vulnerable mental health patients whose care were entrusted to me. It also undermined the values of professionalism, safety and trust that are foundational to medical practice. As a doctor, I understand that patients rely on my professional conduct and judgement, especially those with complex mental health needs. I deeply regret this lapse in judgement and the potential impact it could have had on those under my care and my team on the night. The thought that*

*patients' safety could have been at risk is sobering, weighs heavily on me and underscores the gravity of the incident.*

...

*As a medical professional, I am acutely aware that I hold a privileged position of trust within society. The public has a right to expect that doctors uphold the highest standards of conduct, not only because of the direct impact on patient care but also because of the broader consequences for public confidence in the profession. My conduct in this instance fell short of these expectations and risks eroding public trust in the medical profession. I am deeply disappointed and sincerely sorry for this."*

51. The Tribunal is satisfied that Dr Ojo has demonstrated real insight into his misconduct. There has been no attempt to dissemble, rather he has displayed what the Tribunal finds to be genuine remorse and effort to understand why he acted as he did. The Tribunal was impressed by the fact that whilst Dr Ojo has reflected on the factors that led to his misconduct with the help of various professionals and has provided an explanation of his understanding of how he got to this point, he has never sought to justify or minimise his actions in the process. The Tribunal considered that Dr Ojo has a good understanding of the seriousness and impact of his misconduct and appreciates both the immediate risk to patient safety and the risk to public confidence in the profession.

52. In the circumstances, the Tribunal is satisfied that Dr Ojo has fully developed his insight into his misconduct.

53. The Tribunal is impressed with what it considers has been a genuine effort on Dr Ojo's part to remediate his misconduct, as opposed to conducting a box ticking exercise. It notes Dr Ojo's immediate admission when confronted with the fact of his drug misuse on the night of 15 November 2023; his acceptance that his conduct was inappropriate and illegal, and could have compromised his ability to provide safe care to vulnerable mental health patients; his recognition of XXX combined with a desire to understand why he had acted in the way that he did following XXX; his CPD resilience training evidenced by a number of certificates; and XXX. The Tribunal considered that Dr Ojo's engagement with XXX, have provided him with robust mechanisms of support to help him deal with stressful situations that may arise in the future.

54. The Tribunal was satisfied, in all the circumstances of this case, that whilst Dr Ojo has acted in the past so as to bring the profession into disrepute, he is not likely to do so again in future. The Tribunal concluded that the risk of repetition in this case, if any, was minimal.

55. The Tribunal next turned to the question of whether a finding of impairment was necessary solely on the basis of upholding public confidence in the medical profession.

56. The Tribunal took account of Dr Ojo's openness with his current employers about the GMC investigation and his past misconduct. The Tribunal is satisfied that XXX. It also had

regard to the very positive testimonial evidence provided on behalf of Dr Ojo, which demonstrates that he is currently practising at a high standard and is well regarded by his colleagues.

57. The Tribunal considered that, with full knowledge of the circumstances at the time, together with evidence of the degree of insight and remediation that Dr Ojo has demonstrated, a reasonable member of the public would not expect that a finding of current impairment be made. The Tribunal did not consider that a finding of impairment was necessary in the public interest.

58. The Tribunal therefore concluded that Dr Ojo's fitness to practise is not currently impaired.

#### **Determination on Warning - 26/02/2025**

59. The Tribunal, having determined that Dr Ojo's fitness to practise was not impaired, then went on to consider whether in accordance with s35D(3) of the 1983 Act and under Rule 17(2)(m) of the Rules, a warning was required.

#### **Submissions**

##### On behalf of the GMC

60. Ms Fry submitted that a warning was necessary in this case. She referred the Tribunal to the GMC's Guidance on Warnings (March 2021) ('the Guidance'), particularly paragraphs 16, 17 and 32 (set out below).

61. Ms Fry submitted that the Tribunal has found that the Allegation amounts to serious misconduct. Further, that Dr Ojo's conduct demonstrated significant departures from Good Medical Practice ('GMP') with a risk to patient safety. Therefore, she submitted a warning should be issued to Dr Ojo in this case.

##### On behalf of Dr Ojo

62. Mr Rich submitted that, while there has been a clear and serious breach of GMP, a repetition of which would be likely to result in a finding of impairment, the Tribunal had found that this was an isolated incident. Mr Rich acknowledged that there had been a risk to patient safety and to public confidence in the profession, however, he submitted that this was mitigated by the action taken by Dr Ojo afterwards.

63. Mr Rich submitted that the Tribunal's findings at the impairment stage suggested that this was a case in which a warning was not necessary. He noted that the Tribunal had found Dr Ojo's insight to be fully developed and that he had demonstrated sincere remorse as

demonstrated by his actions since the incident. He noted the Tribunal's acceptance of XXX that Dr Ojo's action was 'entirely related' to the difficult circumstances he was experiencing at the time. Mr Rich submitted that there was no risk of repetition of the misconduct in this case, therefore this is not a case where a warning would be proportionate.

64. Mr Rich submitted that the Tribunal should have regard to its findings in respect of XXX and weigh this as a factor mitigating against a warning.

### The Relevant Legal Principles

65. The decision on whether or not to issue a warning is a matter for the Tribunal alone to determine exercising its own professional judgement. In making its decision the Tribunal has taken into account the submissions of both parties and has had regard to the Guidance.

66. Throughout its deliberations, the Tribunal had regard to the statutory overarching objective. In that regard, it bore in mind that its power to issue a warning is an important feature of its role of protecting the public, which includes protecting patients, maintaining public confidence in the profession, and declaring and upholding proper standards of conduct and behaviour.

67. The Tribunal applied the principle of proportionality and weighed the interests of the public against those of Dr Ojo. The Tribunal bore in mind that a warning would not restrict Dr Ojo's practice. However, it noted that the warning would be imposed on the medical register via the GMC website for a two-year period. After that period, warnings are no longer disclosed to general enquirers, but they are kept on record and disclosed to employers indefinitely on request.

68. The Tribunal bore in mind that a warning has a deterrent effect and sends out a signal to the doctor, the profession, and the public about what is regarded as unacceptable behaviour whilst maintaining public confidence in the profession and upholding proper professional standards and behaviour.

69. In making its decision, the Tribunal had regard to the Warning Guidance, and in particular it had regard to paragraphs 16, 17, 20, 26 and 32 which state:

*“16. A warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:*

- *there has been a significant departure from Good medical practice, or*
- *there is a significant cause for concern following an assessment of the doctor's performance.*

17. *There is no definition of ‘significant’ in the Medical Act or in the Fitness to Practise Rules. The paragraphs below are therefore intended to help decision makers, at both the investigation and hearing stages, consider whether a warning is appropriate.”*

“20. *The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.*

a. *There has been a clear and specific breach of Good medical practice or our supplementary guidance.*

b. *The particular conduct, behaviour or performance approaches, but falls short of, the threshold for the realistic prospect test or in a case before a tribunal, that the doctor’s fitness to practise has not been found to be impaired.*

c. *A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise. Warnings may be an appropriate response to any type of allegation (subject to the comments in paragraph 7 regarding cases solely relating to a doctor’s health); the decision makers will need to consider the degree to which the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear the potential impact of the conduct, behaviour or performance in question, accordingly.*

d. *There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).”*

“26. *In deciding whether to issue a warning the decision maker should apply the principle of proportionality, weighing the interests of the public with those of the practitioner. It is important to bear in mind, of course, that warnings do not restrict the practitioner’s practice and should only be considered once the decision maker is satisfied that the doctor’s fitness to practise is not impaired.”*

“32. *If the decision makers are satisfied that the doctor’s fitness to practise is not impaired or that the realistic prospect test is not met, they can take account of a range of factors to determine whether a warning is appropriate. These might include:*

- a. *the level of insight into the failings*
- b. *a genuine expression of regret/apology*
- c. *previous good history*
- d. *whether the incident was isolated or whether there has been any repetition*

- e. *any indicators as to the likelihood of the concerns being repeated*
- f. *any rehabilitative/corrective steps taken*
- g. *relevant and appropriate references and testimonials.”*

### The Tribunal’s Determination on Warning

70. The Tribunal carefully considered the submissions made by Ms Fry and Mr Rich and had regard to its findings at the facts and impairment stages.

71. At the impairment stage, although the Tribunal found that there was no current impairment of Dr Ojo’s fitness to practise, the Tribunal identified that Dr Ojo’s actions breached three paragraphs of GMP and that these amounted to serious misconduct. It reminded itself, however, that its decision on impairment was based on the evidence of significant insight and thorough remediation as well as the mitigating circumstances surrounding the event, which included XXX.

72. In considering a warning, the Tribunal noted that at paragraph 11 of the Guidance the purpose of warnings is to allow the Tribunal to indicate that a departure from the standards expected of members of the profession should not be repeated and that they are a formal response in the interests of maintaining good professional standards and public confidence in doctors.

73. The Tribunal had regard to paragraph 32 of the Guidance, which sets out factors to consider when deciding if a warning is appropriate.

74. The Tribunal had regard to its finding at the impairment stage that Dr Ojo has fully developed his insight into his misconduct. It also took into account that Dr Ojo has demonstrated genuine remorse and sincerely apologised for his actions. It found that Dr Ojo had not approached these proceedings as a box ticking exercise but had been motivated by sincere regret for his wrongdoing. The Tribunal also took into account Dr Ojo’s previous good fitness to practise history and that there was no suggestion of any similar misconduct in the past. It noted its finding that this was an isolated incident which had occurred in the context of XXX, which had been precipitated by a significant stressor in his personal life which had occurred only recently at the time of the events. The Tribunal bore in mind that there has been no suggestion of any repetition.

75. The Tribunal accepted XXX that Dr Ojo’s misconduct had been ‘entirely related’ to the extreme situation of stress XXX at the time. The Tribunal took into account the extensive and meaningful rehabilitative steps Dr Ojo has taken in the time since the incident occurred.

76. The Tribunal has also had regard to the very positive testimonials from colleagues and patients, both relating to his current practice and from the time before the incident occurred, testifying to his good character and the high esteem he is held in as a doctor.

77. The Tribunal was satisfied that, having regard to the factors set out in the Guidance and in particular at paragraph 32, a warning was not proportionate in this case. It therefore determined not to issue a warning.

78. That concludes this case.