PUBLIC RECORD

Dates: 22/02/2021 - 26/02/2021 & 16/03/2021

Medical Practitioner's name:	Dr Saranjit SANDHU
GMC reference number:	3338805
Primary medical qualification:	MB BS 1989 University of London

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

Summary of outcome

Suspension, 3 months.

Tribunal:

Legally Qualified Chair	Mrs Kim Parsons
Lay Tribunal Member:	Ms Bronwen Cooper
Medical Tribunal Member:	Dr Neil Smart

Tribunal Clerk:	Ms Anne Bhatti & Mr Matthew Rowbotham

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Philip McGhee, Counsel, instructed by MDU
GMC Representative:	Ms Katie Jones, 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 - 25/02/2021

1. This determination will be read in private. However, as this case concerns Dr Sandhu's caution, a redacted version will be published at the close of the hearing XXX.

Background

2. Dr Sandhu qualified in 1989 from University of London where he had obtained his MB BS. Prior to the events which are the subject of the hearing Dr Sandhu qualified as a GP in 1994 and from 1998 worked as a Partner in a medical practice for 13 years. At the time of the majority of the events Dr Sandhu was practising as a GP at Broadway Surgery in Woodford Green ('the Practice') from 2014 to 12 July 2018. Dr Sandhu took early retirement on his 55th birthday on 13 July 2018. Following Dr Sandhu's retirement, he worked for the Out of Hours service, Partnership of East London Cooperatives, where he did two to three sessions per week.

3. After receiving the police caution in February 2019, Dr Sandhu was able to return to work in September 2019 under NHS conditions, working as a locum GP for the Allum Medical Centre in East London. He currently works there three days per week.

4. The events that gave rise to the caution, came to light on 11 January 2019, when Dr Sandhu attended Allen's Pharmacy, Woodford ('the Pharmacy') and presented a handwritten prescription for collection for Patient 1. According to the prescription, Dr B, a GP, at the Broadway Surgery, was the prescribing doctor. The prescription was for: XXX.

5. The pharmacist at Allen's Pharmacy, Ms A, was concerned about the nature of the prescription and the dosage prescribed. Ms A took the view that too much information had been included on the handwritten prescription. It seemed to her that this may have been included to prevent the pharmacy phoning the surgery to query it. Further, she was concerned as supplying XXX in that quantity was "frowned upon" in practice.

6. Ms A discussed the prescription with her colleague, who had similar concerns. She asked her colleague whether there were any alerts about prescriptions from this particular surgery. He said there were not, but he wanted to talk to her about other prescriptions issued for Patient 1, and another patient (Patient 2). He pointed out that the doctor was

waiting for the prescription as he was on a home visit and wanted to deliver the medication to the patient.

7. Ms A, spoke with the doctor waiting to collect the prescription. She recognised him as Dr Sandhu, as he had previously been her GP. She knew that he was not the doctor mentioned on the prescription, as she knew Dr B was a female. Further, having recently tried to book an appointment at the Surgery with Dr Sandhu, she was aware that he was no longer working there.

8. Ms A asked to speak with Dr Sandhu and flagged up her concern with him regarding the prescription for XXX. Following a discussion with Dr Sandhu about XXX, Dr Sandhu requested XXX and it was given to him by the Pharmacy.

9. After Dr Sandhu left, Ms A's pharmacist colleague expressed concern about other prescriptions issued for this and another patient. Ms A checked the Pharmacy Computer Dispensing System, known as the 'PMR'. She observed that other handwritten prescriptions had been dispensed for Patient 1.

10. According to the PMR, on 11 July 2018 a prescription was issued for Patient 1 for XXX. This was dispensed on 13 July 2018. XXX in the same dosage and quantities were also dispensed on 23 August 2018, and 7 November 2018.

11. The PMR system showed that on 21 June 2018 the Pharmacy dispensed drugs for Patient 2; XXX.

12. Ms A later accessed the Summary Care Record ('SCR'), a patient records system which trained pharmacists are allowed to access. She noted that the medications her pharmacy had dispensed for Patient 1 did not appear on his medication history. She observed there was however, one record on the PMR system that related to a printed, rather than handwritten, prescription. It had been dispensed for Patient 1 on 31/1/2018 and was for the same quantities and dosage of XXX, along with another medication XXX.

13. Due to her concerns, Ms A contacted the Surgery. She spoke with Dr C, a GP Partner at the Surgery. Dr C visited Ms A's Pharmacy. She noted the prescription had her Surgery's address on, but noted the telephone number on the prescription was out of date. The prescription purported to have been issued by Dr B, but Dr C did not recognise it to be Dr B's signature. Dr C said that personally she would not have routinely prescribed XXX for a patient, except in exceptional circumstances.

14. Dr B, the Senior GP partner at the Broadway Surgery confirmed that she had not issued the prescription dated 11 January 2019, nor did she recognise the signature as being from a doctor at the Broadway Surgery, past or present.

15. The records showed that in relation to a printed prescription for Patient 2 dated 29 January 2015 for XXX, the record was marked '*in error, wrong pt [patient]*'.

16. Both Patient 1 and Patient 2 were contacted by the Surgery and both said they had not had any home visits or received the medication prescribed on the prescriptions mentioned.

17. Having discussed matters back at the Surgery, NHS England and the Police were informed.

18. On 17 and 18 January 2018, Dr Sandhu contacted the Practice Manager at the Broadway Surgery by text and telephone. He asked for urgent help, as he had been prescribing for himself using patients' names.

19. Dr Sandhu was subsequently arrested by the police. On 18 February 2019, at Romford Police Station, Dr Sandhu accepted a caution for seven counts of theft by an employee and seven counts of fraud by false representation between 29 January 2015 and 11 January 2019. The caution related to Dr Sandhu self-prescribing medication for himself using patients' details.

20. Dr Sandhu admitted issuing 7 prescriptions in Patient 1 and Patient 2's names. He also said there may have been other occasions when he self-prescribed between 2015 and 2018.

21. On 6 February 2019 Dr Sandhu reported himself to the GMC.

The Outcome of Applications Made during the Facts Stage

22. Mr McGhee made an application on behalf of Dr Sandhu, pursuant to Rule 41 (2) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), for the public to be excluded from the proceedings whilst Dr Sandhu gave his oral evidence. The Tribunal agreed to the application and a full decision is included at Annex A.

The Allegation and the Doctor's Response

23. The Allegation made against Dr Sandhu is as follows:

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

1. On 18 February 2019 at Romford Police Station you accepted a caution for:

    a. seven counts of theft by an employee between 29 January 2015 and 11 January 2019; **Admitted and found proved**

    b. seven counts of section 2 fraud by false representation between 29 January 2015 and 11 January 2019. **Admitted and found proved**

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

The Admitted Facts

24. At the outset of these proceedings, through his counsel, Mr McGhee, Dr Sandhu admitted the factual basis of the case, as set out in paragraph 1 of the Allegation above. In accordance with Rule 17(2)(e) of the Rules, the Tribunal found paragraph 1 of the Allegation proved.

Impairment

25. In light of Dr Sandhu's response to the Allegation made against him, the Tribunal is required to determine whether his fitness to practise is impaired by reason of his caution.

Evidence

26. The Tribunal received evidence on behalf of the GMC in the form of witness statements from the following witnesses, who were not called to give oral evidence:

- Ms A, Pharmacist, Owner of Allen's Pharmacy, dated 14 and 24 February 2020;
- Ms D, Practice Manager, Broadway Surgery, Woodford Green, dated 11 February 2020;
- Dr E, GP Partner, Broadway Surgery, Woodford Green, dated 21 September 2020;
- Dr B, Senior GP Partner, Broadway Surgery, Woodford Green, dated 12 February 2020;
- Ms F, Detective Constable dated 9 December 2020; and
- Dr N, Dr Sandhu's Responsible officer, dated 14 January 2021.

27. Dr Sandhu provided his own witness statements dated 7 January 2021 and 5 February 2021 and also gave oral evidence at the hearing.

28. The Tribunal also received evidence on behalf of Dr Sandhu in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Dr I, Dr Sandhu's Workplace Reporter, dated 15 January 2021;
- Dr J, XXX, dated 3 February 2021.

Expert Witness Evidence

29. XXX:

- Dr K, XXX dated 25 May 2019 and XXX on 6 August 2019;
- Dr L, XXX, dated 20 May 2019 and XXX on 26 July 2019.

Documentary Evidence

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

- Signed adult caution, 18 February 2019;
- Ms A, police witness statement, 31 January 2019;
- Handwritten prescription, 10 January 2019;
- Patient medical records, various dates;
- Ms D, police witness statement, 31 January 2019;
- Dr E, handwritten and typed police witness statement, 30 January 2019;
- Extracts from patients' medical records, 31 January 2018 and 29 January 2015;
- Schedule of dates when medication was prescribed and dispensed;
- Dr B, police witness statement, 30 January 2019;
- Letter from Ms M, XXX dated 15 February 2021;
- Birmingham Live Article;
- XXX;
- XXX.

Dr Sandhu's oral evidence

31. XXX.

32. XXX.

33. XXX.

34. XXX.

35. XXX.

36. XXX.

37. In 2012, Dr Sandhu joined the Broadway Surgery, initially as a locum and then as a salaried GP. XXX.

38. XXX.

39. On 29 January 2015 he self-prescribed XXX. On top of the known seven instances, he said he probably self-prescribed on three or four other occasions between 2015 and 2018. XXX. He would prescribe in the quantities set out in the records and then after three to five days of taking it, XXX he would then destroy the rest. XXX.

40. XXX.

41. XXX.

42. In May 2018, Dr Sandhu took the decision to take early retirement and to work part-time as locum going forward.

43. XXX.

44. Dr Sandhu said he took the blank prescriptions originally to put in his dispensing bag to use for patients on home visits. He said he took around ten at a time and when he was running low he would take a few more. When he left the practice in 2018 and was asked by Ms D to return all surgery property, it did not cross his mind that he still had the blank prescriptions, even though he had used one of these blank prescriptions the day before he left.

45. In 2019, when he self-prescribed, he felt he could not find a way out. XXX.

46. XXX. He recognises now that the steps he took were illegal, very drastic and put his registration at risk.

47. He continued to self-prescribe high volumes even though he was only using them for a few days as he had got into a "rut". XXX.

48. Dr Sandhu said he had considered the impact of his actions on the patients concerned, but by marking the prescription entry up as an error on their records, he thought it would be known they had not received this medication. He appreciates that for the patients involved this is 'terrible'.

49. He understands why he was arrested by the police, who searched his house and took his phone. He also realises that he made a huge error in judgement and explained that in his text to Ms D.

50. He was suspended from work by NHS England in January 2019.

51. XXX.

52. XXX.

53. He regularly speaks to his workplace reporter, his friends and his wife and he is open and receives quite 'incredible' support. He has offered an apology to his colleagues and feels he has let them down and has let the profession down as a whole. Dr Sandhu said he is very remorseful.

Submissions on behalf of the GMC

54. On behalf of the GMC, Ms Jones, Counsel submitted that Dr Sandhu's fitness to practise was impaired and all three limbs of the overarching objective applied. Ms Jones acknowledged the tragic background to the case. Ms Jones submitted that the offences which Dr Sandhu had admitted to when he had received the caution were serious offences of dishonesty which go to the heart of a doctor's probity. She submitted that Dr Sandhu had breached a fundamental tenet of the profession, by acting dishonestly, bringing into question his integrity.

55. Ms Jones submitted that when dishonesty occurs on multiple occasions it is considered serious. She submitted that it was unusual not to find impairment when there was dishonest behaviour. Ms Jones submitted that whilst the attitude and practitioner's mitigation will be considered, the statutory objective of maintaining public confidence in the profession and maintaining proper professional standards was overarching.

56. Ms Jones submitted that there were a number of aggravating factors which should lead to a Tribunal making a finding of impairment here, notwithstanding Dr Sandhu's insight into his behaviour. The aggravating factors included:

- the length of time over which the acts had taken place, between 2015 to 2019;
- the of pattern of behaviour which occurred during that period;
- the significant number of incidents;
- a breach of trust involving his colleagues and in relation to the Pharmacy where he was well known and trusted;
- Dr Sandhu had the opportunity to seek help, did seek help, but failed to seek the significant help required for his specific personal circumstances;
- false trails had been left on patients records;
- he had prescribed himself extremely large quantities of medication.

57. Ms Jones submitted that Dr Sandhu had breached several of the standards of Good Medical Practice, 2013, in particular paragraphs 65, 68 and 71. Ms Jones submitted that that the decision on impairment was to establish whether Dr Sandhu's fitness to practise was impaired today.

58. Ms Jones submitted that Dr Sandhu had shown a significant amount of insight, but, notwithstanding that, when considering the overarching objective, there should be a finding of impairment to maintain standards in the medical profession and public confidence in the profession.

59. Ms Jones referred the Tribunal to the case of the *General Medical Council v Dr Iheanyi Chidi Nwachuku [2017] EWHC 2085 (Admin),* in particular she highlighted paragraphs*:*

'45. Dishonesty encompasses a very wide range of different facts and circumstances. Any instance of it is likely to impair a professional person's fitness to practise: R (Hassan) v General Optical Council [2013] EWHC 1887 per Leggatt J at paragraph [39].

46. Dishonesty constitutes a breach of a fundamental tenet of the profession of medicine: PSA v GMC & Igwilo [2016] EWHC 524. A finding of dishonesty lies at the top end in the spectrum of gravity of misconduct: Patel v GMC Privy Council Appeal No.48 of 2002.

47. A finding of impairment does not necessarily follow upon a finding of dishonesty. If misconduct is established, the tribunal must consider as a separate and discrete exercise whether the practitioner's fitness to practise has been impaired: PSA v GMC and Uppal [2015] EWHC 1304 at paragraph [27].

48. However, it will be an unusual case where dishonesty is not found to impair fitness to practise: PSA v Health and Care Professions Council & Ghaffar [2014] EWHC 2723 per Carr J at paragraphs [45] and [46].

49. The attitude of a practitioner to the allegations made and any admissions of responsibility for the misconduct will be taken into account as relevant factors in determining whether or not fitness to practise has been impaired: Nicholas-Pillai v GMC [2009] EWHC 1048 per Mitting J at paragraph [18].

50. The overarching concern is the public interest in protecting the public and maintaining confidence in the practitioner and medical profession when considering whether the misconduct in question impairs fitness to practise: Yeong v GMC [2009] EWHC 1923 per Sales J at paragraphs [50] and [51]; Nicholas-Pillai (above) at paragraph [27]:

> *"In cases of actual proven dishonesty, the balance ordinarily can be expected to fall down on the side of maintaining public confidence in the profession by a severe sanction against the practitioner concerned. Indeed, that sanction will often and perfectly properly be the sanction of erasure, even in the case of a one-off instance of dishonesty."*

The Outcome of Applications Made during the Impairment Stage

60. Mr McGhee made a further application on behalf of Dr Sandhu, pursuant to Rule 41 (2) of the Rules, for the public to be excluded from the proceedings whilst he made submissions on impairment XXX. Ms Jones did not have any objections to the application.

61. The Tribunal agreed to allow Mr McGhee's application for the submission to be heard in private, due to Dr Sandhu's XXX and personal circumstances being inextricably linked to his conduct.

Submissions on behalf of Dr Sandhu

62. Mr McGhee submitted that Dr Sandhu's conduct related to a culmination of traumatic events that had occurred throughout his life, XXX. He said at the time of the offences, Dr Sandhu XXX, which had affected his decision-making process at the time.

63. Mr McGhee submitted that the evidence did not contradict that Dr Sandhu had taken the medication for only three to five days and had then disposed of the rest. He said he had got into a 'rut' of prescribing in the way he did. He said that when Dr Sandhu was asked by Ms D whether he had any surgery property, the thought did not cross his mind that he had the blank prescriptions in his bag. Mr McGhee submitted that Dr Sandhu's behaviour was an unconscious cry for help, XXX. Mr McGhee submitted that although the dishonest behaviour was repeated on a number of occasions, in the context of a long and unblemished career it should be seen as a single isolated incident.

64. Mr McGhee submitted that since matters were brought to light in 2019, Dr Sandhu had been open with the police, he had acknowledged his admission in a text to Ms D and he had made no excuses about it. Dr Sandhu had accepted that this was terrible for the two patients concerned but his candid acceptance of this was relevant to determine whether his fitness to practise is impaired. Further he submitted that whilst the pharmacy records were not accurate the patients had not been put at any risk of harm.

65. Mr McGhee submitted that Dr Sandhu had developed and shown full insight, a conclusion that had been reach by Dr K, Dr L and Ms M. He highlighted that Dr K had concluded that Dr Sandhu appeared to have a honest and responsible moral compass and these were actions against his belief system.

66. Mr McGhee submitted that Dr Sandhu had expressed remorse and from 2019 had been on a journey in terms of seeking professional help. He had fully engaged in the fitness to practise proceedings. Mr McGhee submitted that there was no need for a finding that his fitness was impaired.

67. Mr McGhee submitted that in all the circumstances, public trust would not be seriously undermined if a finding of no impairment was made in the highly unusual circumstances of this case. He referred the Tribunal to Dr Sandhu's work ethic and positive testimonials from his colleagues. He submitted that there was no real risk of repetition as confirmed by the medical professionals involved with him.

68. Mr McGhee submitted that Dr Sandhu's case is one that falls just below a finding of impairment and the Tribunal could issue a warning. However, taking all the circumstances into account Mr McGhee submitted that there was no need for a finding of impairment.

Legally Qualified Chair's (LQC) Advice

69. The LQC highlighted the case of *Roylance v General Medical Council (No.2) [2000]1 AC 311 (UKPC)* and the two-stage process for determining cases of misconduct. Ms Jones and Mr McGhee later flagged up that this case had only been brought as a caution case, under section 35C(2)(c) Medical Act 1983 and therefore the Tribunal was not required to consider misconduct. The LQC accepted this, and thanked counsel for clarifying this.

70. The LQC highlighted relevant extracts from the cases of *Professional Standards Authority v (1) GMC & (2) Uppal [2015] EWHC 1304 Admin* and *The Professional Standards Authority v (1) GMC & (2) Hilton [2019] EWHC 1906 (Admin)* to assist the Tribunal in determining whether Dr Sandhu's behaviour amounted to an isolated incident.

71. She reminded the Tribunal that a finding of impairment does not necessarily follow upon a finding of dishonesty and referred the Tribunal back to the paragraphs referred to in the case of *Nwachuku*. The Tribunal must consider as a separate and discrete exercise whether the practitioner's fitness to practise is impaired. Further, even where the Tribunal did not find the doctor's behaviour to be an isolated incident, it was still possible in dishonesty cases, for there to be a finding that the doctor's fitness to practise was not impaired.

The Relevant Legal Principles

72. 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.

73. In approaching its decision, the Tribunal was mindful that in order to determine whether Dr Sandhu's fitness to practise is impaired, it is important to look at the underlying factors which led to Dr Sandhu receiving a caution on 18 February 2019.

74. The Tribunal must determine whether Dr Sandhu's fitness to practise is impaired today, taking into account Dr Sandhu's conduct at the time that gave rise to the caution and any relevant factors since then such as whether the matters are remediable, have been remedied and whether there is any likelihood of repetition.

75. Throughout its decision-making process, the Tribunal had regard to the overarching objective. It also had regard to paragraphs XXX, 65, 68 and 71 of the GMP:

> *'XXX.*
>
> *65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*
>
> *68 You must be honest and trustworthy in all your communication with patients and colleagues. […]*
>
> *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.[…]'

76. The Tribunal had regard to the guidance set out in the case of *CHRE v NMC and Paula Grant [2011] EWHC 927 Admin*, which cites Dame Janet Smith in her Fifth Shipman report at paragraph 25.67, where she identified the following as an appropriate test for considering impairment of a doctor's fitness to practise:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

a. has in the past acted and/or is liable in the future to act so as to put 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.'

77. The Tribunal also considered, *Cheatle v. General Medical Council [2009] EWHC 645 (Admin), where Cranston J.* said:

'In my judgment this means that 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 at the time of the misconduct and to the present time, is such as to mean that his/her fitness to practise is impaired. The doctor's misconduct at a particular time may be so egregious that, looking forward, the 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, the fitness to practise panel could conclude that, looking forward, his/her fitness to practise is not impaired, despite the misconduct.'

The Tribunal's Determination on Impairment

78. The Tribunal went on to consider whether, as a result of Dr Sandhu's caution, his fitness to practise is currently impaired.

79. The Tribunal considered paragraphs b, c, and d applied, as set out in Dame Janet Smith's Fifth Shipman report, in Dr Sandhu's case. His actions had brought the medical

profession into disrepute, had breached a fundamental tenet of the medical profession and he had been dishonest.

80. The Tribunal found that Dr Sandhu had breached paragraphs 65, 68 and 71 of GMP.

81. The Tribunal considered whether this was an isolated incident, during an otherwise unblemished career. However, it took the view that given the length of time over which Dr Sandhu's behaviour occurred, which amounted to approximately one sixth of his GP career, it could not appropriately be seen as isolated. The Tribunal also considered that whilst there were a number of tragic intervening events during this period, which led to Dr Sandhu XXX, he had chosen to self-medicate. Further, whilst there was a pattern in terms of the medication he prescribed for himself, he attempted to conceal his dishonest behaviour in a number of different ways over the period concerned, with each prescription issued.

82. XXX.

83. Dr Sandhu, in his evidence, stated that XXX. The Tribunal considered Dr Sandhu had experienced extremely tragic personal circumstances which had led to XXX, but were concerned that he continued to self-prescribe over a lengthy period, XXX.

84. The Tribunal identified a number of factors, that it considered were aggravating, in the circumstances of Dr Sandhu's caution:

- The length of time the conduct went on for; for 4 years between 2015 to 2019.
- That the prescriptions were taken and the medication prescribed in the course of Dr Sandhu's employment, where he was in a position of trust.
- That he had issued the prescriptions in another doctor's name.
- He had repeated his behaviour of self-prescribing, on at least seven separate occasions.
- Whilst there was no evidence of the patients concerned suffering any actual harm, patient and pharmacy records had been compromised by Dr Sandhu's actions.
- When Dr Sandhu presented himself at the pharmacy to collect the prescription on 11 January 2019, after he had stopped working at Broadway Surgery, he was challenged by the pharmacist. However, despite this, he still asked for and took away the medication.
- Between June and August 2018, he self-prescribed XXX, using them, he said, for three to five days only and disposing of the rest. He accepted that self-prescribing at that volume was frowned upon in dispensing practice.
- He also acknowledged that, at the time he was prescribing himself this medication, he was well aware that it was unlikely that he would have been prescribed this particular medication XXX.
- XXX.

- When asked to return property to the surgery on the date of his retirement Dr Sandhu had not returned the blank prescriptions that he had in his dispensing bag. In his oral evidence he stated that it did not cross his mind to do so. The Tribunal did not find this convincing, given that he had issued a handwritten prescription in the terms outlined the day before, and the medication was dispensed the following day.

85. The Tribunal next identified a number of mitigating factors:

- Dr Sandhu was suffering from XXX at the time of the events, which arose from exceptional and extraordinary personal tragedy and circumstances. XXX. He had not felt able to share information about them for reasons that Dr J felt were not surprising, in his circumstances.
- XXX.
- Dr Sandhu admitted his dishonesty soon after the incident on 11 January 2019, first to the Practice Manager, then to the Police. He was candid about there likely being other occasions, on top of the seven known instances, where he self-prescribed. He self-reported to the GMC. He has co-operated fully with his regulator in the context of these fitness to practise proceedings.
- Dr Sandhu has no previous fitness to practise concerns, and is considered to have had a successful career in medicine. He is well regarded by the practice he is working at currently. There have been no patient or prescribing concerns raised since he started working at this practice in September 2019.

86. Taking everything into account, the Tribunal considered that Dr Sandhu's conduct was serious and not isolated, as evidenced by the number of aggravating features set out above.

87. The Tribunal went on to consider whether Dr Sandhu has taken steps to remediate his behaviour. The Tribunal was of the view that the Dr Sandhu has taken considerable steps to remediate:

- he acknowledged his admission in a text to Ms D very soon after the pharmacy incident;
- self-referred himself to the GMC;
- accepted a police caution;
- XXX;
- XXX;
- XXX;
- talked openly with other colleagues, family members and professionals;
- apologised to his colleagues and the staff at the pharmacy;
- returned to practise in 2019 with NHS conditions, with positive testimonials about his contribution to date;
- appreciated the need to preserve an appropriate work life balance to maintain his good health;

- put in place XXX so that he and others could identify when XXX;
- admitted the facts before this Tribunal.

The Tribunal considered that Dr Sandhu had therefore done extensive reflection.

88. The Tribunal took the view that there was a minimal risk of repetition, particularly given Dr Sandhu's level of insight into why he had behaved as he had. The Tribunal noted Dr Sandhu's successful engagement with XXX. Further the Tribunal noted the view of the medical professionals that there was a minimal risk of him self-medicating in future.

89. XXX.

90. The Tribunal considered that even with full insight, reflection and remediation being demonstrated it could still be necessary to find current impairment in order to maintain public confidence and uphold proper standards in the profession. The Tribunal took into account the serious features of this case and concluded that Dr Sandhu's conduct fell so far short of the standards of conduct to be reasonably expected of a doctor even in these unusual circumstances, that to promote and maintain public confidence in the medical profession and to maintain proper professional standards and conduct for members of that profession, the only conclusion that it could properly reach was a finding of current impairment.

91. The Tribunal has therefore determined that Dr Sandhu's fitness to practise is impaired by reason of his caution.

Determination on Sanction - 16/03/2021

1. This determination will be read in private. However, as this case concerns Dr Sandhu's caution, a redacted version will be published at the close of the hearing XXX.

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

The Evidence

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

Submissions

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

4. On behalf of the GMC, Ms Jones submitted that the Tribunal should have regard to the Sanctions Guidance (November 2020) ('SG') and be mindful that the main reason for sanctions is to protect the public. Sanctions are not intended to be punitive although they may have a punitive effect. She reminded the Tribunal of the overarching objective.

5. Ms Jones submitted that the Tribunal should take into account the mitigating and aggravating factors of this case, and highlighted paragraph 24 of SG, which states:

> *'The tribunal needs to consider and balance any mitigating factors presented by the doctor against the central aim of sanctions. The tribunal is less able to take mitigating factors into account when the concern is about patient safety, or is of a more serious nature, than if the concern is about public confidence in the profession.'*

6. In mitigation, Ms Jones referred the Tribunal to paragraphs 24-49 of the SG and paragraph 85 of its impairment determination. Ms Jones submitted that the GMC accepts that there is relevant evidence that Dr Sandhu understands the problem he faced, has insight into it and has remediated. She said Dr Sandhu has no previous fitness to practise findings and has adhered to the principles of Good Medical Practice aside from the actions which led to his impairment. Further, there have been no concerns with Dr Sandhu's practice since January 2019 and the risk of him repeating his actions is low. Ms Jones also submitted that Dr Sandhu's personal mitigation and the background of this case were also clearly relevant. In addition, Ms Jones invited the Tribunal to review the references it had received on behalf of Dr Sandhu and consider what weight to give to them.

7. Ms Jones submitted that the Tribunal may feel, in aggravation, that Dr Sandhu had abused his professional position by dishonestly obtaining prescriptions via his surgery and his former surgery. She referred the Tribunal to paragraphs 50 and 55 (d) of the SG and paragraph 84 of its impairment determination. She submitted that this was a serious breach of the trust Dr Sandhu's colleagues and the pharmacy placed in him as a doctor.

8. Ms Jones submitted that taking no action would not be appropriate as the concerns were far too serious. Similarly, the imposition of conditions would also not be appropriate or proportionate given the seriousness and significance of his dishonesty.

9. Ms Jones submitted that this case fitted into the guidance set out in the SG on the sanction of suspension. In particular, Ms Jones highlighted paragraphs 93 and 124 of the SG, which state:

> *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.*
>
> *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.*

Ms Jones highlighted paragraph 91 of the SG pointing out that suspension has a deterrent effect and can be used to send a signal to the doctor, the profession and the public regarding behaviour unbefitting of a doctor. Further she pointed out paragraph 116 in relation to Dr Sandhu's caution, stating the purpose of sanctions is not to punish for a second time, but to maintain high standards and the good reputation of the profession.

10. When considering dishonesty, Ms Jones pointed out there had been a breach of GMP paragraphs 65, 68 and 71; that registered doctors must be honest and trustworthy. Further she highlighted paragraph 124, that whilst the dishonesty may not result in direct harm to patients, dishonesty outside of the doctor's clinical responsibility (for example making false statements) is particularly serious as it can undermine the trust that the public places in the medical profession.

11. Ms Jones referred to paragraph 125(b) as an aggravating factor, in that Dr Sandhu had made false statements on patient records. She said in relation to paragraph 97 (a), (e), (f) and (g), these were engaged.

12. Ms Jones submitted that the Tribunal had found that Dr Sandhu had acknowledged his fault; shown great motivation to remediate and that his behaviour is unlikely to be repeated. She submitted that his actions were not fundamentally incompatible with being a doctor. However, given all the circumstances of this case, a sanction of suspension was a proportionate response.

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

13. On behalf of Dr Sandhu, Mr McGhee submitted that, with regard to the case of *Bolton v Law Society [1994] 1 WLR 512*, where the court held that,

> *'the reputation of the profession is more important than the fortunes of any one individual member. Membership of a profession brings many benefits, but that is a part of the price'*

there is no need to impose a sanction on the grounds of public protection or risk of repetition.

14. Mr McGhee submitted that the Tribunal must therefore consider if a sanction is appropriate in the wider public interest. He submitted that the Tribunal's considerations should reflect that of an informed, reasonable member of the public, and assess public confidence in the medical profession at the standard of an ordinary, intelligent citizen who

was aware of the aggravating and mitigating circumstances as well as all the personal mitigation and cited, *Wallace v Secretary of State for Education [2017] EWHC 109*.

15. Mr McGhee referred the Tribunal to the case of *Giele v GMC [2005] EWHC 2143 Admin* for the correct approach to the question of sanctions, in particular what was needed to maintain public confidence in the profession.

16. Mr McGhee submitted that the aggravating and mitigating factors in this case should be weighed and evaluated, considering whether public confidence in the profession has been undermined and cited, *Arunachalam v GMC [2018] EWHC 758*. He submitted that the finding of impairment the Tribunal has already made is itself a significant public marker, and that there is no need to issue a sanction as a deterrent.

17. Mr McGhee submitted that Dr Sandhu's actions did not occur in a vacuum. Instead they occurred whilst he was XXX, and that XXX was the driving force behind his dishonest conduct. XXX. Mr McGhee suggested that to suspend Dr Sandhu for his actions during XXX, which was no fault of Dr Sandhu's, would send a perplexing message to the public given his reduced culpability. He said as a result of this XXX, there were cogent and robust reasons for his actions.

18. Mr McGhee submitted that suspending Dr Sandhu would have a punitive effect, and reminded the Tribunal that those who had assessed Dr Sandhu had found that he could currently work in an unrestricted capacity. XXX. Mr McGhee highlighted that Dr Sandhu has been back in work for nearly 18 months, and is likely to be offered a permanent role following these proceedings. Mr McGhee also submitted that Dr Sandhu has fully engaged with these proceedings and the police investigation. Mr McGhee said that a member of the public would not expect Dr Sandhu to be punished given what he has been through.

19. Mr McGhee submitted that whilst Dr Sandhu's conduct may not be seen as isolated, after the 2015 prescription, there were significant gaps where Dr Sandhu did not self-prescribe. He submitted that his behaviour was episodic linked to XXX, particularly during the period 2018 to 2019, and it could be viewed as taking place over a shorter period of a year. He submitted that Dr Sandhu fully understands what he has done and has reflected on the issues. Mr McGhee said that Dr Sandhu had engaged with help when offered, and outlined why he found it difficult to raise these issues with XXX earlier.

20. Mr McGhee said that the mitigating factors in this case could be summarised as:

- It being episodic and not sustained;
- It was inextricably linked to XXX;
- It did not put patients at risk of harm or affect the clinical care provided by Dr Sandhu;
- Of the drugs prescribed, he did not take the vast amount, he destroyed the rest and put them out of reach;
- He had engaged fully with the help he had been offered;

- He had co-operated fully with his regulator;
- XXX;
- There was a minimal risk of repetition.

Mr McGhee said in Dr Sandhu's case there had been considerable remediation, extensive reflection and full insight. He submitted it was a rare case where all of these factors existed in total.

21. Mr McGhee drew the Tribunal's attention to the positive references Dr Sandhu had received. Dr Sandhu was described as reliable, conscientious and a pleasure to work with, by his Workplace Reporter in the surgery where he had worked for 18 months after receiving a caution. During the 18 months there had been no prescribing concerns.

22. Mr McGhee submitted that Dr Sandhu's extraordinary and traumatic personal mitigating factors might have felled another individual. His personal circumstances were of such an exceptional nature and so compelling that they are highly relevant. Mr McGhee invited the Tribunal to consider this as a rare case where taking no action would be justified. He said it was hard to conceive that if this was not exceptional, what was. He said that a member of the public would be concerned and perturbed to learn if action was taken in this case.

The Tribunal's Determination on Sanction

23. The decision as to the appropriate sanction, if any, is a matter for this Tribunal exercising its own judgment.

24. In reaching its decision, the Tribunal has taken account of the SG and the statutory overarching objective. It has borne in mind that the purpose of sanctions is not to be punitive, but to protect patients and the wider public interest, although the sanction may be of punitive effect. Further, that any sanction must be proportionate, but that *'...the reputation of the profession as a whole is more important than the interests of any individual doctor*' (SG paragraph 17).

25. Throughout its deliberations the Tribunal has applied the principle of proportionality, balancing Dr Sandhu's interests with the public interest. It reminded itself that it should only impose the minimum sanction necessary to achieve the overarching objective. In deciding what sanction, if any, to impose the Tribunal considered each of the sanctions available, starting with the least restrictive.

26. The Tribunal firstly considered the aggravating and mitigating factors in this case. The Tribunal noted its findings as set out in paragraphs 84 and 85 of its impairment determination. The Tribunal had regard to paragraph 55 of the SG and considered that subparagraph (d) applied here. Dr Sandhu had abused his professional position when he self-prescribed on at least seven occasions, issuing the prescriptions in another doctor's name and making false statements on patient records, obtaining the medication on false pretences,

and prescribing for himself a volume of drugs which was frowned upon in dispensing practice. The Tribunal considered Dr Sandhu's caution, for offences of dishonesty over a period of four years, to be serious.

27. Balanced against that the Tribunal noted:

- Dr Sandhu had a history of trauma XXX and was suffering from XXX at the time of the events. XXX. He had not felt able to share information about them for reasons that Dr J felt were not surprising, in his circumstances.
- XXX.
- Dr Sandhu accepted a caution from the police and has made full admissions to this Tribunal. He co-operated fully with the investigation and his regulator throughout.
- After Dr Sandhu had been arrested, he sought help XXX promptly and had engaged fully and openly XXX.
- XXX.
- It was two years since the last incident and there were no prescribing concerns. Dr Sandhu was working as a GP during this time
- There were no previous fitness to practise findings. Dr Sandhu was in all other respects a good and competent doctor.
- Dr Sandhu had demonstrated considerable remediation as set out in paragraph 87 of the Tribunal's determination on impairment, exhibiting extensive reflection and full insight into the reasons for his offending behaviour. Dr Sandhu had apologised for his actions and shown remorse.
- Dr Sandhu's positive testimonials and references, and the positive statement from his responsible officer.

28. The Tribunal noted paragraph 24 of the SG:
'The Tribunal needs to consider and balance any mitigating factors presented by the doctor against the central aim of sanctions (see paragraph 14-16). The tribunal is less able to take mitigating factors into account when the conduct is about patient safety, or is of a more serious nature, than if the concern is about public confidence in the profession.'

No action

29. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Sandhu's case, the Tribunal first considered whether to conclude the case by taking no action. The Tribunal considered the following paragraphs of the SG:

'68 Where a doctor's fitness to practise is impaired, it will usually be necessary to take action to protect the public. But there may be exceptional circumstances to justify a tribunal taking no action.

69 To find that a doctor's fitness to practise is impaired, the tribunal will have taken account of the doctor's level of insight and any remediation, and therefore these mitigating factors are unlikely on their own to justify a tribunal taking no action.

70 Exceptional circumstances are unusual, special or uncommon, so such cases are likely to be very rare. The tribunal's determination must fully and clearly explain:

a what the exceptional circumstances are
b why the circumstances are exceptional
c how the exceptional circumstances justify taking no further action.'

30. The Tribunal took into consideration the mitigating and aggravating factors as set out above and concluded that the mitigating factors here did not outweigh the aggravating factors, when considering the overall seriousness of this case. The Tribunal accepted that Dr Sandhu's XXX tragic and unusual personal circumstances, had significantly contributed to his offending behaviour. However, the Tribunal did not consider that XXX absolved him of culpability for his actions. Dr Sandhu accepted that he behaved dishonestly, he knew what he was doing was illegal, and that his actions were drastic and outwith his own moral compass. The Tribunal bore in mind, that in all other respects, Dr Sandhu continued to practise competently as a doctor over this extended period, with no patient safety concerns or other concerns regarding his judgement.

31. The Tribunal acknowledged that at the time of these events Dr Sandhu did not feel able to discuss these matters openly XXX. Had he sought appropriate help sooner this may have reduced the risk of repeating his offending behaviour. The Tribunal concluded that a reasonable member of the public fully appraised of all the circumstances, would not consider these to be exceptional, such that no action is warranted. Dr Sandhu had acted fraudulently and abused his position of privilege and trust as a doctor. Given the seriousness of the offending the mitigation put forward by Dr Sandhu does not in the Tribunal's view justify taking no action.

32. The Tribunal considered that Dr Sandhu had full insight into his behaviour and had taken considerable remedial action. However, the Tribunal concluded it would be neither sufficient, proportionate nor in the public interest, to conclude this case by taking no action.

Conditions

33. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Sandhu's registration. Any conditions imposed would need to be appropriate, proportionate, workable and measurable.

34. Given the seriousness with which it viewed his conduct, the Tribunal determined that a period of conditional registration would not adequately maintain public confidence in the profession nor uphold proper standards of conduct for members of the profession.

Suspension

35. The Tribunal moved on to consider whether it would be appropriate to impose a period of suspension on Dr Sandhu's registration. Paragraph 91 of the SG was given consideration:

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

36. The Tribunal identified the following factors as set out in paragraph 97 of the SG as relevant in Dr Sandhu's case, indicating suspension may be appropriate where there is:

> *'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. '*

37. The Tribunal identified that paragraphs 65, 68 and 71 of GMP had been breached and a sanction lower than suspension would not be sufficient to maintain confidence in the profession and uphold proper professional standards. There was no evidence that remediation would not be successful and in the last two years since the incident there had been no repeat of similar behaviour. Dr Sandhu had shown full insight and there was a low risk of repetition as per the reasons set out in the impairment determination. The Tribunal found that Dr Sandhu's conduct was not fundamentally incompatible with continued registration.

38. The Tribunal concluded that due to the nature of the conduct, the fact that Dr Sandhu had abused his position as a doctor in order to commit illegal acts of self-prescribing using patient records, a period of suspension was appropriate in order to mark the seriousness of his offending, maintain public confidence in the profession and to maintain proper professional standards and conduct for members of the profession.

39. Having determined that a period of suspension was appropriate in this case, the Tribunal went on to decide what the appropriate length of the suspension should be. In doing so, the Tribunal considered paragraph:

'100 The following factors will be relevant when determining the length of suspension:
a the risk to patient safety/public protection
b the seriousness of the findings and any mitigating or aggravating factors
c ensuring the doctor has adequate time to remediate.'

The Tribunal determined that risk of repetition was low and there had been no risk to patient safety throughout his GP career. The Tribunal also considered the aggravating and mitigating factors as set out in its impairment determination. The Tribunal took into consideration that Dr Sandhu had used the time since he had been apprehended very positively and had taken steps to remediate and put his life back on track.

40. The Tribunal then went on to consider the examples at page 30 in the SG, of the aggravating factors that are relevant to the length of suspension. The Tribunal considered that there had been a departure from GMP as set out above. Given the seriousness of Dr Sandhu's actions, the Tribunal determined to suspend Dr Sandhu's registration for a period of three months. It considered that this would be proportionate in upholding the public interest and particularly public confidence in the medical profession and promoting and maintaining proper professional standards and conduct for members of that profession, whilst not having an overly punitive effect on Dr Sandhu.

41. The Tribunal determined that given Dr Sandhu's level of insight and remediation and that he posed a very low risk of repetition a review would not be necessary in this case.

Determination on Immediate Order - 16/03/2021

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

Submissions

2. On behalf of the GMC, Ms Jones, Counsel submitted that an interim order was not required in this case.

3. On behalf of Dr Sandhu, Mr McGhee, Counsel, made no submissions on the matter.

The Tribunal's Determination

4. The Tribunal has taken account of paragraph 172 of the SG which states:

'The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a

position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public' interest, which may require an immediate order.'

5. The Tribunal has determined that an immediate order is not necessary in the public interest. Dr Sandhu has been practising with conditions, without any prescribing issues and there are no patient safety concerns. The Tribunal is of the view that Dr Sandhu has shown himself to be a competent and well-respected doctor and he has not submitted that it is in his best interests to make an immediate order.

6. The substantive decision of three months suspension, as already announced, will take effect 28 days from when notice is deemed to have been served upon Dr Sandhu, unless he lodges an appeal in the interim.

7. That concludes the case.

Confirmed
Date 16 March 2021 Mrs Kim Parsons, Chair

ANNEX A – 22/02/2021

Application to Exclude the Public from the Proceedings

1. This determination will be read in private. However, as this case concerns Dr Sandhu's caution, a redacted version will be published at the close of the hearing XXX.

2. At the outset of the hearing, Mr McGhee on behalf of Dr Sandhu, made an application under Rule 41(2) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules') for the public to be excluded from the proceedings when Dr Sandhu gives his oral evidence regarding impairment.

Evidence

3. XXX

Submissions

On behalf of Dr Sandhu

4. Mr McGhee, Counsel submitted that effectively all parts of the hearing should be heard in private when Dr Sandhu gives his evidence. XXX.

5. XXX.

6. Mr McGhee submitted that he was not going to repeat what was in Dr Sandhu's statement but that parts of this evidence would touch on matters relating to XXX. Mr McGhee said that he did not envisage any of the questions put to Dr Sandhu, would not fall within this application because XXX had had an impact on his conduct.

On behalf of the GMC

7. Ms Jones submitted that she had no objection to the application under Rule 41 (2) because XXX and the circumstances of the caution were bound up.

Tribunal's Decision

8. The Tribunal had regard to Rule 41(2) of the Rules, which reads as follows:

> *'(2) The Committee or Medical Practitioners Tribunal may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the particular circumstances of the case outweigh the public interest in holding the hearing in public.'*

9. The Tribunal balanced Dr Sandhu's interests with the public interest in hearings being held in public. The Tribunal regarded Dr Sandhu's XXX and the facts of this case in relation to the highly sensitive personal details about XXX, which had led to XXX, as being so inextricably linked that it would not be feasible to separate them out.

10. The Tribunal considered that normally the public interest outweighed the doctor's interest, to ensure the hearing is fair and transparent. The Tribunal concluded that due to these usual circumstances, hearing Dr Sandhu's evidence in private would outweigh the public interest in holding it in public.

ANNEX B – 26/02/2021

Application to Adjourn

1. On the fifth day of this MPTS hearing, the Tribunal, of its own volition, under Rule 29(2) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'), determined to adjourn. This Rule states:

> *"Where a hearing of which notice has been served on the practitioner in accordance with these Rules has commenced, the Committee or Tribunal considering the matter may, at any stage in their proceedings, whether of their own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as they think fit."*

2. The Tribunal considered that there was insufficient time to conclude this hearing. It found that it would need one further day to conclude the hearing, which adjourned following submissions on sanction.

3. Neither Ms Jones nor Mr McGhee opposed the adjournment.