PUBLIC RECORD

Dates: 09/05/2022 - 20/05/2022

Medical Practitioner's name:	Dr Seshni MOODLIAR
GMC reference number:	6063076
Primary medical qualification:	MB ChB 2000 University of the Orange Free State

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

Summary of outcome

Conditions, 18 months.
Review hearing directed
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mr Ian Comfort
Lay Tribunal Member:	Mr Robert McKeon
Medical Tribunal Member:	Dr Gabrielle Downey

Tribunal Clerk:	Ms Keely Crabtree

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Ms Helena Duong, Counsel, instructed by Mr Amardeep Nibber, MDS
GMC Representative:	Mr Lee Fish, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 17/05/2022

Background

1. Dr Moodliar completed her MB ChB at the University of the Orange Free State, South Africa in 2000. She gained full GMC registration on 2 December 2002 and moved to the UK in January 2003. Between 2003 and 2014, she worked in various mental health roles in general and forensic psychiatry inpatient units.

2. Dr Moodliar obtained her MRCPsych from the Royal College of Psychiatry in London in 2012. In 2015, she became a Consultant Psychiatrist in Learning Disability and obtained her registration on the specialist register Psychiatry of Learning Disability on 31 March 2015.

3. Dr Moodliar has been undertaking medico-legal work since 2005 in non-training posts and subsequently in training grade posts.

4. The initial concerns were raised with the GMC on 18 January 2020 by Dr C. The concerns related to Dr Moodliar's work as an expert witness.

5. The allegation that has led to Dr Moodliar's hearing is that in November 2017, Dr Moodliar acted as an expert witness for the prosecution in the case of Patient A and dishonestly copied sections of another doctor's expert report.

6. Further, it is alleged that between September and December 2019, when acting as an expert witness for the defence in the case of Patient B, Dr Moodliar failed to adequately assess Patient B. It is also alleged that Dr Moodliar acted beyond her training and expertise and failed to prepare an expert report that was factually accurate.

The Outcome of Applications Made during the Facts Stage

7. The Tribunal refused Dr Moodliar's application, made pursuant to Rule 17(2)(g) and 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). The Tribunal also refused Mr Fish's application, on behalf of the GMC, made pursuant to Rule 17(6) of the Rules. The Tribunal's full decision on the application is included at Annex A.

8. The Tribunal granted Dr Moodliar's application to change her admission to paragraph 3(e) of the Allegation. The Tribunal's full decision on the application is included at Annex B.

The Allegation and the Doctor's Response

9. The Allegation made against Dr Moodliar is as follows:

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

1. In November 2017, you acted as an expert witness for the Prosecution in the case of Patient A and you:
    a. copied sections of Dr C's expert report; Admitted and found proved
    b. submitted the report as if it was all your own work; To be determined
    c. knew that sections of the report were not your own work. Admitted and found proved
2. Your actions as described at paragraph 1a and 1b were dishonest by reason of paragraph 1c. To be determined
3. Between September and December 2019, you acted as an expert witness for the Defence in the case of Patient B and you:
    a. failed to assess Patient B adequately in that you did not:
        i. obtain a detailed background history; To be determined
        ii. perform a detailed mental state assessment, detailing the symptoms reported at the time of the assessment; To be determined

iii. check the veracity of Patient B's account by:

1. corroborating the information which he provided; To be determined

2. adequately considering the documents provided, including the medical records; To be determined

iv. explore the symptoms and possibility of:

1. insanity; To be determined

2. schizophrenia; To be determined

3. psychosis; To be determined

b. failed to prepare an expert report which was factually accurate, in that you asserted that Patient B had been seen by the CPS expert who had concluded that he had diminished responsibility, and you:

i. were unable to state where this information was obtained from; Admitted and found proved

ii. admitted that this was an error; Admitted and found proved

c. acted beyond your training and expertise in that you served as an expert witness without:

i. possessing sufficient knowledge of:

1. diminished responsibility; To be determined

2. the offence with which Patient B was charged; To be determined

ii. undergoing higher training in forensic psychiatry; To be determined

d. failed to keep adequate records; To be determined

e. failed to record your actions as set out at paragraph 3a. To be determined

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

The Admitted Facts

10. At the outset of these proceedings, through her counsel, Dr Moodliar made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

Witness Evidence

11. The Tribunal received evidence on behalf of the GMC from the following witnesses:

- Dr C, Consultant Forensic Psychiatrist, by video link.

12. Dr Moodliar provided her own witness statement dated 4 April 2022 and also gave oral evidence at the hearing.

13. The Tribunal also received evidence on behalf of Dr Moodliar in the form of two testimonials.

Expert Witness Evidence

14. The Tribunal received an expert report dated 2 June 2020 and addendum expert report dated 9 July 2021 prepared by Dr D expert witness for the GMC. Dr D also gave oral evidence to the Tribunal.

Documentary Evidence

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

- Psychiatric report of Dr C of Patient A dated 11 August 2017;
- Psychiatric report of Dr Moodliar, Patient A dated 14 November 2017;
- Expert joint statement, Patient A dated 17 November 2017;
- Opening note - R v Patient B dated 23 January 2019;
- Independent psychiatric assessment of Patient B dated 17 June 2019;
- Report of Dr Moodliar for the case of Patient B dated 9 October 2019;
- Opening note - R v Patient B dated 8 December 2019;
- Addendum report of Dr Moodliar for the case of Patient B dated 9 December 2019;
- Witness evidence of Dr Moodliar - R v Patient B dated 13 December 2019;

- Witness evidence of Dr Moodliar - R v Patient B dated 16 December 2019;
- Sentencing remarks - R v Patient B dated 10 January 2020;
- Online complaint form submitted to the GMC by Dr C dated 18 January 2020;
- Expert report of Dr D dated 2 June 2020;
- Addendum expert report of Dr D dated 9 July 2021;
- Details of training Dr Moodliar has undertaken;
- Dr Moodliar's CPD and Course Certificates;
- Dr Moodliar's CV undated;
- Expert Instructions for Patient A dated 6 October 2017;
- Expert Instructions for Patient B dated 16 September 2019;
- Unamended Version of Addendum Report dated 9 December 2019;
- Emails between Dr Moodliar and Dr C dated November 2017;
- Emails between Dr Moodliar and Professor E dated 22 November 2017;
- Gamma hydroxybutyrate (GHB), gamma butyrolactone (GBL) and 1,4-butanediol (1,4-BD;BDO): A literature review with a focus on UK fatalities related to non-medical use; Novel psychoactive substances of interest for psychiatry; Novel psychoactive substan
- ces (NPS): clinical and pharmacological issues;
- Additional Joint Expert Report dated 22 November 2017;
- Letter from Dr C's Instructing Solicitors dated 18 February 2022;
- Clinical Supervisor's Report dated 9 December 2021 and 4 March 2022;
- Dr Moodliar's feedback from the 'Pass the CASC' Book;
- Dr Moodliar's feedback and references from Section 12 work;
- Dr Moodliar's feedback from employers;
- Dr Moodliar's MAG form for her appraisal dated 30 January 2021.

The Tribunal's Approach

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

17. In relation to the allegation of dishonesty, the Tribunal was reminded that the correct test is as set out in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 in which a two-stage test must be applied as follows:*

> *1. First ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of their belief is a matter of evidence going to whether they held the belief, but it is not an additional requirement that their belief must be reasonable; the question is whether it is genuinely held.*

> *2. When once the doctor's actual state of mind as to knowledge or belief as to facts is established, the question whether their conduct was honest or dishonest is to be determined by [this tribunal] by applying the (objective) standards of ordinary decent people. There is no requirement that the doctor must appreciate that what they have done is, by those standards, dishonest.*

18. The Legally Qualified Chair reminded the Tribunal that Dr Moodliar was of good character. Good character is not a defence to any allegation However, evidence of good character counts in Dr Moodliar's favour in two ways:

1. her good character supports her credibility and so is something which the Tribunal should take into account when deciding whether they believe her evidence (the 'credibility limb'); and

2. her good character may mean that she is less likely to have committed the act with which she is charged (the 'propensity limb').

19. It is for the Tribunal to decide what weight it gives to the evidence of good character, taking into account everything it has heard about the doctor.

20. The Legally Qualified Chair referred to the article from the BJPsych Advances provided by Dr Moodliar, which considers expert evidence following the case of Pool v GMC [2014] EWHC 3791. In that case entry on the GMC specialist register and to have undergone higher training was raised as an important factor by the GMC's expert witness. It has been similarly raised in this hearing by Dr D. Mr Fish had accepted that it is not an absolute requirement to be on the specialist register. The case law in the article reminds the Tribunal that it is a question of fact in each individual case whether someone is a medical 'expert' in a field, based on consideration of the combination of their skills, qualifications, training and experience. Dr Moodliar was acting as an expert in criminal proceedings. The required content of an expert's report in criminal proceedings is set out in rule 19.4 of the Criminal Procedure Rules 2015. These were the rules (as amended) that were applicable both in 2017 and 2019. Rule 19.2 makes it clear that an expert has an overriding duty to the court when preparing their report and giving evidence. The Rules are supplemented by the Criminal Practice Directions 2015 (as amended). Directions regarding Expert Evidence are set out at part 19 A.

21. The GMC and Dr D. rely in part on Dr Moodliar's evidence at the trial of Patient B. The Tribunal has been provided with a copy of the trial transcript and the judge's sentencing remarks. The Legally Qualified Chair reminded the Tribunal that it should consider all of Dr Moodliar's evidence given at the trial not just the cross examination or sentencing remarks. He referred to the case of *Meadow v General Medical Council* [2007] QB 462 (referenced in *Squier v GMC (2016) EWHC 2739*) where the following advice was given:

> *" Where the conduct of an expert alleged to amount to a professional offence under scrutiny by his professional disciplinary body arises out of evidence that he has given*

to a court or other tribunal, it is, therefore, important that that body should fully understand and assess his conduct in the forensic context in which it arose. Of great importance are the circumstances in which he came to give the evidence, the way in which he gave it, and the potential effect, if any, it had on the proceedings and their outcome. If the disciplinary body lacks information to enable it properly to assess the expert's conduct in that forensic context, or fails properly to take it into account, a court reviewing its determination, is likely to bring important insights of its own into the matter. Not least amongst those should be an appreciation of the isolation of an expert witness, however seasoned in that role in the alien confines of the witness box in an adversarial contest over which the judge and the lawyers hold the sway…… In that, sometimes, fevered process, mistakes can be made, ill- considered assertions volunteered or analogies drawn by the most seasoned court performers, whatever their role."

The Tribunal's Analysis of the Evidence and Findings

22. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

Paragraph 1(b)

23. Dr Moodliar stated that when completing her expert witness psychiatric report for Patient A she did not plagiarise, nor did she have any intention of plagiarising Dr C's report. She stated that she had referenced that she had reviewed Dr C's report in the '*Sources of Information'* section of her report.

24. Dr Moodliar said that she had read Dr C's report, researched the information and had reached similar opinions to Dr C. She stated that she had also provided Dr C and the instructing solicitor with copies of her research materials.

25. Dr Moodliar stated that she had '*borrowed'* some of Dr C's information in her report as she had agreed with his opinion and was in no way trying to pass it off as her own work. She said that there were only so many ways in which you could write something. Dr Moodliar said that it had been an unintentional error on her part that she did not make it clear to the reader that she had agreed with Dr C's opinion by citing his name at the point where she used his exact wording. Dr Moodliar stated that she had personally elicited Patient A's history, schooling, occupational and relationship history, which was largely similar to, if not exactly the same as, the information provided to Dr C.

26. The Tribunal first considered Dr Moodliar's Psychiatric report dated 14 November 2017. The report does not attribute anything to Dr C. The Tribunal was of the view that any casual reader would see the report as her own work as it does not state anywhere that it is not.

27. Dr C in his evidence stated that the copying of his work had been blatant to him. However, the Tribunal was of the view that if you put both reports side by side, a reader would have to compare each section of the report and it would be difficult, without careful scrutiny, to establish whose work was whose.

28. The Tribunal has considered Dr Moodliar's response. The Tribunal does not accept that it was adequate for Dr Moodliar to reference Dr C under the '*Sources of Information'* section of her report. There are no citations or references in the body of the report, which suggests to the reader that it is all Dr Moodliar's own work and opinions that she had submitted.

29. Accordingly, the Tribunal found Paragraph 1(b) of the Allegation proved.

Paragraph 2

30. The Tribunal considered Dr Moodliar's evidence. She admitted to copying Dr C's opinions and that her expert report was not all her own work. At the time Dr Moodliar wrote her expert report she says that it was not her intention to mislead any reader. She thought it acceptable to copy wording of someone else's report to support her own opinion and that it was an inadvertent mistake not to consider referencing Dr C's work.

31. In considering the first limb of the test for dishonesty set out in *Ivey,* Dr Moodliar had knowingly copied Dr C's work and included it in her report. She knew, when she submitted the report, that it was not all her own work. She has given evidence that it was her genuinely held belief that her actions were not dishonest. She said that it was '*an unintentional error, an innocent mistake'.*

32. The Tribunal has considered the evidence as a whole. In two areas of her report, Dr Moodliar had copied Dr C's reasoning from his report but changed the opinion. In his report Dr C said:

> *'my opinion leads to an opinion which would appear to make a non-insane automatism unlikely'*

In her report, Dr Moodliar said:

> *'my opinion leads to an opinion which would appear to make a non-insane automatism likely'*

In his report Dr C said:

> *'His amnesia for what occurred and the fact that it was apparently out of character suggests he was not in an unusual state, on balance, it seems unlikely that he could be considered to have been in a state were at that moment he had no conscious awareness of what he did.'*

In her report Dr Moodliar said:

> *'His description of the amnesia for what occurred and the fact that it was apparently out of character suggests he was not in a usual state, on balance, it seems likely that he could be considered to have been in a state at that moment he had no conscious awareness of what he did.'*

33. The Tribunal does not accept Dr Moodliar's explanation as to her failure to credit Dr C having been through simple inadvertence. Dr Moodliar has undertaken post-graduate study, has published her own works, and says that she has extensive experience as an expert. It is inconceivable that she was not conscious of the fact that she was misrepresenting large portions of her report as her own work.

34. The Tribunal concluded that an ordinary decent member of the public, knowing the context in which Dr Moodliar produced her reports as an expert witness, where she is required to provide her own independent opinion, would take the view that Dr Moodliar's actions were dishonest and as such the Tribunal found Paragraph 2 of the Allegation proved.

Paragraph 3(a)(i)

35. Dr Moodliar stated that she had assessed Patient B on two occasions. The first was conducted on 25 September 2019 and she completed her report in October 2019. She had also been asked to provide an addendum report on 3 December 2019 and to comment specifically as to whether Patient B was '*under diminished responsibility at the time of the offence*'. Dr Moodliar said that she had asked the instructing solicitors for further information numerous times and was supplied with a large bundle of notes that included Patient B's medical notes, Rio [electronic patient record system] notes, a report from Dr E, an additional report for the defence, and other materials which included complete slam documents (electronic health and personal patient records), additional medical notes, as well as the defence statement. Dr Moodliar stated that she then, in conjunction with her original report, completed her addendum report.

36. Dr Moodliar stated that in her opinion, both reports she had completed were of a reasonable standard and competency for a Consultant Psychiatrist.

37. Dr Moodliar stated that in her original report of Patient B dated 9 October 2019, she has stated that she obtained a detailed background history, which she did not feel was necessary to repeat in the addendum report on 9 December 2019. Dr Moodliar stated that in order to determine whether or not she had obtained a detailed history, her two reports should be read together. Dr Moodliar stated that her written notes which had been present and referenced in court in December 2019, only reflected the addendum report and not the initial assessment which contained a more detailed background history.

38. The Tribunal considered both reports prepared by Dr Moodliar. It was mindful that her notes had not been presented in evidence and were not available. It considered aspects of the transcript of the trial that referred to her notes. The Tribunal noted that Dr Moodliar did obtain a background from Patient B's medical records, these were records that related to Patient B's health prior to and after the index incident. Dr Moodliar had also taken a background directly from Patient B.

39. The Tribunal found that this background was very limited. The Tribunal was of the view that when looking at the presenting complaint of Patient B, the background was not detailed enough for Dr Moodliar to be able to make the decisions she was required to make. The Tribunal concluded that Dr Moodliar did not explore Patient B's past and present mental health history adequately.

40. Accordingly, the Tribunal found Paragraph 3(a)(i) of the Allegation proved.

Paragraph 3(a)(ii)

41. Dr Moodliar stated that on both occasions she had seen Patient B she had conducted a complete mental state assessment / examination of Patient B.

42. Dr Moodliar stated that she had successfully completed both the MRCpsych in 2010. She was the main author of a textbook for the CASC exams in psychiatry. Further, she had also successfully completed the competency levels for conducting a mental state examination and that she has extensive experience in undertaking these types of assessments.

43. Dr Moodliar stated that the findings she made were described in terms of psychopathology. Further, that on reading other experts' reports the findings were similar and it was concluded by some of the other experts that Patient B had been diagnosed with a mental illness.

44. The Tribunal noted that it had no documentary evidence other than Dr Moodliar's reports to determine if Dr Moodliar had performed a detailed mental state assessment of Patient B.

45. In the reports there was no evidence of any analysis of the information given but more a reproduction of what was said and obtained from the medical records. In particular, she did not document the relevant positive and negative findings that are required to make a diagnosis of schizophrenia and / or psychosis.

46. The Tribunal concluded that the report Dr Moodliar produced was inadequate in explaining what she had done and the conclusions she had drawn. The Tribunal was of the view that the report was scant and lacking in detail. Dr D, in his evidence said that Dr Moodliar had not explored Patient B's mental state adequately and that she would not have been able to come to the conclusions that she did from what she had written.

47. Accordingly, the Tribunal found Paragraph 3(a)(ii) of the Allegation proved.

Paragraph 3(a)(iii)(1)

48. Dr Moodliar stated that in her report dated 9 December 2019 she acknowledged that Patient B had lied in the past, and that she had taken this into consideration during her interview and when formulating her opinion. This is noted in paragraphs 8.13, 8.14, 8.16 and 8.27 of her report. Dr Moodliar stated that she now understands that it would have been helpful if she had mentioned that she had asked Patient B about these alleged lies and mentioned it in her opinion. Dr Moodliar stated that she had assumed at the time that because she had already mentioned it in the body of her report, that she did not need to mention it in her opinion.

49. Dr Moodliar stated that she had used Patient B's medical records and documentation that she had been provided with to be able to corroborate what he told her during the assessment.

50. The Tribunal considered Dr Moodliar's report. It noted that Dr Moodliar has not provided any thought process or rationale when corroborating the information which Patient B provided. Further, there is no evidence of her exploring what Patient B was telling her or any assessment to say why she thought he was telling the truth now.

51. The Tribunal considered Dr D's expert report:

> *'My own reading of the documentation leads me to conclude that Dr Moodliar did not adequately check the veracity of account. She should have sought to corroborate the information he provided, by perusing the documents provided, in particular his medical records, to establish the truthfulness of the account given to her by Patient B'*

52. The Tribunal considered the sentencing remarks of HHJ M Lucraft QC dated 10 January 2020:

> '*In her reports she had not included any explicit assessment of the truthfulness of the defendant's account. In a case where there are a number of accepted 'lies' told by a defendant one would expect an expert to make their own assessment of the veracity of the account given to them by a defendant.'*

53. In all the circumstances, the Tribunal concluded that Dr Moodliar did not corroborate the information Patient B provided. Accordingly, the Tribunal found Paragraph 3(a)(iii)(1) of the Allegation proved

Paragraph 3(a)(iii)(2)

54. Dr Moodliar stated that she had adequately considered all the documents pertaining to her addendum report including all medical information. She stated that she made a further request for information and was provided with the additional large bundle of Patient B's medical notes. Dr Moodliar stated that she had considered all previous diagnoses and opinions made by other medical professionals in Patient B's medical notes. She also reviewed all of Patient B's medical records extensively when she compiled the addendum report for Patient B. Dr Moodliar stated that on reflection, she should have stated that she had done this more clearly in her report.

55. The Tribunal considered Dr Moodliar's reports. It noted that Dr Moodliar does not adequately set out what she did, therefore any reader of the reports would not be aware. Further Dr Moodliar's addendum report discusses medical notes but not what she has done with them. In the *'sources of information'* section of her report, the final point identifies *'further documentation received'* but does not detail what these documents were. The Tribunal was of the view that although Dr Moodliar lists some of the documents she had been given, she did not give any analysis and did not reference them.

56. Dr Moodliar had been presented with documentation that showed that Patient B had lied to other health care professionals on a number of occasions. She had referred to some of these matters in the body of her report. However, there is nothing in her report to show that she adequately considered these documents to check the veracity of Patient B's account.

57. In all the circumstances, the Tribunal concluded that Dr Moodliar did not adequately consider the documents, including medical records provided to her. Accordingly, the Tribunal found Paragraph 3(a)(iii)(2) of the Allegation proved.

<u>Paragraphs 3(a)(iv)(1)(2)(3)</u>

58. Dr Moodliar stated that she had a duty to the court as an expert and that in this capacity she had continued to provide the court with her psychiatric opinions. Dr Moodliar stated that she had provided her opinion in relation to the medicolegal defences based on her assessment and formulation. Dr Moodliar stated that she did not comment in her report on insanity as she was specifically only asked about diminished responsibility in the instructions from her instructing solicitors.

59. Dr Moodliar stated that she did explore the symptoms and possibility of both schizophrenia and psychosis. Dr Moodliar stated that it was her opinion that Patient B did show evidence suggestive of psychotic symptoms. She said psychosis was an umbrella term for all mood disorders and used if another diagnosis did not fit; schizophrenia was a specific diagnosis as set out in ICD-10 (F20).

60. The Tribunal considered Dr D's expert report:

> *'In my opinion, despite Dr Moodliar stating in her report and in evidence in Court about seeing demons which could be a feature of insanity, there is no information to lead me to conclude that this was appropriately assessed and documented in both her reports. I have not been provided with her hand-written notes. She should have done a detailed mental state assessment to establish if the mental illness is of such a severe nature that could not distinguish fantasy from reality, and could conduct his affairs due to psychosis. If she did assess and did not document it, this in my view is poor standard of assessment. I consider that all relevant content from her hand-written notes in relation to her opinion and recommendation should be in her final report.'*

61. The Tribunal was mindful that insanity is a legal rather than a medical term. However, it did not consider that this caused any difficulty with the wording of the Allegation. In order to come to a conclusion that someone is insane there has to be an underlying diagnosis of a mental illness.

62. The Tribunal considered Dr Moodliar's report. The Tribunal was of the view that although Dr Moodliar stated that she did explore the symptoms and possibility of insanity, schizophrenia, and psychosis, there is little or no evidence in her report to suggest that she explored any of these symptoms. Although there is some reference to symptoms which might lead to a conclusion of schizophrenia and / or psychosis, there is nothing within the reports to establish how Dr Moodliar reached the opinions that she did.

63. In all the circumstances, the Tribunal concluded that Dr Moodliar did not explore the symptoms and possibility of insanity, schizophrenia, and psychosis. Accordingly, the Tribunal found Paragraphs 3(a)(iv)(1)(2)(3) of the Allegation proved.

Allegation 3(c)(i)(1)

64. Dr Moodliar stated that in her opinion, she had sufficient knowledge of diminished responsibility at the time of the trial. However, she did not believe that her explanation at the time was understood by the judge and the court. Dr Moodliar stated that her testimony had been severely affected by the plagiarism accusation on that day in court because she was in a state of shock. Therefore, it had appeared to the judge that she possessed no knowledge about diminished responsibility. This however is not the case.

65. The Tribunal considered the transcript of Dr Moodliar's evidence given at trial to ascertain whether it supported the criticisms made of her in the judge's sentencing remarks. The Tribunal also considered how Dr Moodliar had approached her opinion of diminished responsibility in her reports.

66. The Tribunal noted Dr Moodliar's experience as outlined by her *CV.* This demonstrated that she had exposure to the field of forensic psychiatry for 12 months in a

non-training staff grade post, 1 year at a junior training level and 1 year as a senior trainee. During her junior doctor post in 2003 she described accompanying her consultant to assess a case of diminished responsibility. Her experience thereafter was at consultant level from March 2015. Additional training prior to 2019 submitted in evidence in relation to medico-legal work includes:

- 'Health Care Records on Trial' in 2013.
- G4S Induction course for Forensic and Medical Services Induction in 2016.
- Cardiff University Bond Solon Course entitled 'CUBS Assessment Module' and 'Civil CUBS accreditation' in 2018.

67. The Tribunal also noted that it has not been contested in her evidence, that Dr Moodliar says that she has provided evidence in a number of previous murder cases before 2019 including those that involved diminished responsibility.

68. The Tribunal took into account Dr Moodliar's evidence that she had been stressed and severely affected by the plagiarism accusation in court. The Tribunal also understood that that it had been an 'horrendous' day for Dr Moodliar and that she had been subjected to robust cross examination. Nevertheless, the Tribunal concluded that Dr Moodliar had been an expert many times before and that this was not a sufficient reason. Both in her evidence in chief and in her cross examination at court she had struggled to demonstrate sufficient knowledge of diminished responsibility. In her written report, although Dr Moodliar quotes from the Homicide Act (1957) and says that Patient B was suffering from a mental illness, she says little or anything about how this impaired Patient B's ability to understand the nature of his conduct, to form a rationale judgement or to exercise self-control.

69. The Tribunal considered the sentencing remarks of HHJ M Lucraft QC dated 10 January 2020:

> '*Despite professing to be an expert she was not able easily to explain what diminished responsibility amounts to, did not know where the burden of proof lay, and did not appear to know that it could only be a partial defence to murder.'*

70. The Tribunal noted that this remark was supported by the trial transcript of Dr Moodliar's evidence.

71. Accordingly, the Tribunal found Paragraph 3(c)(i)(1) of the Allegation proved.

Paragraph 3(c)(i)(2)

72. Dr Moodliar stated that she was familiar with the offence with which Patient B had been charged. She stated that as she was in shock and emotionally unsettled after being

accused in open court of plagiarism in an unrelated case, her explanation to the court appeared unclear.

73. The Tribunal noted Dr Moodliar's instruction sent from the defence solicitor which stated:

> *'I represent a client charged with murder who has serious mental health issues. We require a doctor such as yourself to assess him to see if he was under diminished responsibility when he committed the offence. You have been recommended to our QC, Richard Carey-Hughes.'*

74. The Tribunal also noted Dr Moodliar's report which states:

> *'On the afternoon of Tuesday, 10th January 2017, he murdered….*
>
> *…He was subsequently arrested on suspicion of murder.'*

75. The Tribunal concluded that although there appears to have been some confusion both in Dr Moodliar's reports and her notes as to which offence Patient B was charged with, it is clear from the evidence it has before it that it is more likely than not that Dr Moodliar did know that Patient B was charged with murder.

76. Accordingly, the Tribunal found Paragraph 3(c)(i)(2) of the Allegation not proved.

<u>Paragraph 3 (c) (ii)</u>

77. The Tribunal considered the legal advice provided by the Legally Qualified Chair, and agreed by the parties, in relation to the qualifications for an expert. It concluded that undergoing higher training in forensic psychiatry was not a requirement.

78. Accordingly the Tribunal found Paragraph 3(c)(ii) of the Allegation not proved.

<u>Paragraph 3(d)</u>

79. Dr Moodliar stated that her record-keeping for the assessments was adequate in keeping with the information in her reports. She had seen Patient B twice to be able to produce her two reports. Dr Moodliar apologised that her notes appeared not to be detailed enough and that she had reflected on this and was ensuring that she would write more comprehensive notes in the future. Dr Moodliar stated that the records she kept were sufficient for her to be able to write and produce her reports, but that she understood how they could be considered not to be as comprehensive as they could be.

80. The Tribunal was mindful that it did not have a copy of Dr Moodliar's notes and could not make its own independent assessment of their adequacy. The Tribunal considered Dr Moodliar's evidence, the trial transcript and the sentencing remarks of HHJ M Lucraft QC dated 10 January 2020:

'Another feature of her written reports is that they did not properly distinguish between her personal findings and opinions and what was contained in medical notes she had examined. The handwritten notes taken in the course of her meetings with the defendant were also the subject of cross-examination. Her notes of the defendant's account of events were not complete. Overall her notes were woefully inadequate and not what one would expect to see in a case such as this.'

81. The Tribunal noted that the sentencing remarks were supported by the trial transcript of Dr Moodliar's evidence.

82. In all the circumstances, given that Dr Moodliar considered her notes not to be as comprehensive as they could be and the remarks of HHJ M Lucraft, who had reviewed those notes, the Tribunal concluded that Dr Moodliar had failed to keep adequate records.

83. Accordingly, the Tribunal found Paragraph 3(d) of the allegation proved.

Paragraph 3(e)

84. Dr Moodliar stated that she had completed two reports on Patient B and completed a detailed background history check. She stated that she had reviewed the medical notes along with reports by other medical experts. Dr Moodliar stated that she had also undertaken a detailed mental state examination and considered all symptoms presented at the time.

85. Dr Moodliar stated that in order for her to reach her conclusion, she explored and considered all symptoms. She also completed all the actions listed within the allegations, however upon reflection, she understood how these could have been recorded more clearly and comprehensively in her reports.

86. The Tribunal considered Dr D's expert report:

'*In my opinion, despite Dr Moodliar stating in her report and in evidence in Court about (Patient B) seeing demons which could be a feature of insanity, there is no information to lead me to conclude that this was appropriately assessed and documented in both her reports. I have not been provided with her hand-written notes. She should have done a detailed mental state assessment to establish if the mental illness is of such a severe nature that (Patient B) could not distinguish fantasy from reality, and could conduct his affairs due to psychosis. If she did assess and did not document it, this in my view is poor standard of assessment. I consider that all relevant content from her hand-written notes in relation to her opinion and recommendation should be in her final report.'*

87. Given its findings in respect of the Allegation set out in paragraph 3(a), the Tribunal preferred Dr 's. evidence in respect of the Allegation at paragraph 3(e).

88. Accordingly, the Tribunal found Paragraph 3(e) of the allegation proved.

The Tribunal's Overall Determination on the Facts

89. The Tribunal has determined the facts as follows:

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

1. In November 2017, you acted as an expert witness for the Prosecution in the case of Patient A and you:

    a. copied sections of Dr C's expert report; **Admitted and found proved**

    b. submitted the report as if it was all your own work; **Determined and found proved**

    c. knew that sections of the report were not your own work. **Admitted and found proved**

2. Your actions as described at paragraph 1a and 1b were dishonest by reason of paragraph 1c. **Determined and found proved**

3. Between September and December 2019, you acted as an expert witness for the Defence in the case of Patient B and you:

    a. failed to assess Patient B adequately in that you did not:

        i. obtain a detailed background history; **Determined and found proved**

        ii. perform a detailed mental state assessment, detailing the symptoms reported at the time of the assessment; **Determined and found proved**

        iii. check the veracity of Patient B's account by:

            1. corroborating the information which he provided; **Determined and found proved**

2. adequately considering the documents provided, including the medical records; **Determined and found proved**

iv. explore the symptoms and possibility of:

1. insanity; **Determined and found proved**

2. schizophrenia; **Determined and found proved**

3. psychosis; **Determined and found proved**

b. failed to prepare an expert report which was factually accurate, in that you asserted that Patient B had been seen by the CPS expert who had concluded that he had diminished responsibility, and you:

i. were unable to state where this information was obtained from; **Admitted and found proved**

ii. admitted that this was an error; **Admitted and found proved**

c. acted beyond your training and expertise in that you served as an expert witness without:

i. possessing sufficient knowledge of:

1. diminished responsibility; **Determined and found proved**

2. the offence with which Patient B was charged; **Not proved**

ii. undergoing higher training in forensic psychiatry; **Not proved**

d. failed to keep adequate records; **Determined and found proved**

e. failed to record your actions as set out at paragraph 3a. **Determined and found proved**

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

Determination on Impairment - 19/05/2022

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

The Evidence

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

92. Dr Moodliar provided her own witness statement dated 17 May 2022.

93. The Tribunal also received in support of Dr Moodliar a further number of testimonials all of which it has read.

Submissions

Misconduct

94. On behalf of the GMC, Mr Fish reminded the Tribunal of the Overarching Objective and outlined the staged approach when considering misconduct and impairment.

95. Mr Fish submitted that the facts found proved in this case clearly amounted to serious misconduct, referring the Tribunal to the relevant paragraphs of Good medical practice (2013) ('GMP') which he identified as paragraphs: 65 to 67 in relation to Dr Moodliar's honesty and integrity, paragraph 19 in relation to record keeping and paragraphs 72 to 74 in relation to Dr Moodliar giving evidence in a criminal trial. Mr Fish stated that GMP also makes it clear that a doctor is personally accountable for their actions.

96. Mr Fish submitted that a finding of dishonesty amounts to misconduct. Further, that providing expert evidence in a murder trial which fell short of the standards required and involved Dr Moodliar acting beyond her level of training and expertise, which the Tribunal has found proved, also amounts to misconduct.

97. Mr Fish stated that serious misconduct is not defined in law. It is left to the Tribunal's own independent judgement. He stated that the courts have been very careful not to limit the Tribunal's ability to exercise its own independent judgement when assessing whether behaviour amounts to misconduct that is serious.

98. Mr Fish referred the Tribunal to the case of *Schodlock v GMC 2015 EWCA CIV 769.*

99. Mr Fish stated that the case of *Schodlock* provides authority for the proposition that a Tribunal can look at the totality of the allegations and that it is open to a Tribunal to find that cumulatively they may be regarded as serious misconduct impairing fitness to practise. Mr Fish submitted that in relation to the particulars set out in Allegation 3, which relate to the expert evidence that was provided in the murder trial, these had been presented from the outset, and throughout the hearing, as matters that could be cumulated and Dr Moodliar was aware of that.

100. Mr Fish referred the Tribunal to its facts determination and its reference to the case of *Squier v GMC (2016) EWHC 2739*. Mr Fish submitted that this case goes to the heart of what the Tribunal is confronted with in these proceedings.

101. Mr Fish stated that in Dr Moodliar's case, the authority of *Squier* does provide some assistance as to the requirements that are placed on experts to provide accurate information that is not misleading, and that relevant information must not be left out.

102. Mr Fish also referred the Tribunal to the case of *Kumar v GMC [2012] EWHC 2688 (Admin)*. This emphasises that misconduct can be found even when the Tribunal does not find that there has been bad faith or recklessness involved in the provision of expert evidence. Mr Fish stated that the court commented that there can be circumstances where the giving of expert evidence in court may be such that the nature or degree of negligence and the risks created by it may amount to misconduct. Mr Fish submitted that the case of *Kumar* emphasised that the Tribunal does not have to find that Dr Moodliar acted in bad faith or recklessly for the failures that have been identified to amount to misconduct.

103. Mr Fish stated that in all these circumstances, Dr Moodliar's conduct, which has been found proven, amounts to misconduct that is serious.

Impairment

104. Mr Fish submitted that Dr Moodliar's fitness to practise is currently impaired. He reminded the Tribunal that impairment is looking forward but nevertheless involves consideration of past misconduct and any steps subsequently taken by a practitioner to remedy that misconduct.

105. Mr Fish stated that the Tribunal has heard Dr Moodliar give evidence on two occasions and is well placed to consider the level of insight and reflection that she has demonstrated to remediate the failures that have been exposed during this hearing.

106. Mr Fish submitted that there is some evidence of Dr Moodliar's insight and reflection; however, this process is continuing and far from complete. Mr Fish stated that Dr Moodliar, in her evidence, did not appear to appreciate how far short her professional

standards fell. Mr Fish asked the Tribunal to question whether Dr Moodliar fully accepts that her actions were dishonest or fully understands why they were dishonest. He said that Dr Moodliar did not appear to appreciate the shortcomings in the reports she had prepared or her whole approach to acting as an expert in Patient B's case.

107. Mr Fish stated that in stage one of these proceedings Dr Moodliar did not appear to accept any personal responsibility for what had happened in court. Mr Fish stated that Dr Moodliar had expressed the view that the report that she provided in relation to Patient B was of a reasonable standard of competency for a consultant psychiatrist.

108. Mr Fish stated that it is accepted that a doctor is perfectly entitled to robustly defend themselves and just because they have done so, this does not automatically mean that it has to be held against them at this stage of the proceedings. However, that will be an evaluative assessment that the Tribunal will have to undertake as to Dr Moodliar's attitude at stage one and what she said at stage two of these proceedings and where the line should be drawn as to her sincerity.

109. Mr Fish stated that that there is no statutory definition of impairment; however, he referred the Tribunal to the guidance provided by Dame Janet Smith in the Fifth Shipman Report, as endorsed by the High Court in *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin.*

110. Mr Fish submitted that three of the *Grant* criteria are engaged in this case. Mr Fish stated that plagiarism and breaching the duties that were placed upon her as an expert is conduct capable of bringing the medical profession into disrepute, breaching fundamental tenets of the medical profession and undermining the public trust in the profession.

111. Mr Fish stated that Allegations 1 & 2 relate to plagiarism and there has been a clear finding of dishonesty. Mr Fish submitted it is for these reasons that the three *Grant* criteria are engaged.

112. Mr Fish stated that Dr Moodliar has reflected on her actions and her insight is developing. However, as recently as last week, Dr Moodliar was characterising the allegations in relation to patient A as an '*innocent mistake'* and, in addition failed to properly recognise the deficiencies in her performance as an expert witness in a case of the upmost gravity.

113. Mr Fish stated that it is important that the Tribunal does not lose sight of the fact that Dr Moodliar was providing expert evidence in a murder trial. Her experience in court ought to be attributed to the failures on her part, and it is revealing that last week she did not appear to accept any personal responsibility for what had occurred.

114. Mr Fish stated that Dr Moodliar has demonstrated some evidence of insight. There have also been some efforts made to remediate the failures that this Tribunal has exposed;

however, it is still an ongoing process. Further, the Tribunal cannot rule out that these things would not happen in the future.

115. Mr Fish submitted that Dr Moodliar's fitness to practise is impaired by reason of her misconduct.

116. On behalf of Dr Moodliar, Ms Duong submitted that Dr Moodliar's fitness to practise is not impaired.

117. Ms Duong stated that the Tribunal should approach its findings on misconduct on each distinct allegation separately and not cumulatively. Ms Duong referred the Tribunal to the authority of *Schodlock* which provides the principle authority in support of such an approach. She also referred the Tribunal to the case of *Ahmedsowida v GMC [2021] EWHC 3466 (Admin)* where the approach to adopting a cumulative approach was also criticised. Ms Duong submitted that whilst there are aspects of the Tribunal's determination where it might lead it to conclude that the Allegations found proved amount to misconduct falling short of serious misconduct, it would be wrong for the Tribunal to accumulate those in order to elevate it to one of seriousness misconduct. Ms Duong submitted that Dr Moodliar's case is not an unusual case, nor is it the sort of case that is envisaged in the authority of *Schodlock*. Ms Duong asked the Tribunal that when considering cases of accumulation, it exercised care and be slow to accumulate findings.

118. Ms Duong stated that insofar as the plagiarism allegation is concerned it is readily conceded that given that the Tribunal has made a finding of dishonesty, it would be difficult to try to persuade it that Dr Moodliar's conduct did not amount to serious misconduct. However, insofar as matters concerning patient B are concerned, Ms Duong submitted that this is a less straightforward exercise and invited the Tribunal to remind itself of the evidence of Dr D.

119. Ms Duong stated that in terms of the overarching objective, this is a case that touches upon the wider public interest. Ms Duong stated that it has never been suggested that any of Dr Moodliar's misconduct has risked patient safety or the wellbeing of any patient.

120. Ms Duong referred to the case of *Nandi v. General Medical Council [2004] EWHC 2317 (Admin*) where it says that *'serious'* must be given its proper weight. Further, it references conduct which would be regarded as deplorable by fellow practitioners. Ms Duong submitted that the word '*deplorable*' carries significant weight and assists the Tribunal in understanding what is meant by the word *'serious'* in the context of regulatory proceedings.

121. Ms Duong referred the Tribunal to the case of *Calhaem v GMC 2007 EWHC 2606*, where it was stated that '*Mere negligence does not constitute "misconduct" within the meaning of section 35C(2)(a) of the Medical Act 1983. Nevertheless, depending on the*

circumstances, negligent acts or omissions which are particularly serious may amount to misconduct'.

122. Ms Duong stated that in terms of dishonesty, she did not make any positive submission that it does not amount to misconduct. However, it would be proper that it be reflected within the Tribunal's determination that this had been an isolated incident and occurred five years ago. Further, that two years had passed before the accusation of plagiarism was first made and significant time has passed since that incident.

123. Ms Duong submitted that there is evidence before the Tribunal, notwithstanding the fact that Dr Moodliar by her own admission, had copied parts of Dr C's report, that she reached her own independent conclusions as an expert. The Tribunal has a testimonial from Professor E, which shows that Dr Moodliar had prior knowledge of the issues that were concerning Patient A. This is a factor which tempers the Tribunal's finding of dishonesty in this case.

124. Ms Duong submitted that each of the separate subparagraphs in paragraph 3 reflect different concerns. Ms Duong stated that insofar as paragraph 3(a) is concerned, it is accepted that it would be artificial to expect the Tribunal to look at 3(a) and not to consider the assessment of Patient B and the adequacy of it as set out in the various sub paragraphs.

125. Ms Duong stated that Dr Moodliar's actions set out in paragraph 3(b) were in essence an error included in her report. She accepted her error and corrected it straight away. It could not be considered as misconduct. Ms Duong stated that when looking at paragraphs 3(c), 3(d) and 3(e), these are separate matters that require the Tribunal's individual consideration. Ms Duong submitted that in terms of Dr D's evidence in regard to paragraphs 3(d) and 3(e), he has assessed these as falling below but not seriously below the standards.

126. Ms Duong submitted that paragraph 3(c)(i)(1) falls short of serious misconduct. Ms Duong submitted that Dr D had confirmed his opinion that Dr Moodliar's actions fell seriously below the standards was based on her not having undergone high training in forensic psychiatry. The Tribunal has found that such training is not required. Ms Duong submitted that, as a result, Dr D's evidence does not support a finding that Dr Moodliar's conduct fell seriously below the standards expected.

127. Ms Duong referred the Tribunal to *Grant* when looking at Dr Moodliar's current impairment. Ms Duong submitted that the first factor in *Grant* is whether Dr Moodliar has in the past acted or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm. Ms Duong submitted that there is plainly no evidence of that and in fact it is quite the opposite. The Tribunal has evidence about other areas of Dr Moodliar's practice which demonstrates that she is a good doctor, in terms of her work as a psychiatrist. Ms Duong stated that regardless of what the Tribunal's overall determination on impairment is, this is not a case where patient harm is concerned.

128. Ms Duong accepted that a finding of dishonesty is something that is often said to be difficult to remediate, and that there are some authorities which suggest that where there is a finding of dishonesty, there is an expectation by a regulatory body to make a finding of impairment. However, a finding of impairment on the wider public interest grounds is not necessary in this case given the nature of Dr Moodliar's dishonesty.

129. Ms Duong stated that Dr Moodliar has effectively been before a public hearing and that addresses the wider public interest concerns the Tribunal may have if it was persuaded to find Dr Moodliar's fitness to practise not impaired.

130. Ms Duong stated that there is, at the very least, evidence of developing insight. This can be based on Dr Moodliar's oral evidence and in her written reflections.

131. Ms Duong submitted that there is evidence before the Tribunal that Dr Moodliar has developed insight into her actions. Ms Duong stated that there had been criticisms by the GMC that Dr Moodliar effectively shifted her position from a few days ago to now.
Ms Duong invited the Tribunal not to hold it against her where she has now gone further in accepting where she has gone wrong. Further, not to take too much cynicism at any perceived shift in Dr Moodliar's position. Rather, whether it is her openness and willingness to accept criticism from others where she has seen it fully reasoned by the Tribunal.

132. Ms Duong referred the Tribunal to the testimonials on behalf of Dr Moodliar, some of which predate any of the concerns that are being dealt with. Ms Duong submitted that these testimonials are relevant to assess the overall standards of Dr Moodliar's work as a psychiatrist and what her peers think of her.

133. Ms Duong stated that these proceedings and the concerns that have been raised have caused Dr Moodliar to reflect upon her own practice more widely. She is also taking a more cautious approach. Ms Duong stated that insofar as insight is concerned, it would be wrong to suggest that Dr Moodliar has gone from '*zero to 100*' in terms of what she is accepting because she did in fact make admissions about the copying, which at the very least meant that no one had to go line by line through it in order to try to demonstrate where there was copying and where there was not.

134. Ms Duong stated that it is to Dr Moodliar's credit that she has accepted this Tribunal's findings and that she has, through her oral evidence, and also in her written submissions, demonstrated a significant degree of insight into the concerns that are raised and importantly, that she was able to articulate how the Tribunal's finding of dishonesty impacts upon the overall reputation of the profession.

135. Ms Duong referred the Tribunal to the remedial work Dr Moodliar has undertaken and the certificates of what she's has done. She stated that Dr Moodliar has also explained in her oral evidence her involvement in the Medico-legal peer group which she has undertaken. She has undergone a lot of reflection about what she has done and how she might improve as an expert in the future.

136. Ms Duong stated that there is either no risk or at the very least a very low risk of repetition. Dr Moodliar has plainly learned from her experience of these proceedings and has been affected by them. Ms Duong said that it is to her credit, within her second witness statement, where she has suggested that she would now take a more cautious approach in restricting herself to the area where she has the greatest expertise. Dr Moodliar has been able to recognise that in terms of ensuring that she provides proper reports in future, she will allow adequate time.

The Relevant Legal Principles

137. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.

138. In deciding whether Dr Moodliar's fitness to practise is impaired, the Tribunal has exercised its own judgement and borne in mind the statutory overarching objective of the GMC set out in Section 1(1B) of the Medical Act 1983 to:

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

139. Misconduct has been defined and described in several cases. In *Roylance v GMC (No 2)* [2001] 1 AC 311 it was said that professional misconduct is falling short by omission or commission of the standards of conduct expected among medical professionals and such falling short must be serious.

140. The Legally Qualified Chair (LQC) referred to Ms Duong's reference to the case of *Nandi v. General Medical Council [2004] EWHC 2317 (Admin*), where misconduct was described as *"conduct which would be regarded as deplorable by fellow practitioners"*. He advised the Tribunal to be cautious about this approach and referred to the case of *Mallon v General Medical Council [2007] ScotCS CSIH_17*, where the court stated that using words such as *'deplorable conduct'* was unhelpful when seeking to describe *'serious misconduct'*:

141. The LQC advised the Tribunal that 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 judgement on the facts and circumstances and in the light of the evidence.

142. The LQC referred to the case of *Schodlock v GMC 2015 EWCA CIV 769* that had been raised by both Mr Fish and Ms Duong. He advised that in that case there was not a consensus of opinion between the judges. Beatson LJ's view was tentative and very preliminary, as well as (in a minority) less sceptical than that of Vos LJ with whose judgment Moore-Bick LJ agreed. Vol LJ said:

> *"I do not think that we should opine on the theoretical possibility that, in a particular case on different facts, a series of non-serious misconduct findings could, taken together, be regarded as serious misconduct. For my part, I would not think that the possibility of taking such a course in a very unusual case on very unusual facts should be ruled out, but I would prefer to leave the argument for a case in which such facts were said to arise. In the normal case, I do not think that a few allegations of misconduct that are held individually not to be serious can or should be regarded collectively as serious misconduct."*

Beatson LJ's said:

> "*My tentative and very preliminary view is that, provided it is clear from either the charge brought by the GMC or the way the case against the doctor is presented at the hearing, that any adverse findings by the panel on matters identified in the charges might be cumulated in this way, so that the doctor is aware this is a possibility, such an approach should in principle be open to the panel. I recognise that a small number of allegations of misconduct that individually are held not to be serious misconduct should normally not be regarded collectively as serious misconduct."*

143. The LQC advised that from this case law, in general a small number of allegations of misconduct that are not serious should not be treated cumulatively to amount to serious misconduct. However, where the allegation is drafted in such a way that the sub-particulars are effectively part of the stem, as in 3(a), they could consider the cumulative effect.

144. The Tribunal must determine whether Dr Moodliar's fitness to practise is impaired today, taking into account Dr Moodliar's 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.

145. 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 endorsed by the *High Court in CHRE v NMC and Paula Grant [2011] EWHC 297 Admin*. The Tribunal should therefore consider whether the practitioner:

> *'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 in the future to act dishonestly in the future.'*

146. The Tribunal also bore in mind the guidance in *Grant* (above) at paragraphs 71 and 74, that:

> *"it is essential when deciding whether fitness to practise is impaired, not to lose sight of fundamental considerations […] namely the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession".*
>
> *"……the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public…. but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances."*

The Tribunal's Determination on Impairment

Misconduct

147. In reaching its decision as to whether Dr Moodliar's actions amounted to misconduct the Tribunal considered the applicable paragraphs of GMP to be 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,[1] are honest and trustworthy, and act with integrity and within the law.*

7. *You must be competent in all aspects of your work, including management, research and teaching.*

14. *You must recognise and work within the limits of your competence.*

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

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

    …

19. *Documents you make (including clinical records) to formally record your work must be clear, accurate and legible. You should make records at the same time as the events you are recording or*

as soon as possible afterwards.

21. Clinical records should include:

a. relevant clinical findings

…

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

71. You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents.22 You must make sure that any documents you write or sign are not false or misleading.

a. You must take reasonable steps to check the information is correct.
b. You must not deliberately leave out relevant information.

72. You must be honest and trustworthy when giving evidence to courts or tribunals.[28] You must make sure that any evidence you give or documents you write or sign are not false or misleading.

a. You must take reasonable steps to check the information.

b. You must not deliberately leave out relevant information.

74. You must make clear the limits of your competence and knowledge when giving evidence or acting as a witness.

Paragraphs 1(a),1(b), 1(c)

148. The Tribunal considered the expert report prepared by Dr D dated 2 June 2020. The Tribunal noted that in relation to Dr Moodliar copying sections of another expert's report on paragraphs 1(a),1(b), 1(c) of the Allegation Dr D opined that that this was a serious error of judgement and lack of professionalism and fell seriously below the standard expected of a reasonable competent consultant in psychiatry.

149. The Tribunal has considered paragraphs 1(a),1(b), 1(c) of the Allegation individually. The Tribunal determined that individually and cumulatively the misconduct found proved against Dr Moodliar was serious, breached multiple GMC guidelines, and fell far short of the standards expected of a registered practitioner and amounted to serious misconduct.

Paragraph 2

150. The Tribunal has found that Dr Moodliar's actions set out in paragraphs 1(a), 1(b) and 1 (c) were dishonest. It considered that as such this was serious misconduct.

Paragraph 3(a)

151. The Tribunal first considered the way in which this Allegation and its sub-particulars had been formulated. It concluded that the Allegation was worded in such a way that the sub-particulars, which all related to the failure to assess Patient B adequately, should be considered individually and cumulatively.

152. The Tribunal considered the expert report prepared by Dr D dated 2 June 2020. He opined:

> *'Dr Moodliar did not adequately check the veracity of account. She should have sought to corroborate the information he provided, by perusing the documents provided, in particular his medical records, to establish the truthfulness of the account given to her by Patient B. This fell below the standard expected of a reasonably competent consultant in psychiatry.'*
>
> *'In my opinion, despite Dr Moodliar stating in her report and in evidence in Court about seeing demons which could be a feature of insanity, there is no information to lead me to conclude that this was appropriately assessed and documented in both her reports. I have not been provided with her hand-written notes. She should have done a detailed mental state assessment to establish if the mental illness is of such a severe nature that could not distinguish fantasy from reality, and could conduct his affairs due to psychosis. If she did assess and did not document it, this in my view is poor standard of assessment. I consider that all relevant content from her hand-written notes in relation to her opinion and recommendation should be in her final report. In my view, these fell below the standard expected of a reasonably competent consultant in psychiatry.'*

153. The Tribunal concluded that individually each of the sub-particulars of paragraph 3(a) fell below but not seriously below the standards expected of a reasonably competent consultant in psychiatry. However, the combined effect of the failings was significant and lead to a poor and woefully inadequate assessment of Patient B.

154. The Tribunal therefore concluded that cumulatively this amounted to serious misconduct.

Paragraph 3(b)

155. The Tribunal noted that Dr Moodliar had made full admissions to Allegation 3(b). The Tribunal also noted that Dr Moodliar at the time had recognised that her expert report was factually inaccurate and had corrected her report before the case went to court.

156. The Tribunal concluded that this was a serious error on Dr Moodliar's part; however, it considered that this had been a genuine mistake and had been corrected. The Tribunal therefore concluded that this did not amount to serious misconduct.

Paragraph 3(c)

157. The Tribunal noted Dr D's expert report dated 2 June 2020 in which he opined that Dr Moodliar did not possess sufficient knowledge to serve as an expert witness, with particular reference to her knowledge of the issues relating to diminished responsibility. In his opinion, this fell seriously below the standard expected of a reasonably competent consultant in psychiatry, as she was acting beyond her training and expertise.

158. The Tribunal determined that Dr Moodliar had been paid to act as an expert for the defence in criminal proceedings and was there to argue a defence of diminished responsibility. It was clear in the criminal court that Dr Moodliar did not have the expertise to undertake an assessment and provide an opinion on the defence of diminished responsibility. The Tribunal was of the view that in putting herself forward as an expert, she was not able to support the defence in its argument that the charge of murder be reduced to that of manslaughter on the basis of diminished responsibility.

159. The Tribunal concluded that Dr Moodliar acting beyond her training and expertise as an expert witness, without possessing sufficient knowledge of diminished responsibility, had a significant impact on the criminal court proceedings.

160. Notwithstanding that the Tribunal has found that it is unnecessary to undertake higher training in forensic psychiatry. Dr Moodliar's expertise and knowledge did not equip her in this matter, and she acted outside her expertise and competence. The Tribunal therefore concluded that this amounted to serious misconduct.

Paragraph 3(d)

161. The Tribunal considered the sentencing remarks of HHJ M Lucraft QC dated 10 January 2020 which stated '*Overall her notes were woefully inadequate and not what one would expect to see in a case such as this*'.

162. The Tribunal also considered Dr D's expert report dated 2 June 2020 in which he opined:

> *'My reading of the documentation leads me to conclude that she did not keep adequate notes of her assessment of the patient, as there were questions in evidence and she could not provide evidence of how she arrived at the conclusion from her written notes, for example, in relation to dealing with the issue of insanity with the client, particularly because she had stated that he told her that he was seeing demons which the Court considered to be a feature of insanity. The record keeping*

was below the standard expected of a reasonably competent consultant in psychiatry.'

163. Although the Tribunal has considered the sentencing remarks and the trial transcript, it has not had the benefit of considering the notes. It has been guided by Dr D's conclusion that Dr Moodliar's record keeping was below the standard expected of a reasonably competent consultant in psychiatry but not seriously below the standards expected. It therefore concluded that this did not amount to serious misconduct.

Paragraph 3 (e)

164. The Tribunal has considered that this paragraph directly relates to Paragraph 3(a) where it has determined that the failure to undertake an adequate assessment was serious misconduct.

165. However, taking Paragraph 3(e) alone, the Tribunal is guided by Dr D's opinion that Dr Moodliar's record keeping was below the standard expected of a reasonably competent consultant in psychiatry but not seriously below the standards expected. As such the Tribunal does not find that this is serious misconduct. It does not consider it appropriate to accumulate this with its findings in Paragraph 3(a).

Impairment

166. Having found some of the facts found proved amounted to misconduct, the Tribunal went on to consider whether Dr Moodliar's fitness to practise is currently impaired by reason of that misconduct.

167. The Tribunal noted that Dr Moodliar had engaged in further training and reflection. She produced many favourable testimonials from colleagues and a reflective witness statement. In her oral evidence, Dr Moodliar accepted and recognised that she had not done the things that she should have done.

168. The Tribunal was of the view that while Dr Moodliar has recognised what went wrong, she has provided no analysis or reflection on her role or what factors caused her to behave in the way that she did. The Tribunal was of the view that the testimonials along with Dr Moodliar's oral evidence showed that she had developed some insight into her misconduct, however, the Tribunal was concerned that this insight was limited and still developing and overall, not complete.

169. The Tribunal concluded that while Dr Moodliar's deficiencies may be capable of remediation, they had not been remedied, and there was a risk of repetition. Furthermore, as Dr Moodliar had been found to be dishonest, the Tribunal concluded that all but the first limb of the test set out in *Grant* were engaged in this case.

170. The Tribunal was of the opinion that public confidence in the medical profession and the maintenance of standards within the profession would be undermined were a finding of impairment not made, given the multiple breaches of GMP and associated guidance. Moreover, it determined that the public would be very concerned were a doctor who had been dishonest be allowed to practise without restriction.

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

Determination on Sanction - 20/05/2022

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

The Evidence

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

174. On behalf of the GMC, Mr Fish referred the Tribunal to relevant paragraphs in the Sanctions Guidance (16 November 2020) (SG). Mr Fish submitted that the appropriate and proportionate sanction in this case is a period of suspension. Mr Fish submitted that such a sanction would promote and maintain public confidence in the medical profession and would promote and maintain proper professional standards and conduct for members of the profession.

175. Mr Fish stated that the Tribunal has the option to take no action in this case but the guidelines make it clear that this is a wholly exceptional course of action, which, he submitted, could not possibly apply here. Mr Fish submitted that the starting point for the Tribunal was at conditions on Dr Moodliar's practice, which in his submission where not appropriate in this case.

176. Mr Fish referred the Tribunal to paragraphs 91 to 102 of the SG. He stated that it refers to some of the factors which are indicative of suspension being appropriate, namely, the deterrent effect which is clearly required here.

177. Mr Fish stated that doctors have to be deterred from acting dishonestly and also have to be deterred from seeking to provide expert evidence in cases when it is outside their knowledge and expertise.

178. Mr Fish stated that there is a finding of dishonesty in relation to the copying in Dr Moodliar's report. The Tribunal has also found that Dr Moodliar breached the fundamental duties that were placed upon her as an expert. Not only was her assessment of

Patient B wholly inadequate, one of the most egregious aspects of the misconduct here is that she was seeking to give expert evidence in relation to a medical defence in a murder trial, which this tribunal has found she did not have the requisite experience to do so.

179. Mr Fish stated that the conduct in this case was serious; however, it falls short of being fundamentally incompatible with continued registration. If the Tribunal accepts that, then that is indicative that suspension is the correct sanction as there has been some acknowledgement of fault.

180. Mr Fish stated that Dr Moodliar's insight and reflection are far from complete. This is a factor that has already been identified by the Tribunal and referred to in its findings in relation to impairment and misconduct, but they are equally relevant to the issue of sanction.

181. Mr Fish stated that paragraph 97 of the SG relates to suspension being appropriate, where there's been a serious breach of Good medical practice. The Tribunal is not dealing with just one breach, there are a number of breaches the Tribunal has already been referred to in parts of Good medical practice.

182. Mr Fish stated that the Tribunal has already referred to the duties on expert witnesses and will no doubt have them in mind when considering whether there has been serious breaches of Good Medical Practice. Mr Fish submitted that the number of breaches that exist here are serious enough to justify suspension. Further, that when considering suspension insight has to be considered.

183. Mr Fish acknowledged that at stage two of these proceedings Dr Moodliar has shown some insight and indicated that remediation may be successful; however, this is still ongoing as the Tribunal has expressed in its findings on impairment.

184. Mr Fish stated that there is no evidence of repetition and that there is no evidence of any other concerns that have arisen since the trial in 2019.

185. Mr Fish referred the Tribunal to paragraphs 120 – 128 of the SG which specifically deal with dishonesty. Mr Fish stated that paragraph 124 acknowledges that conduct such as this, although it may result in no direct harm to patients, is still serious because it undermines the trust in the medical profession. Mr Fish stated that this is such a case as it undermines trust in expert witnesses.

186. Mr Fish stated that another factor that is referred to in paragraph 124 is that evidence of clinical competence, referring to the various testimonials that the Tribunal has received, cannot mitigate serious dishonesty.

187. On behalf of Dr Moodliar, Ms Duong stated that lying at the very heart of the Tribunal's consideration at this stage, is the principle of proportionality, weighing the interests of the public against those of Dr Moodliar.

188. Ms Duong accepted that in light of the findings that the Tribunal has made, it is not a case where it would be appropriate for the Tribunal to take no action at all, or indeed one where undertakings might be appropriate, and so to that extent she concurs with Mr Fish's observations that the starting point is conditions.

189. Ms Duong submitted that in light of the Tribunal's findings, considering the context of the case as a whole, and also the evidence it has heard, the issue that is likely to detain the Tribunal at this stage is whether this is a case that can be properly met by conditions, or one where suspension is appropriate.

190. Ms Duong stated that the serious misconduct in this case relates to: the dishonesty of copying the report; the adequacy or inadequacy of the assessment of Patient B; Dr Moodliar acting beyond her training and expertise when giving evidence; and not having sufficient knowledge of the defence of diminished responsibility.

191. Ms Duong reminded the Tribunal that when considering and applying the overarching objective, the main reason for imposing sanctions is to protect the public. Ms Duong submitted that the Tribunal can readily conclude that this is not a case that involves concerns regarding patient risk.

192. Ms Duong submitted that conditions would be a sufficient sanction in this case to meet the public interest. Ms Duong stated that there is some insight demonstrated in this case and that there have been attempts at remediation. There is also Dr Moodliar's apology and that she has demonstrated work in improving upon areas that are relevant to the concerns that have been raised. She has accepted that there is a limitation to the areas of work in which she can act as an expert and there is evidence of reflection both from Dr Moodliar and also from others within their testimonials.

193. Ms Duong stated that although Dr Moodliar did not admit to all the facts that the Tribunal has found proved, it does not curtail its ability to take account of the insight Dr Moodliar has been able to demonstrate at this stage of proceedings.

194. Ms Duong stated that there is evidence of Dr Moodliar adhering to important principles of Good Medical Practice. There is evidence of her keeping up with her professional development , her continued work as a psychiatrist and the testimonials of those she works with. Ms Duong stated that there is a lack of any fitness to practice history which is a mitigating feature in in this case as is the lapse of time since the incident occurred. Ms Duong stated that the dishonesty was five years ago and two years before the concern was initially raised. Therefore, there has been a significant lapse of time since the conduct took place.

195. Ms Duong said that insofar as remediation is concerned, Dr Moodliar has given evidence about the training, mentoring, and the peer group work that she has undertaken

and the reflections that she has completed. Ms Duong submitted that Dr Moodliar has gone quite far in terms of taking steps to remediate.

196. Ms Duong stated that in terms of conditions being appropriate, she submitted that these would be sufficient in this case. Dr Moodliar has been subject to conditions for some time from an interim order that has been running. Ms Duong stated that Dr Moodliar has complied with the conditions and has worked as a good doctor in psychiatry, providing good care to her patients over that time.

197. Ms Duong stated that in the absence of her contribution as a good working psychiatrist if she was suspended, this is likely to impact upon not only her immediate patients and the team that she works within, but also a loss to the profession of a good working psychiatrist in learning disability in particular.

198. Ms Duong stated that although the concerns in this case have been quite properly charged as misconduct, the Tribunal may feel that it is not far off from a case concerning deficient professional performance because it is about Dr Moodliar not having been good enough in her job as an expert. Ms Duong stated that this is more akin to a case that may benefit from workable conditions.

199. Ms Duong stated that one of the conditions that is currently attached to Dr Moodliar's interim order is the restriction of Dr Moodliar's ability to work in any form of medico-legal work. Ms Duong stated that this has effectively acted as a partial suspension to an area of practice that she had been previously involved in and so effectively, any sort of conditions that would reflect similar to what she currently has is in effect, a partial suspension of the area of concern that the Tribunal is considering.

200. Ms Duong stated that the Tribunal can be satisfied that Dr Moodliar will comply with conditions. There is evidence that she has complied in the past and thus likely that she would comply with them in the future. Ms Duong stated that there is no evidence that remediation is unlikely to be successful. Further, that Dr Moodliar has fully engaged with these proceedings and has already started the process of remediation.

201. Ms Duong stated that, notwithstanding the fact that this case concerns dishonesty, conditions will be sufficient to meet the public interest. There has already been a public finding against Dr Moodliar's conduct in these proceedings and this should satisfy the public interest.

202. Ms Duong submitted that the sanction of suspension would be disproportionate in this case. She submitted that the appropriate sanction is one of conditions.

The Tribunal's Determination on Sanction

203. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal alone, exercising its own judgement. In so doing, it has given consideration to its

findings of fact, its findings of misconduct and impaired fitness to practise and the submissions made by Mr Fish, and Ms Duong. The Tribunal also paid particular attention to the Sanctions Guidance and relevant paragraphs contained therein.

204. Throughout its deliberations the Tribunal bore in mind that the main reason for imposing sanctions is to protect the public. This is the statutory overarching objective which includes to: protect the health, safety and well-being of the public; promote and maintain public confidence in the medical profession; and promote and maintain proper professional standards and conduct for members of that profession. In making its decision, the Tribunal also had regard to the principle of proportionality, and has weighed Dr Moodliar's interests with those of the public. It also considered and balanced the aggravating and mitigating factors in this case.

Aggravating Factors

- Dr Moodliar's course of conduct was over a period of time in relation to the assessment of Patient B;
- Acted as an expert witness in a murder trial without the necessary skill, knowledge and experience required;
- Dr Moodliar's dishonesty.

Mitigating Factors

- There is no evidence of any further complaints or concerns since the incident;
- Dr Moodliar has no previous adverse GMC history;
- Dr Moodliar's expression of regret and remorse for her actions and her partial admissions at the outset of these proceedings;
- No concerns regarding Dr Moodliar's clinical skills in terms of patient safety;
- Testimonials from people aware of these proceedings who work with Dr Moodliar and say that she is good clinician;
- Dr Moodliar has developing insight;
- Dr Moodliar has completed courses relevant to some of the areas identified as deficient and has engaged in a positive way with her medico-legal peer group.

205. In deciding what sanction, if any, to impose the Tribunal considered each of the options available, starting with the least restrictive.

No Action

206. The Tribunal first considered whether to conclude the case by taking no action. Taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that given its findings there are no exceptional circumstances in this case and that it would not be sufficient, proportionate, or in the public interest to conclude this case by taking no action.

Conditions

207. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Moodliar's registration. The Tribunal took account of paragraphs 82 (a), (b), (c), (d) and 84 (a), (b) and (c) of the SG. These state:

> *'82. Conditions are likely to be workable where:*
>
> *a. the doctor has insight;*
>
> *b. a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings;*
>
> *c. the tribunal is satisfied the doctor will comply with them;*
>
> *d. the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.*
>
> *84. Depending on the type of case (eg health, language, performance or misconduct), some or all of the following factors being present (this list is not exhaustive) would indicate that conditions may be appropriate:*
>
> *a. no evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage;*
>
> *b. identifiable areas of their practice are in need of assessment or retraining;*
>
> *c . willing to respond positively to retraining, with evidence that they are committed to keeping their knowledge and skills up to date throughout their working life, improving the quality of their work and promoting patient safety (Good medical practice, paragraphs 7–13 on knowledge, skills and performance and paragraphs 22–23 on safety and quality).'*

208. It also had regard to paragraph 85 of the SG, which states:

> *'85 Conditions should be appropriate, proportionate, workable and measurable.'*

209. The Tribunal considered that there are effectively two matters of concern that it has to address: Dr Moodliar's dishonesty in relation to the report she prepared on Patient A; and her assessment of Patient B in a murder trial. Both of these matters relate to a discrete area of Dr Moodliar's practice where she was

acting as an expert. There have been no concerns about her clinical practice. As such, the first limb of the overarching objective is not engaged in this case.

210. The Tribunal was mindful that dishonesty is always a serious matter; however, it is important that it considers the context of that dishonesty. The Tribunal considered that dishonesty is a matter of degree. In this particular case it was an isolated event in Dr Moodliar's career where she had copied Dr C's wording into her report. It was a foolish thing to do as it was readily identified. There was no attempt to cover it up.

211. The Tribunal next considered Dr Moodliar's role as an expert in relation to Patient B. This is also a serious finding. She put herself out to be an expert in a murder trial and was clearly out of her depth. She did not have the necessary training, skill or experience to undertake that role. Her assessment and reports were woefully inadequate. However, the Tribunal accepts Ms Duong's submission that this is not far off from a case concerning deficient professional performance. It is a discrete area of her practice that can be addressed and strengthened.

212. Dr Moodliar has tried to be honest about aspects of her practice that are deficient, and she has expressed remorse for her actions and apologised. Dr Moodliar told the Tribunal that she has reflected on the issues and would change her practice by only taking on cases within her specialist field of expertise, that of learning disability. The Tribunal noted, however, that it has not been provided with any objective evidence to support this because Dr Moodliar has not undertaken any medico-legal work.

213. Dr Moodliar has provided evidence of courses she has attended and completed to assist in addressing the concerns identified. She has provided testimonials from her colleagues which confirm that she is a good doctor and that she provides a high standard of care to her patients. The Tribunal is satisfied that Dr Moodliar has demonstrated that she has begun a journey of remediation; however, she still has some way to go before the journey is complete. It took into account that Dr Moodliar has no previous history with the GMC and there have been no complaints about her clinical practice. Dr Moodliar has evidenced that she has complied with the interim order of conditions.

214. The Tribunal concluded that conditions may be appropriate in this case; however, given the seriousness of the misconduct, it went on to consider whether suspension was the appropriate sanction in this case. It also considered the GMC's submissions on imposing an order of suspension.

215. The Tribunal acknowledged (as set out at paragraph 92 of the SG) that a sanction of suspension does have a deterrent effect and can be used to send a signal to Dr Moodliar, the profession, and the public about what is regarded as behaviour unbefitting a registered doctor. It also acknowledged that suspension is an appropriate response to misconduct which is sufficiently serious that action is required in order to protect members of the public

and maintain public confidence in the profession, but which is not fundamentally incompatible with continued registration.

216. The Tribunal considered that suspension may be the appropriate sanction in the public interest under circumstances where a doctor has breached a fundamental tenet of Good medical practice; *honesty goes to the heart of the medical profession*.

217. The Tribunal has taken into account Ms Duong's submission, that Dr Moodliar has been brought before a Tribunal in public proceedings and that there have been findings made against her. The Tribunal agreed that this addressed some of the public interest concerns in this case.

218. There is no risk to public safety in this matter. Therefore, in all the circumstances the Tribunal considers that a period of suspension would be disproportionate in this case.

219. The Tribunal has considered the representations made by Mr Fish and Ms Duong, who both accept that erasure does not need to be considered in this case.

220. In view of the above, the Tribunal concluded that Dr Moodliar's misconduct could adequately be marked with a period of conditional registration. The Tribunal determined that conditions would promote and serve the overarching objective, whilst, at the same time, adequately mark the seriousness with which it viewed Dr Moodliar's actions. Further, a period of conditional registration would allow Dr Moodliar to continue to work towards completing her journey of remediation, and to be able to demonstrate, with objective evidence, that she has learnt from her past failings and that he has implemented steps to address them.

221. The Tribunal determined to impose the conditions for a period of 18 months. It was of the view that this length of time would ensure Dr Moodliar had adequate opportunity to update her skills and knowledge as well as update her portfolio. The Tribunal noted that Dr Moodliar may consider it helpful to provide independent evidence of reflection.

222. The Tribunal therefore determined to impose the following conditions upon Dr Moodliar's registration:

1 She must personally ensure the GMC is notified of the following information within seven calendar days of the date these conditions become effective:

a the details of her current post, including:

i her job title

ii her job location

iii her responsible officer (or their nominated deputy)

b the contact details of her employer and any contracting body, including her direct line manager

c any organisation where she has practising privileges and/or admitting rights

d any training programmes she is in

e of the contact details of any locum agency or out of hours service she is registered with.

2 She must personally ensure the GMC is notified:

a of any post she accepts, before starting it

b that all relevant people have been notified of her conditions, in accordance with condition 8.

c if any formal disciplinary proceedings against her are started by her employer and/or contracting body, within seven calendar days of being formally notified of such proceedings

d if any of her posts, practising privileges or admitting rights have been suspended or terminated by her employer before the agreed date within seven calendar days of being notified of the termination

e if she applies for a post outside the UK

3 She must allow the GMC to exchange information with any person involved in monitoring her compliance with her conditions.

4 a She must have a workplace reporter appointed by her responsible officer (or their nominated deputy).

b She must not work until:

i her responsible officer (or their nominated deputy) has appointed her workplace reporter

ii She has personally ensured that the GMC has been notified of the name and contact details of her workplace reporter.

5 a She must design a personal development plan (PDP), with specific aims to address the deficiencies in the following areas of her practice.

- Assessment, analysis and preparation of expert reports;
- Giving evidence before a court;

- Knowledge of medical legal defences.

b Her PDP must be approved by her responsible officer (or their nominated deputy)

c She must give the GMC a copy of her approved PDP within three months of these substantive conditions becoming effective.

d She must give the GMC a copy of her approved PDP on request.

e She must meet with her responsible officer (or their nominated deputy), as required, to discuss her achievements against the aims of her PDP.

6 She must undertake an assessment of her performance, if requested by the GMC.

7 She must not provide expert reports or act as an expert witness in any proceedings.

8 She must personally ensure the following persons are notified of the conditions listed at 1 to 7:

a her responsible officer (or their nominated deputy)

b the responsible officer of the following organisations:

i her place(s) of work, and any prospective place of work (at the time of application)

ii all her contracting bodies and any prospective contracting body (prior to entering a contract)

iii any organisation where she has, or has applied for, practising privileges and/or admitting rights (at the time of application)

iv any locum agency or out of hours service she is registered with.

v If any of the organisations listed at (i to iv) does not have a responsible officer, she must notify the person with responsibility for overall clinical governance within that organisation. If she is unable to identify this person, she must contact the GMC for advice before working for that organisation.

c the approval lead of her regional Section 12 approval tribunal

d her immediate line manager and senior clinician (where there is one) at her place of work, at least 24 hours before starting work (for current and new posts, including locum posts).

Review

223. The Tribunal directs that before the end of the period of conditional registration, Dr Moodliar's case be reviewed by a Medical Practitioners Tribunal. A letter will be sent to her about the arrangements for the review hearing. The Tribunal considered that those reviewing Dr Moodliar's case would be assisted by receiving the following:

- A personal statement from Dr Moodliar setting out her reflections or other document which shows that she has reflected on her misconduct;
- Any other information which Dr Moodliar considers would assist the Tribunal.

Determination on Immediate Order - 20/05/2022

224. Having determined to impose conditions on Dr Moodliar's registration for 18 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Moodliar's registration should be subject to an immediate order.

Submissions

225. On behalf of the GMC, Mr Fish submitted that an immediate order was necessary.

226. On behalf of Dr Moodliar, Ms Duong said that an immediate order was usually only necessary where there were public safety concerns. There are no such concerns in this case. However, this was a matter for the Tribunal.

The Tribunal's Determination

227. In making its decision the Tribunal exercised its own judgement and had regard to the submissions of Mr Fish and Ms Duong. It had regard to paragraph 172 of the Sanctions Guidance, 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."*

228. In all the circumstances, the Tribunal determined to impose an immediate order of conditions on Dr Moodliar's registration. It was of the view that an immediate order was necessary in terms of the public interest given the findings of the Tribunal in this case.

229. This means that Dr Moodliar's registration will be made subject to the immediate conditions from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

230. The interim order is hereby revoked.

231. That concludes this case.

ANNEX A – 11/05/2022

Applications under Rule 17(2)(g) and 17(6)

232. Following the closing of the GMC's case, Ms Duong, on behalf of Dr Moodliar, made an application under Rule 17(2) (g) of the GMC's (Fitness to Practise) Rules 2004, as amended, (the Rules) which states:

> *'17(2) The order of proceedings at the hearing before a Medical Practitioners Tribunal shall be as follows—*
>
> *…*
>
> *(g) the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld;'*

233. Ms Duong submitted that the GMC has called insufficient evidence to prove the allegation of dishonesty as set out paragraph 2. Ms Duong reminded the Tribunal of the test for dishonesty as set out in in the judgment of Lord Hughes in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at paragraph 74:

> *'… When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'*

234. Ms Duong referred the Tribunal to the evidence that has been adduced at this stage: Dr C's report on Patient A; Dr Moodliar's report on Patient A; and the witness statement and oral evidence of Dr C.

235. Ms Duong submitted that in the context of this case it must be proved that the copying of Dr C's report was done either intentionally to pass off his work or opinion as her own, or to intentionally mislead that those copied parts of the report represented her own work.

236. Ms Duong referred the Tribunal to the case of Uddin v GMC [2012] EWHC 2669 (Admin):

'the real issue in many cases may be whether the conduct took place and with what state of mind. For example, as a false representation made? But even if it was, was it done knowing that it was false or may have been, for example, innocent or even a negligent mistake'

237. Ms Duong submitted that there is already evidence before the Tribunal from which it may infer that Dr Moodliar did not have a dishonest state of mind, namely others she must have known would have sight of her report and Dr C's report.

238. Ms Duong submitted that the context in which Dr Moodliar's report was prepared and submitted is extremely important in this case. Dr C gave evidence about the way in which expert reports are prepared in criminal proceedings and what an expert preparing such a report expects to happen with the report that they prepared. In the case concerning Patient A, Dr Moodliar's report was prepared on behalf of the prosecution. Dr C's evidence is that such a report once prepared must be disclosed. It is also his evidence that an expert providing a second report, once they have provided it to their instructing solicitors, can expect that it might be served on the court, the other party and the expert whose report is being responded to. Ms Duong stated that it is apparent that Dr Moodliar would have known that Dr C would have sight of her report; that the court and both parties to proceedings would have sight of both their reports.

239. Ms Duong referred the Tribunal to the oral evidence of Dr C. He stated that it would be "*immediately apparent to everyone"* as the words were virtually identical. Dr C said, "*it wasn't like there was any kind of disguising it, trying to pass it off [as her own]. If someone were writing an article it would be different."* He also stated he did not feel *"particularly personally upset"* that she had apparently copied his work. It is significant to this Tribunal's consideration of dishonesty that he drew a distinction between this case and if the copying related to an academic article. It is submitted that the tenor of his evidence was not that he was concerned she was passing off his work as her own, but rather, that she would be opening herself to criticism for not reaching her own independent conclusions in respect of Patient A.

240. Ms Duong stated that the Tribunal will also be assisted by the email correspondence between Dr C and Dr Moodliar. She submitted that it is apparent from this correspondence that Dr Moodliar expected Dr C to read her report once it was drafted. Further, that the second email chain supports the contention that Dr Moodliar conducted her own research and reached her own independent views on the issues concerning Patient A.

241. Ms Duong stated that it may be submitted on behalf of the GMC that the Tribunal is not bound by Dr C's evidence on this point; however, it must be accepted that as the person whose report had been copied and who was directly involved with Dr Moodliar, his view is highly probative. Ms Duong stated that Dr Moodliar also relies upon the purported actions by Dr C upon noting the similarities. His evidence is that his only action was to tell Dr Moodliar that he thought the reports were "*very* similar" and told the solicitor and barrister involved in the case. He did not raise any formal or regulatory complaint against

Dr Moodliar. Ms Duong submitted that the actions of Dr C, a highly experienced doctor, at the time that he noted the concerns in 2017, are probative on the issue of dishonesty.

242. Ms Duong submitted that with a view to the evidence of the wider context and the evidence of Dr C, there is insufficient evidence upon which this Tribunal properly directed, could safely infer that the doctor's conduct was dishonest.

243. Ms Duong further submitted that the GMC has called insufficient evidence to prove the following aspects of paragraph 3(a):

> *Between September and December 2019, you acted as an expert witness for the Defence in the case of Patient B and you:*
>
> *(a) Failed to assess Patient B adequately in that you did not:*
>
> *(iv) explore the symptoms and possibility of:*
>
> *1. Insanity*
> *2. Schizophrenia*
> *3. Psychosis*.

244. Ms Duong submitted that the Tribunal should consider closely the wording of these allegations in determining whether there is sufficient evidence to prove each particular fact. She stated that the word "symptoms" has little meaning in the context of insanity, which is a legal construct as opposed to a medical term.

245. Ms Duong invited the Tribunal to strike out or ignore "symptoms" in relation to insanity. In so far as the possibility of insanity is concerned, she submitted at the very least that at the stage that Dr Moodliar was giving evidence in December 2019 that she had explored the possibility of insanity. She submitted that for those reasons, there is insufficient evidence that this Tribunal could properly find this fact proven.

246. Ms Duong submitted in relation to 3(a)(iv)(2) and (3), namely schizophrenia and psychosis, there is insufficient evidence that the doctor did not consider the possibility of schizophrenia and psychosis. She submitted that the Tribunal may conclude that there is in fact no evidence that she did not consider the possibility of schizophrenia and / or psychosis. Schizophrenia, or paranoid schizophrenia, was a condition that is not only considered, but diagnosed on the face of her two reports on Patient B. Similarly, Dr Moodliar refers to psychosis in her report within the current diagnosis of Patient B with "confused thoughts (thought disorder)" and as reflected within the summary of his past psychiatric history in the second report.

247. Ms Duong stated that Dr D, the expert called on behalf of the GMC, in his evidence said that schizophrenia and psychosis were both referred to by Dr Moodliar, but he was critical about the fact she had not fully explored the symptoms. It is submitted that his

evidence does not support a finding that Dr Moodliar had not explored the possibility of schizophrenia or psychosis.

248. Ms Duong stated that it is conceded that there remains a case as to whether she has "explored the symptoms" of schizophrenia or psychosis, and therefore that aspect of the allegation may stand.

249. Ms Duong stated that if the application is acceded to, it is submitted that the Tribunal's determination may be reflected as follows:

> Between September and December 2019, you acted as an expert witness for the Defence in the case of Patient B and you:
>
> (a) Failed to assess Patient B adequately in that you did not:
> (iv) explore the symptoms ~~and possibility~~ of:
> 1. ~~Insanity~~
> 2. Schizophrenia
> 3. Psychosis.

250. Ms Duong submitted that it is for these reasons that the Tribunal should conclude that there is insufficient evidence to allow the case to proceed past half time in relation to those discrete aspects of the factual allegations.

251. Mr Fish on behalf on the GMC opposed Ms Duong's application. Mr Fish stated that when dealing with the plagiarism allegations, it is submitted that it is difficult to divorce allegation 2 from 1(b).

252. He stated that reference has been made to the case of *Uddin* in relation to an innocent mistake of not providing a solid foundation for a finding of dishonesty. Mr Fish stated that the Tribunal is not confronted with an innocent mistake here. He submitted that Dr Moodliar copied parts of Dr C's report knowing that parts of the report that she was submitting were not her own work. Mr Fish stated that it remains a fact to be determined in relation to allegation 1(b) for which it is conceded that there is a case to answer.

253. Mr Fish stated that nowhere in Dr Moodliar's report does she acknowledge that the contents are not all her own work. Further, at no stage in her report does Dr Moodliar quote from Dr C's report or make it clear that that is what she is doing.

254. Mr Fish stated that the Tribunal will recall in re-examination and following Tribunal questions, that Dr C's answer to '*what would he have done if he'd been trying to do what Dr Moodliar was trying to do*' he stated that he would make it clear and referenced in quotation marks. Mr Fish stated that these are simple things that Dr Moodliar could have done, which she did not.

255. Mr Fish submitted that it is open to the Tribunal to conclude that to a reader of Dr Moodliar's report, it would appear that this was her own work. Mr Fish stated that if the Tribunal concludes, as it could on the available evidence, that Dr Moodliar presented that report as if it was all of her own work, then it could conclude that this was dishonest.

256. Mr Fish stated that it is already known that Dr Moodliar knew that she had copied someone else's work and that she had not acknowledged this and knew that it was not all her own work. Mr Fish stated that it then needs to be considered whether this conduct would be considered dishonest by the standards of ordinary people.

257. Mr Fish stated that the Tribunal will be aware that that is essentially an objective test and Dr Moodliar does not have to have appreciated that what she was doing by the standards of ordinary people was dishonest. It is the GMC's submission that it is open to this tribunal, on the available evidence, to conclude that ordinary people looking at that report would conclude that this was all her own work. However, it has been revealed that it was not.

258. Mr Fish stated that if the two reports were side by side, it would be obvious, however, in the GMC's submission that misses the point entirely. This is about Dr Moodliar's report which she was preparing as her own expert report purporting to express her own independent expert opinion in which she copied someone else's. Mr Fish submitted that to anyone reading that report, it would not be apparent to them that Dr Moodliar had included a large part of someone else's work.

259. Mr Fish submitted that the 17(2)(g) application should fail, and it is for Dr Moodliar to explain why she did what she did.

260. Mr Fish stated that where there is a prima facie case to support an allegation of dishonesty, one would expect to assess the doctor's state of mind at the time to make findings. At this stage of proceedings, the Tribunal has not had any evidence in regard to that.

Allegation 3(a)(iv)

261. Mr Fish submitted that it is important that the Tribunal reads the whole of the allegation, not just the words in in 3(a)(iv). Mr Fish stated that Dr D in his evidence has given a very clear expert opinion. Namely, that there were inadequacies in the quality of the assessment that Dr Moodliar conducted with Patient B. Mr Fish stated that this allegation is about the quality of that assessment.

262. Mr Fish submitted that in summary, the criticisms which are reflected in the allegations are borne out of expert evidence. Dr Moodliar has cited the symptoms and then did not apply these to her assessment of Patient B and she did not consider insanity at all.

263. Mr Fish conceded that there may be some ambiguity about the wording of paragraph 3 (a) (iv). He made an application under Rule 17 (6) to amend the paragraph to read *"explore the symptoms and/or possibilities of: "*. He submitted that this was a very minor amendment and could be made without any injustice to Dr Moodliar. He also stated that it would not in any way alter the case that Dr Moodliar was expected to meet in respect of Patient B.

264. Ms Duong opposed the application. She stated that, while an application could be made at any stage, it was highly relevant that it had not been made until the close of the GMC case. Ms Duong submitted that the amendment did cause some injustice to Dr Moodliar even though it was only a small amendment. She stated that the GMC chose the wording in its drafting of the Allegation and submitted that the GMC ought to take responsibility in that respect. Ms Duong submitted that the wording of the allegation ought to remain as it was given the stage of proceedings reached.

The Tribunal's Approach and Legal Advice

265. The Tribunal reminded itself that, at this stage, its purpose was not to make findings of fact but to determine whether sufficient evidence had been presented such that a Tribunal, correctly advised as to the law, could properly find the relevant paragraph(s) proved to the civil standard. The Tribunal considered Ms Duong's submissions and those of Mr Fish. It also took account of the evidence presented, both oral and documentary, in reaching its decision.

266. The Legally Qualified Chair (LQC) reminded the Tribunal that making a decision that there is no case to answer must be made with great caution, and must be done taking fully into account the tribunal's overarching statutory duties to protect the public, which are:

a. *protect and promote the health, safety and wellbeing of the public*

b. *promote and maintain public confidence in the medical profession*

c. *promote and maintain proper professional standards and conduct for the members of the profession.*

267. The LQC referred to the approach set out by Lord Lane in the case of *R v Galbraith [1981] 1 WLR 1039* that where there is evidence with some inherent weakness or vagueness then (a) where the judge comes to the conclusion that the evidence, taken at its highest, is not enough for a conviction then it is his duty to stop the case, or (b) where the strength or weakness of the evidence depends on the view to be taken of a witness's reliability, or other matters within the providence of the jury, upon which the jury could conclude the defendant is guilty then the judge should allow the matter to be tried by the jury.

268. The LQC also referred to the case of *R (Dr Alan Tutin) v General Medical Council [2009] EWHC 553 Admin* in respect of applying the principles set out in *Galbraith* to regulatory proceedings; proceedings where the panel necessarily acts as both judge and jury and the standard of proof is civil rather than criminal.

Tribunal Decision

269. The Tribunal considered the evidence that the GMC has adduced.

270. The matter of paragraph 1(b) of the Allegation is yet to be determined. The Tribunal has been provided with both documentary and oral evidence. Dr Moodliar has also admitted paragraphs 1(a) and 1 (c) of the Allegation. The Tribunal concluded that if there is a case to answer in respect of paragraph 1(b) then it follows there is a case to answer in respect of paragraph 2.

271. The Tribunal had regard to the report that was submitted by Dr Moodliar. It noted that, in a number of places, Dr Moodliar used the phrase 'in my opinion' however, on her own admission the report contained copied sections of Dr C's report.

272. The Tribunal determined that the GMC had adduced sufficient evidence for there to be a case to answer in relation to paragraphs 1(b) and 2 of the Allegation. The Tribunal was satisfied that it should proceed to consider the fact-finding stage in respect of this paragraph.

273. The Tribunal determined to refuse Ms Duong's application under Rule 17(2)(g) in respect of paragraph 2 of the Allegation.

43. The Tribunal considered Ms Duong's application in relation to paragraph 3 (a) (iv) of the Allegation and Mr Fish's application to amend the paragraph under Rule 17(6).

44. The LQC referred the Tribunal to the Rule which states:

> *"Where, at any time, it appears to the Medical Practitioners Tribunal that—*
>
> > *(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and*
> > *(b) the amendment can be made without injustice,*
>
> *it may, after hearing the parties, amend the allegation in appropriate terms."*

274. The Tribunal considered Ms Duong's submission where she invited the Tribunal to either 'strike out or ignore "symptoms" in relation to insanity'. The Tribunal also considered Mr Fish's submission that any ambiguity could be resolved by inserting the word "or" after "and".

46. The Tribunal considered that there was sufficient evidence to support the allegation set out at paragraph 3 (a) (iv) and accordingly there was a case to answer. It did not consider it necessary to amend the paragraph. The Tribunal determined to refuse Ms Duong's application under Rule 17 (2) (g) and Mr Fish's application under Rule 17(6).

ANNEX B –12/05/2022
Application for change of plea

275. Ms Duong submitted that in relation to Allegation 3(e), Dr Moodliar wished to withdraw her admission. This was as a result of the questions that she was asked by Mr Fish in cross examination and by herself in re-examination in order to clarify Dr Moodliar's account.

276. Ms Duong submitted that Dr Moodliar's initial admission to the Allegation did fall short of a full admission as it is drafted. This was clear in her witness statement. Ms Duong said that she accepted some responsibility as Dr Moodliar's legal advisor for not recognising and addressing this earlier.

277. Ms Duong said that the Fitness to Practise Rules did not address the situation where there is a change of plea. However, she reminded the Tribunal that it does have the power to make a decision if it considers that it is in the interest of justice to do so.

278. Mr Fish stated that he concurred with Ms Duong, in that he could not find anything in the rules that deals with this situation. However, in his personal experience, he has encountered this before and doctors have been allowed to withdraw admissions in the past in Medical Practitioner Tribunals. Mr Fish stated that he had cross-examined Dr Moodliar in relation to Allegation 3(e).

279. Mr Fish submitted that the GMC is entirely neutral to the application and that it is a matter for the Tribunal.

Tribunal Decision

280. The Legally Qualified Chair advised the Tribunal that there is no Rule regarding a change of plea. He advised that a plea could be changed at any time before the conclusion of the proceedings if the Tribunal considered that it was in the interests of justice to do so, having heard from the parties.

7 The Tribunal was of the view that it was clear from the evidence that Dr Moodliar's admission in relation to Allegation 3(e) was equivocal.

281. The Tribunal took into account the submission of both parties and agreed that it was in the interests of justice to allow Dr Moodliar's change of plea in relation to Allegation 3(e).