Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 20/08/2018 - 22/08/2018

Medical Practitioner's name: Dr Shivakumar Hanumantappa KENCHAYIKOPPAD

GMC reference number: 6059330

Primary medical qualification: MB BS 1999 Bangalore

Type of case
New - Conviction / Caution

Outcome on impairment
Not Impaired

Summary of outcome
No warning

Tribunal:

Legally Qualified Chair	Ms Marianne O'Kane
Lay Tribunal Member:	Sir Graham Brady
Medical Tribunal Member:	Dr Ann Wolton

Tribunal Clerk:	Mr Matt O'Reilly

Attendance and Representation:

Medical Practitioner:	Present and not represented
GMC Representative:	Ms Shirlie Duckworth, Counsel

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

Overarching Objective

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

Determination on Facts and Impairment - 21/08/2018

Background

1. Dr Kenchayikoppad qualified with an MB BS degree from Bangalore University, Karnataka State of India in 2001. He arrived in the UK in May 2003, and began working initially as a Locum Senior House Officer at the Whittington Hospital, London in January 2004 before securing a substantive training post in August 2004 in the same hospital. He completed Senior House Officer training in Chesterfield and Stoke-on-Trent during 2004 to 2007. Dr Kenchayikoppad achieved his Certificate of Completion of Specialist Training in March 2014. He worked as a Locum Consultant at Queen Elizabeth Hospital, Woolwich from May 2014 - October 2016 followed by Medway Maritime Hospital from December 2016 - May 2017.

2. Dr Kenchayikoppad is currently a Medical Practitioner working as a Locum Consultant in the Acute Medicine and Ambulatory Care Unit at Queen Elizabeth Hospital Woolwich having commenced in May 2017.

3. On 18 November 2016 Dr Kenchayikoppad was arrested XXX following an allegation of an assault upon Ms A. Dr Kenchayikoppad was taken into custody and interviewed by the police.

4. The police summary of that interview reported that XXX Ms A started trying to goad him, making snide comments XXX which were intended to provoke him. XXX Dr Kenchayikoppad took this to be a further attempt to goad him into another argument. Dr Kenchayikoppad went upstairs and shut himself in XXX.

5. Ms A followed Dr Kenchayikoppad XXX making comments about two of his family members. Dr Kenchayikoppad stated to the police that he could not remember the content of the remarks from Ms A, he XXX asked her to stop provoking him as he was becoming angry. He told the police that Ms A did not stop and he pushed Ms A away from him XXX.

6. During police interview on 18 November 2016 Dr Kenchayikoppad admitted his conduct and accepted a police caution for assault by beating contrary to Section 39 of the Criminal Justice Act 1988.

7. XXX Additionally, he cited XXX the day prior to the incident which had contributed to the conflict between him and Ms A.

8. He stated in his email to the GMC on 19 January 2017 that it was at a tired and vulnerable moment when he was feeling XXX exhausted and could not face a night in custody that he accepted the police caution.

9. At the time of the incident Dr Kenchayikoppad was not employed, having taken time off XXX. On 12 December 2016 He took up a post as a locum consultant at Medway Maritime Hospital, Medway NHS Foundation Trust ('the Trust') through ID Medical, an employment agency ('the agency'). In the course of a routine annual Disclosure and Barring Service check, Dr Kenchayikoppad's police caution came to light. The agency telephoned Dr Kenchayikoppad on 19 January 2017 and informed him that he should notify the GMC and the Trust of the police caution.

10. Dr Kenchayikoppad notified the Trust and the GMC of his police caution that same day, 19 January 2017. Following an investigation by the Trust into these matters, it found there to be no concerns that indicated Dr Kenchayikoppad's fitness to practise may be impaired and no further action was taken.

11. In his email notification to the GMC on the 19 January 2017, Dr Kenchayikoppad stated that he had accepted a simple caution from the police arising from an incident unrelated to his work and cited the circumstances. He stated in his email that he had been advised that day by the agency that he should notify the GMC and his Trust. He had been unaware of his duty to report this and apologised for his mistake.

The Allegation and the Doctor's Response

12. At the outset of these proceedings Dr Kenchayikoppad admitted the following paragraphs of the Allegation, in accordance with Rule 17(2)(d) the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs of the Allegation as admitted and found proved.

1. On 18 November 2016 at a custody suite in Croydon Borough you accepted a caution for assaulting Ms A by beating her contrary to Section 39 of the Criminal Justice Act 1988.
Admitted and found proved

2. You failed to notify the GMC without delay of the caution referred to at paragraph 1.
Admitted and found proved

The following matters were to be determined

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

a) caution, in respect of paragraph 1;

b) misconduct, in respect of paragraph 2.

The Outcome of Applications Made during the Impairment Stage

13. Ms Duckworth made an application prior to Dr Kenchayikoppad giving oral evidence at stage two of the process. She submitted that matters relating to XXX should be held in private, pursuant to Rule 41 XXX of Rules. The Tribunal granted this application XXX.

Witness Evidence

14. Dr Kenchayikoppad provided a witness statement, dated 12 July 2018, and also gave oral evidence at the hearing. In addition, the Tribunal received oral evidence from Ms A, the complainant in the incident for which Dr Kenchayikoppad had accepted a caution, in person.

Documentary Evidence

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

- A copy of Dr Kenchayikoppad's simple caution from the police, dated 18 November 2016:
- Email from Dr Kenchayikoppad to the GMC reporting that he had accepted a police caution, dated 19 January 2017;
- Case summary produced by the police, undated;
- Work details form, dated 29 January 2017;
- A letter from Medway NHS Trust Foundation to the GMC providing the outcome details of the Trust's investigation, dated 28 March 2017;
- Dr Kenchayikoppad's ePortfolio and 360 colleague feedback;
- Testimonial letters.

Submissions of behalf of the GMC

16. In summary, Ms Duckworth submitted that whilst there was no actual harm caused to the victim, Dr Kenchayikoppad's caution was for an offence of violence; assault by beating contrary to section 39 of Criminal Justice Act 1988. Ms Duckworth submitted that when considering whether Dr Kenchayikoppad's fitness to practise is impaired because of his caution, this Tribunal should consider that Dr Kenchayikoppad admitted he committed a criminal offence.

17. She referred the Tribunal to paragraph 56d of the Sanctions Guidance (February 2018) ('SG'), which states that 'Tribunals are also likely to take more serious action where certain conduct arises in a doctor's personal life, such as;

…misconduct involving violence….' She invited the Tribunal to consider this criminal offence to have amounted to misconduct.

18. Ms Duckworth submitted that Ms A told the Tribunal Dr Kenchayikoppad had received no legal advice prior to accepting the caution. However, Ms Duckworth submitted that he was told of his right to have legal advice upon his admission to the custody suite, again prior to his police interview and again when he signed the declaration on the police caution. She submitted that the absence of legal advice does not invalidate the police caution and this matter had never been challenged by Dr Kenchayikoppad.

19. Ms Duckworth submitted that this Tribunal heard evidence about Dr Kenchayikoppad's steps to remediate and the fact that he had has done so reduces the risk of repetition. However, she submitted that there is a failure by Dr Kenchayikoppad to recognise the impact of his actions on the wider profession. Furthermore, she submitted that public confidence would be impacted if impairment were not found in a case in which a criminal offence had been committed, a police caution accepted and matters compounded by the doctor not notifying his regulator. Ms Duckworth submitted that for these reasons Dr Kenchayikoppad's fitness to practise is impaired as a result of his caution.

20. In relation to Dr Kenchayikoppad's failure to report the caution, Ms Duckworth submitted that he described his failure to report as 'dishonest'. She submitted that though he has used this word himself in his evidence, it is not a particular of the Allegation in this case and it is not alleged that his omission was in fact dishonest.

21. Ms Duckworth referred the Tribunal to the paragraph 75 of Good Medical Practice 2013 ('GMP') which states that there is an obligation upon a doctor to inform the GMC without delay if cautioned by the police. She submitted that Dr Kenchayikoppad's failed in his responsibility to report his caution to the GMC, albeit she recognised that he eventually did so some eight weeks and five days after the event and had apologised for his mistake. She also noted that his employing Trust, having been made aware of the fact of the caution took no further action in respect of his employment.

22. Ms Duckworth submitted that the medical profession and public would not be aware of the factual context of this case, they would only know that a doctor was charged with a criminal offence and that would have an impact on the reputation of the profession.

23. Ms Duckworth submitted that whilst the Tribunal may have regard to the explanation submitted for the delay in reporting the police caution to the GMC, the fact is there was a breach of GMP which amounted to misconduct and that his fitness to practise is impaired by virtue of his failure to report his caution.

Submissions by Dr Kenchayikoppad

24. In summary, Dr Kenchayikoppad confirmed that he has admitted paragraphs 1 and 2 of the Allegation, although in pushing Ms A he said it was his intention to avoid an escalation of the argument and remove himself from the altercation.

25. Dr Kenchayikoppad submitted that when he stated in his oral evidence that he had been dishonest, he meant that the public may view the circumstances of this case as a doctor trying to hide his police caution from the GMC by not notifying them without delay. He submitted that GMC Counsel was correct to point out that there was a failure on his part to notify the GMC without delay but that his failure was not intentionally dishonest.

26. Dr Kenchayikoppad referred the Tribunal to the paragraph 24 of the 'SG' which states '…the tribunal is less able to take mitigating factors into account when the concern is about public safety, or is of a more serious nature, than if the concern is about public confidence in the profession'. He submitted that he accepted all the circumstances may not be known to the public but that there are mitigating factors and these should be given weight when considering the impact upon public confidence.

The Relevant Legal Principles

27. 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 judgment alone.

28. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted; firstly whether the facts as found proved amounted to misconduct, and that the misconduct was serious, and secondly whether the finding of misconduct was sufficiently serious to lead to a finding of impairment.

29. The Tribunal must determine whether Dr Kenchayikoppad's fitness to practise is impaired today, taking into account Dr Kenchayikoppad's conduct at the time of the incident and any relevant factors since then, including his level of insight and whether the matters are remediable, have been remedied and any likelihood of repetition.

The Tribunal's Determination on Impairment

30. In making its decision whether Dr Kenchayikoppad's fitness to practise is currently impaired, the Tribunal bore in mind the relevant legal principles as set out

in Roylance V GMC. Furthermore, it bore in mind the need to meet the statutory overarching objective and considered Section 35(C)(2) of the Medical Act 1983, which states:

> *"35(C)(2) A person's fitness to practise shall be regarded as "impaired" for the purposes of this Act by reason only of –*
>
> *…*
>
> *(c) a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence…"*

31. The Tribunal went on to consider paragraph 56d of the SG, as referred to in Ms Duckworth's submission, which states:

> *"Conduct in a doctor's personal life*
>
> *56 Tribunals are also likely to take more serious action where certain conduct arises in a doctor's personal life, such as (this list is not exhaustive):*
> *…*
>
> *d misconduct involving violence…"*

32. The Tribunal also bore in mind the evidence of numerous testimonials and feedback reports confirming Dr Kenchayikoppad's professional competence and good character.

Misconduct in relation to the caution

33. The Tribunal heard evidence from Ms A in which she accepted that she had goaded Dr Kenchayikoppad in the events leading up to the incident. She stated that following Dr Kenchayikoppad having pushed her, she said she would call the police as a threat to Dr Kenchayikoppad, who said 'go ahead then, call them', and that was why she did. She stated that she had been shocked when the police arrested him and took him into custody. Ms A stated that she was in no way a victim and that the incident came out of a 'mutual altercation'.

34. The Tribunal considered the fact that there was an offence of assault by beating committed by Dr Kenchayikoppad which warranted a police caution, an offence which he has admitted and accepted. This Tribunal recognises the gravity of any form of violence XXX.

35. The Tribunal XXX found Ms A to be a compelling and credible witness, convincing in her demeanour and assertion that she was 'not a victim by any means'

and that this incident was borne out of a mutual altercation. It considered Ms A to be a self-assured and educated woman XXX In her own words she told the Tribunal 'I am a formidable character XXX'

36. The Tribunal considered that there were a number of mitigating factors. It noted Ms A's and Dr Kenchayikoppad's consistent evidence XXX. It considered Ms A's evidence in which she asserted with some conviction that she was definitely not a victim in relation to these matters XXX. Furthermore, Ms A asserted she had goaded and provoked Dr Kenchayikoppad.

37. The Tribunal went on to consider whether there was any risk of repetition of Dr Kenchayikoppad's conduct. It considered that he had demonstrated significant insight into the impact his actions had on his victim, the reputation of the profession and himself. He has provided this Tribunal with his reflections and told this Tribunal what he has learned XXX. He stated that he is better equipped to identify trigger points and has learned strategies to deal with similar situations that may arise.

38. The Tribunal determined that whilst it could not exclude any possibility of a further episode of assault in the future, it accepted Dr Kenchayikoppad had taken significant steps to reduce this likelihood.

39. The Tribunal noted Dr Kenchayikoppad's evidence and considered that he had significant insight and that his expressions of regret, remorse and of being ashamed were genuine.

40. The Tribunal considered that whilst a police caution for assault is a serious matter, the circumstances of this case provide context in that the police considered a simple caution appropriate as this incident was one push, without harm XXX. It considered that the police offered a simple caution because they saw the offence to be at the lower end of seriousness. The Tribunal also noted that his employing Trust deemed further action unnecessary when it was informed of the caution.

41. The Tribunal considered the SG reference to violence in this context to refer to instances of a more serious nature. It bore in mind that Tribunals are more likely to take action where violence occurs. It considered these circumstances to be at the lower end of the spectrum as both parties agreed it was a single push in the context of an ongoing altercation. It considered Ms Duckworth's submission that the public would not see all the circumstances of this case. The Tribunal considered that this determination provides the public with those circumstances.

42. The Tribunal determined that Dr Kenchayikoppad's action in pushing Ms A, falls short of conduct expected by a medical practitioner. It then went on to consider if Dr Kenchayikoppad's actions were so serious that fellow members of the profession would find his behaviour so deplorable as to amount to serious misconduct.

43. Taking into account all the factors relating to this particular incident and accepting the caution in this case does amount to misconduct, the Tribunal concluded that Dr Kenchayikoppad's conduct regarding the facts admitted and found proved in relation to paragraph 1 of the Allegation did not amount to serious misconduct.

Misconduct in relating to failure to notify the GMC

44. The Tribunal then went on to consider Dr Kenchayikoppad's failure to report the police caution to the GMC. It noted that Dr Kenchayikoppad accepted the police caution on 18 November 2016 and notified the GMC of the police caution by email on 19 January 2017.

45. The Tribunal considered paragraph 75 of GMP, which states:

> *"75. You must tell us without delay if, anywhere in the world:*
>
> *a. you have accepted a caution from the police…"*

46. The Tribunal considered Dr Kenchayikoppad's assertion that he simply did not realise he had to notify the GMC of his police caution, that he was not working at the time and that these matters were not work related. His evidence was that during this period following the caution he was dealing with XXX, he was making efforts to seek employment, and XXX.

47. The Tribunal considered paragraphs 35, 36, 37, 38 and 41 of Dr Kenchayikoppad's witness statement, dated 12 July 2018, which state:

> *"35. I was totally consumed by the shock of the alarming events which led to the police caution. Consequently, and rather regrettably, I entirely overlooked reporting the same to the GMC immediately.*
>
> *36. However, as soon as I was alerted to my oversight by the locum agency ID Medical on 19 January 2017. I immediately informed my employer and the GMC the same day.*
>
> *37. I was never seeking to hide the caution from anyone which is evidenced by my immediate action when I was reminded of my duty to report the caution.*
>
> *38. Notwithstanding my excellent conduct at work evidenced by the fact that there have never been any concerns raised about my conduct by any of my colleagues or patients, I accept that the GMC would be concerned that my*

conduct could have a negative impact upon public confidence in the medical profession.

…

41. I have felt deeply humiliated by the consequences of my actions and I cannot risk there being any repetition."

48. Furthermore, it considered paragraphs 10,11 and 12 of Ms A's witness statement, dated 20 July 2018, which state:

"10. …he was so consumed by XXX that he forgot to report the caution to the GMC and is now facing very serious allegations of failing to report a criminal offence to the GMC.

11. I wholly accept that XXX have jeopardised his professional reputation and I am really sorry that I have indirectly caused him to be in this situation.

XXX"

49. The Tribunal has considered Dr Kenchayikoppad's oral evidence that once he was told by the agency he must notify the GMC and the Trust, he did so that day. The Tribunal bore in mind that there had been a breach of GMP, which Dr Kenchayikoppad accepted. However, the Tribunal accepted his explanation.

50. The Tribunal determined that it was highly unlikely that Dr Kenchayikoppad would fail to report to the GMC in the future. It accepted he understands the importance of his obligation and found him to be persuasive before the Tribunal.

51. The Tribunal therefore concluded that Dr Kenchayikoppad's conduct regarding his failure to notify the GMC, without delay, of his police caution amounted to misconduct but that it did not fall so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct.

Impairment

52. For the reasons set out above the Tribunal does not find Dr Kenchayikoppad's fitness to practise to be impaired in relation to either paragraph of the Allegation.

Determination on Warning - 22/08/2018

1. The Tribunal determined that Dr Kenchayikoppad's fitness to practise was not impaired. It invited submissions from the parties as to whether a warning should be issued.

Submissions

2. In summary, Ms Duckworth invited the Tribunal to issue a warning to Dr Kenchayikoppad. She referred the Tribunal to the relevant sections of the SG, including paragraph 61, which states:

> *"61 Where a tribunal finds a doctor's fitness to practise is not impaired, it cannot impose a sanction. However, it must consider, under rule 17(2)(m) whether to:*
>
> *a take no action*
>
> *b issue a warning if the doctor's conduct, behaviour or performance has significantly departed from the guidance in Good medical practice."*

3. Ms Duckworth submitted that the GMC does invite the Tribunal to issue a warning in this case as there was a departure from GMP.

4. Ms Duckworth referred the Tribunal to the relevant paragraphs of the Guidance on Warnings ('the Guidance'). She submitted that this Tribunal has found Dr Kenchayikoppad's conduct to have fallen below that which is expected of a medical practitioner. She submitted that in this case he has admitted, and it has been found proved, that he received a caution for an offence of assault and he failed to notify the GMC of that caution without delay.

5. Ms Duckworth submitted that this Tribunal found misconduct and though not determined by the Tribunal to be serious, she submitted that Dr Kenchayikoppad's conduct still amounts to a serious departure from GMP. She submitted that the Guidance indicates this to be a factor the Tribunal should consider in determining whether or not to issue a warning.

6. Ms Duckworth submitted that a warning will be appropriate when the concerns are sufficiently serious, that if there were a repetition, they would likely result in a finding of impaired fitness to practise on a future occasion.

7. Ms Duckworth submitted that the Tribunal will need to consider the degree to which the conduct, behaviour or performance could, most importantly in her submission, impact upon public confidence in the profession or the reputation of the profession. If the Tribunal considers that a warning is appropriate, it should make clear the potential impact of the conduct or behaviour in question accordingly.

8. Ms Duckworth reminded the Tribunal of its finding on impairment and stated that whilst Dr Kenchayikoppad had taken significant steps to reduce the likelihood of a repetition of his conduct, the Tribunal could not exclude any possibility of a further episode of assault in the future.

9. Ms Duckworth submitted that when considering the issue of proportionality, and noting Ms A's evidence as to the impact any restrictions could have XXX, the Tribunal should bear in mind that a warning does not impose any restrictions on Dr Kenchayikoppad's practise. Ms Duckworth submitted that the public interest indicates a warning is appropriate and proportionate.

10. Ms Duckworth submitted that although Dr Kenchayikoppad volunteered information regarding a previous incident involving Ms A, which did not form part of this case, this Tribunal should consider how he will deal with similar situations in the future. She submitted that by way of mitigation, he XXX provided evidence of remediation. She stated however that the doctor's focus was the effect of his conduct on himself, rather than that of public confidence in the medical profession.

11. Ms Duckworth concluded by submitting that in taking account of all the circumstances this is a case where a warning is appropriate.

Submissions from Dr Kenchayikoppad

12. Dr Kenchayikoppad submitted that he is of previous good character and has good references dating from medical school until now. He submitted that he has demonstrated reflection, including reflection on his professional values. He submitted that he is adhering to that which is required of him in terms of his professional knowledge, skills and values.

13. Dr Kenchayikoppad submitted that his conduct relating to the incident with Ms A in 2016 was the last conduct of that kind and there has been no repetition. He submitted that XXX he does not anticipate any repetition of similar incidents in the future.

14. Dr Kenchayikoppad submitted that a warning is not intended to restrict practise, however, he submitted that as he is a locum, any warning may have a bearing on his future employment, and in particular, on his ability to secure a permanent post. XXX Dr Kenchayikoppad concluded that by submitting he was very sorry to the public, the GMC and his employer for his actions and invited the Tribunal to take no further action.

The Tribunal's Approach

15. The decision on whether or not to issue a warning is a matter for the Tribunal alone to determine, exercising its own professional judgment. In making its decision the

Tribunal had regard to the evidence it had received, the submissions made by both parties and the advice of the Legally Qualified Chair.

16. The Tribunal had regard to the Guidance, in particular paragraph 61 of the SG as outlined in Ms Duckworth's submission.

The Tribunal's determination on whether to issue a warning

17. The Tribunal considered the Guidance in relation to issuing a warning. It had particular reference to paragraph 10, which states:

> *"10. The power to issue warnings, together with other powers available to the GMC and to MPTS tribunals, is central to their role of protecting the public which includes protecting patients, maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour."*

18. The Tribunal recognised its power in these circumstances to issue a warning, if it so determined.

19. The Tribunal considered paragraph 11 of the Guidance, which states:

> *"11. Warnings allow the GMC and MPTS tribunals to indicate to a doctor that any given conduct, practice or behaviour represents a departure from the standards expected of members of the profession and should not be repeated. They are a formal response from the GMC and MPTS tribunals in the interests of maintaining good professional standards and public confidence in doctors. The recording of warnings allows the GMC to identify any repetition of the particular conduct, practice or behaviour and to take appropriate action in that event. Breach of a warning may be taken into account by a tribunal in relation to a future case against a doctor, or may itself comprise misconduct serious enough to lead to a finding of impaired fitness to practise."*

20. The Tribunal recognised its duty to maintain proper professional standards and that a formal response from an MPT Tribunal could serve to indicate that any future similar misconduct may lead to a finding of impairment.

21. The Tribunal also considered paragraph 13 of the Guidance, which states:

> *"13 Although warnings do not restrict a doctor's practice, they should nonetheless be viewed as a serious response, appropriate for those concerns that fall just below the threshold for a finding of impaired fitness to practise."*

22. The Tribunal considered this paragraph of the Guidance to be relevant in this case given its findings at the impairment stage of the process.

23. The Tribunal noted paragraphs 14 and 16 of the Guidance, which states:

> *"14 Warnings should be viewed as a deterrent. They are intended to remind the doctor that their conduct or behaviour fell significantly below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise. Warnings may also have the effect of highlighting to the wider profession that certain conduct or behaviour is unacceptable."*
>
> *"16 A warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:*
>
> *· there has been a significant departure from Good medical practice…"*

24. The Tribunal bore in mind that it is necessary to inform the wider public and the profession that the behaviour was unacceptable. The Tribunal had already determined that Dr Kenchayikoppad's conduct amounted to a departure from GMP. It must now determine whether that departure was significant. It had regard to the evidence it received in relation to Ms A's involvement in the lead up to the incident and the extent of her contribution to the events that followed. Both Dr Kenchayikoppad and Ms A have indicated regret and remorse for what occurred and have demonstrated insight into the events and asserted that there will not be a repetition. The Tribunal determined that on the basis of its findings at stage two of the proceedings, there had not been a *significant departure* from GMP relating to either of the paragraphs of the Allegation.

25. The Tribunal was of the opinion that a warning would be unlikely to have any additional deterrent effect as XXX Dr Kenchayikoppad XXX aware of the consequences and XXX the risk of any repetition.

26. The Tribunal considered paragraph 20 of the Guidance, which states:

> *"20 The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.*
>
> *a There has been a clear and specific breach of Good medical practice or our supplementary guidance.*

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

c A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise… the decision makers will need to consider the degree to which the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear the potential impact of the conduct, behaviour or performance in question, accordingly.

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

27. The Tribunal's findings at stage two make it clear that paragraph 20 a b and c have all been met and it is satisfied therefore that the imposition of a warning is available to it.

28. With reference to paragraph 20d, the Tribunal then considered whether there is a need to formally record any particular concerns it may have. The Tribunal has concluded that its previous determination at stage two which refers to the background of the case and the Tribunal's conclusions will sufficiently inform the public and members of the profession of concerns arising. The Tribunal also noted that the fact of the doctor's caution is a matter of public record and will remain so.

29. The Tribunal considered paragraph 25 of the Guidance, which states:

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

30. The Tribunal bore in mind that whilst a warning should not present any restrictions on a doctor's practise, Dr Kenchayikoppad submitted that a warning could impact on him as a locum in trying to secure a permanent position and this may have an unintended adverse effect on his future employment prospects.

31. The Tribunal considered paragraph 33 of the Guidance, which addresses matters in mitigation:

> *"33 However, if the decision makers are satisfied that the doctor's fitness to practise is not impaired or that the realistic prospect test is not met, they can take account of a range of aggravating or mitigating factors to determine whether a warning is appropriate. These might include:*
>
> - *the level of insight into the failings.*
>
> *a A genuine expression of regret/apology.*
>
> *b Previous good history.*
>
> *c Whether the incident was isolated or whether there has been any repetition.*
>
> *d Any indicators as to the likelihood of the concerns being repeated.*
>
> *e Any rehabilitative/corrective steps taken.*
>
> *f Relevant and appropriate references and testimonials."*

32. The Tribunal was satisfied that all of the mitigating factors listed in paragraph 33 of the Guidance had been met in this case. The doctor has demonstrated significant insight, genuine regret and remorse and appears to have the support of Ms A during these proceedings. It considered that whilst the matter leading to the caution was not an isolated incident, there had been no repetition since 2016 and steps have been taken to avoid any recurrence. XXX

33. Throughout its deliberations, the Tribunal was mindful of the public interest and bore in mind its power to issue a warning is central to its role of protecting the public, which include protecting patients, maintaining public confidence in the medical profession, and upholding proper professional standards and conduct for members of that profession. It also bore in mind that Dr Kenchayikoppad is a competent doctor as borne out by numerous testimonials, and the public has a need for good doctors.

34. In deciding whether or not to issue a warning, the Tribunal applied the principle of proportionality and weighed the interests of the public against Dr Kenchayikoppad's interests. It reminded itself that a warning does not prevent a doctor from holding a licence to practise and does not place any restrictions on their registration.

35. The Tribunal considered that the public interest and Dr Kenchayikoppad's interests are finely balanced. In weighing the public interest and Dr Kenchayikoppad's interests, the Tribunal considered the purpose of a warning and

what imposing a warning might achieve. It bore in mind the impact a warning would have on Dr Kenchayikoppad's future prospects XXX.

36. It concluded that this determination and previous determinations at stages one and two of these proceedings will sufficiently inform the public that the doctor's conduct and his omission in failing to inform the regulator of the caution without delay are unacceptable. It also noted that the fact of the criminal caution is a matter of public record and will continue to be subject to DBS disclosure.

37. The Tribunal determined for the reasons given above, that a warning would not be necessary or proportionate in the particular circumstances of this case. It has therefore determined not to impose a warning on Dr Kenchayikoppad's registration.

38. This case is concluded.

Confirmed
Date 22 August 2018 Ms Marianne O'Kane, Chair