PUBLIC RECORD

Dates: 03/05/2022 - 11/05/2022

Medical Practitioner's name:	Dr Shreelata DATTA
GMC reference number:	6076715
Primary medical qualification:	MB BS 2003 University of London

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

Summary of outcome

Suspension, 12 months.
Review hearing directed
Immediate order imposed

Tribunal:

Legally Qualified Chair	Ms Melissa Coutino
Lay Tribunal Member:	Mrs Anita Hargreaves
Medical Tribunal Member:	Dr Bryn Davies

Tribunal Clerk:	Mr Mark Hibbert

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Marios Lambis, QC, instructed by RadcliffesLeBrasseur
GMC Representative:	Mr Peter Horgan , 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 - 09/05/2022

1. This determination will be read in private. However, as this case concerns Dr Datta's alleged misconduct a redacted version will be published at the close of the hearing with those matters relating to XXX removed.

Background

2. Dr Datta qualified in 2003 and entered the Specialist Register in Obstetrics and Gynaecology in May 2012. At the time of the events Dr Datta was practising as a Consultant Obstetrician and Gynaecologist at Kings College Hospital NHS Foundation Trust ("the Trust"), where she worked until December 2019. During her time at the Trust, Dr Datta also held practicing privileges at a number of private hospitals; the Guthrie Clinic, Portland Hospital, and the Lister Hospital, as well as clinics at a GP practice and at The Medical Chambers.

3. The allegation that has led to Dr Datta's hearing can be summarised as follows: between 18 January and 24 May 2019, Dr Datta acted dishonestly in that she carried out paid private work, without the consent of her manager, whilst absent from her NHS post on paid sick leave. It is also alleged that between May and August 2019, Dr Datta carried out surgical and obstetric procedures privately during a phased return to work, while simultaneously accepting that assistance was required for her to do the same work in her NHS practice; the misleading impression and lack of frankness with her NHS employer was dishonest. Dr Datta did not provide an open and truthful account of her position to her employer at a 'Return to Work Meeting and Work Plan Discussion' where her work was discussed.

4. The Trust dismissed Dr Datta for gross misconduct in December 2019 and subsequently reported the matter to the GMC.

The Outcome of Applications Made during the Facts Stage

5. At the outset of proceedings, the Tribunal were aware that Dr Datta wished to make admissions to the Allegation. The Tribunal noted that part of the Allegation concerned dishonest behaviour and was of the opinion that it would be helpful to the Tribunal to hear the GMC's opening comments before hearing admissions, in that it would assist it in understanding the context in which the dishonesty is alleged.

6. The Tribunal heard submissions from both parties on this matter, who were content to proceed as suggested by the Tribunal. The Tribunal, whilst acknowledging that the normal order of proceedings is to hear admissions first, determined to proceed with the GMC's opening and then to hear Dr Datta's admissions.

7. The Tribunal granted the GMC's application to amend the Allegation by correcting a typographical error. This application was made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). The Tribunal's full decision on the application is included at Annex A.

The Allegation and the Doctor's Response

8. The Allegation made against Dr Datta is as follows:

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

1. Whilst on a period of paid certified sickness absence from your NHS post at Kings College Hospital NHS Trust ('the Trust') between 18 January 2019 and 24 May 2019, on one or more occasion you undertook paid private work at the:

   a. Lister Hospital, on one or more of the dates set out in Schedule 1; Admitted and found proved

   b. Portland Hospital, on one or more of the dates set out in Schedule 2; Admitted and found proved

   c. Guthrie Outpatient Clinic at Kings College Hospital, on one or more of the dates set out in Schedule 3. Admitted and found proved

2. You were not permitted to undertake private work whist on paid sickness absence from your NHS post as you did not have your manager's consent to do so. Admitted and found proved

3. You knew that you did not have your manager's consent to undertake private work whilst on paid sickness absence from your NHS post. Admitted and found proved

4. Your actions as described at paragraph 1 were dishonest by reason of paragraphs 2 and 3. Admitted and found proved

5. On one or more occasion, including on the dates set out in Schedule 4, you carried out private medical work despite being aware that Occupational Health at the Trust ('Occupational Health') had concluded that you were unfit to work following an assessment on 14 March 2019. Admitted and found proved

6. On one or more occasion, including on the dates set out in Schedule 5, you undertook private:

   a. surgical procedures; Admitted and found proved

   b. obstetric procedures; Admitted and found proved

   despite being aware that Occupational Health had concluded that you should only return to work with the restrictions/adjustments set out in Schedule 6. Admitted and found proved

7. During a 'Return to Work Meeting and Work Plan Discussion' with the Trust on 16 July ~~2020~~ 2019 you said that the on-call and obstetric components of your current role were the most difficult for you, and this meant you had not been able to undertake this part of your role, or words to that effect. Amended under rule 17(6). Admitted and found proved.

8. The information you provided as set out in paragraph 7 was untrue. Admitted and found proved

9. You knew that the information you provided as set out in paragraph 7 was untrue because you had been carrying out private obstetric work during the same period. **Admitted and found proved**

10. Your actions as described at paragraphs 7 and 8 were dishonest by reason of paragraph 9. **Admitted and found proved**

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

The Admitted Facts

9. At the outset of these proceedings, through her counsel, Mr Lambis QC, Dr Datta admitted the Allegation in its entirety, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced the Allegation as admitted and found proved.

IMPAIRMENT

10. 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 Datta's fitness to practise is impaired by reason of misconduct.

Witness Evidence

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

- Mr A, Directorate Manager for the Private Patients Division at Kings College Hospital, dated 1 July 2020;
- Dr B, Chief Medical Officer at the Trust, dated 18 August 2020;
- Ms C, General Manager for the Women's Health Department at the Trust, dated 24 August 2020;
- Mr D, Acting Chief Operating Officer at The Portland Hospital, dated 5 March 2021;
- Ms E, formerly Private Patient Liaison Officer at The Guthrie Clinic, dated 22 December 2021;

- Ms F, Chief Executive Officer at The Lister Hospital, dated 4 February 2022 and 15 March 2022;
- Dr G, Medical Director at The Portland Hospital, dated 9 February 2022;
- Dr H, Responsible Officer for HCA Healthcare UK, dated 15 March 2022.

12. Dr Datta provided her own witness statement dated 19 April 2022 and also gave oral evidence at the hearing.

Documentary Evidence

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

- The Trust's Sickness Absence Policy and Procedure;
- Occupational Health Reports;
- Activities Lists for Dr Datta;
- Dr Datta's fit note;
- Dr Datta's appraisals dated 2019, 2020 and 2021;
- CPD summary and certificates;
- Dr Datta's continuing reflections;
- Feedback from patients, colleagues and students.

14. The Tribunal also received, in support of Dr Datta, 26 testimonials from colleagues, all of which it has read.

Submissions

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

15. On behalf of the GMC, Mr Horgan submitted that Dr Datta's actions, as admitted and found proved, clearly amount to misconduct and were serious breaches of Good Medical Practice (2013) ('GMP') and fundamental tenets of the profession. In particular, he submitted that Dr Datta's actions breached paragraphs 28 and 65 of GMP, namely:

> ***28*** *If you know or suspect that you have a serious condition that you could pass on to patients, or if your judgement or performance could be affected by a condition or its treatment, you must consult a suitably*

qualified colleague. You must follow their advice about any changes to your practice they consider necessary. You must not rely on your own assessment of the risk to patients.

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

16. Mr Horgan submitted that Dr Datta's misconduct was particularly serious given that she had originally sought to claim that her actions were a consequence of XXX, but that during her oral evidence she conceded that her decision to continue with her private practice while on sickness absence from her NHS post was made before XXX. He submitted that it was therefore a deliberate and conscious act which undermines Dr Datta's assertions that such behaviour was out of character XXX.

17. Mr Horgan submitted that after XXX, Dr Datta chose to ignore the Trust's sickness and absence policy and any claims that she did not know about, or even that there was, such a policy at the time, are not credible given her role and experience. He submitted that she chose to ignore the obvious fact that if she was signed off as unfit to work, she should not undertake any clinical practice without discussing with medical professionals and those that manage her clinical work. He submitted that it is therefore clear that this was not a spur of the moment decision but was a continued and repeated series of dishonest actions over an extended period of time, and that she chose to 'brazenly' continue with her private work even when multiple opportunities arose for her to inform her employers.

18. Mr Horgan submitted that given the gravamen of Dr Datta's misconduct, which was persistent, deliberate, repeated and consistently covered up, the Tribunal should find that her fitness to practise is impaired. He submitted that Dr Datta demonstrated a disregard for GMP, XXX, and the needs of her Trust and working colleagues, putting her own needs before those of her patients at significant detriment to the reputation of the wider profession.

19. Mr Horgan submitted that the Tribunal may consider that such serious and persistent dishonesty is not remediable, and that Dr Datta continued to deny misleading anyone, let alone being dishonest, until her written statement, dated April 2022, some 18 months after she received notification of the GMC investigation.

20. Mr Horgan submitted that Dr Datta's evidence was that she has developed insight and that during the course of her evidence she was at pains to express how apologetic she was. However, he submitted, there needs to be understanding in order to gain insight and it is a matter for the Tribunal whether Dr Datta has any real understanding or acceptance of her actions, or whether other people would see these as dishonest. He submitted that it is unclear if there is any evidence of real insight or remediation, which given the facts of the case is wholly surprising, and that if a finding of impairment was not made public confidence in the profession would be seriously undermined.

On behalf of Dr Datta

21. On behalf of Dr Datta, Mr Lambis QC, submitted that in reaching its determination the Tribunal should be cognisant of the open and candid evidence given by Dr Datta.

22. He submitted that the Tribunal should conclude that Dr Datta poses no current risk to patients given the lengthy remediation bundle and associated documents provided by Dr Datta, which directly address the issues in this case.

23. He submitted that the Tribunal should also be mindful of the 'glowing' testimonials provided on Dr Datta's behalf, and that he will refer further to these should the hearing proceed to the sanctions stage.

The Relevant Legal Principles

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

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

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

27. The Tribunal had regard to the questions posed by Dame Janet Smith in the Fifth Shipman Report, as referred to in the case of *CHRE v NMC and Grant [2011] EWHC 927 (Admin)*, as follows:

> *'Do our findings of fact in respect of the doctor's misconduct... show that his/her fitness to practise is impaired in the sense that s/he:*
>
> *a. has in the past acted and/or is liable in the future to act so as to put 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*
>
> *d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The Tribunal's Determination on Impairment

Misconduct

28. The Tribunal first considered whether Dr Datta's actions amounted to misconduct, and whether that misconduct was serious.

29. The Tribunal considered that the evidence before it clearly demonstrates that Dr Datta made a deliberate decision to continue with the private portion of her work starting within days of her surgery. It is clear from the evidence, including Dr Datta's admission, that this decision was made in advance of that procedure XXX. She confirmed that she made no provision for any colleague to cover her private patient responsibilities in her absence.

30. The Tribunal was provided with no evidence which could justify it reaching any conclusion other than that this behaviour was dishonest and a clear breach of GMP, particularly paragraphs 28 and 65 as set out above. Dr Datta admitted dishonesty and accepted in her evidence that her actions fell far below the standards expected.

31. Dr Datta's admitted dishonesty was a sustained course of action in which she logged approximately 100 private appointments, while on certified sick leave from her NHS post and omitted to inform or discuss this decision with her NHS employer. XXX. She offered this as a possible explanation for why she failed to correct her behaviour even when there were clear, obvious flags to do so, such as when expressly reminded by Dr B in an email dated 13 February 2019, not to undertake any private practice while on certified sick leave from her NHS work.

32. The Tribunal determined that Dr Datta's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct.

Impairment

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

34. The Tribunal considered that dishonesty can be difficult to remediate, particularly in cases of repeated and persistent dishonesty. However, it recognises that Dr Datta has now admitted the Allegation in full and has accepted her wrongdoing, which is the first step towards remediation. Given Dr Datta's admissions, contrition and willingness to change her behaviour the Tribunal concluded that this misconduct is capable of being remedied.

35. The Tribunal considered the tests for impairment set out in the case of *Grant* (above) and determined that all limbs are applicable in this case. This is because: Dr Datta put patients at risk of unwarranted harm by practising when she had been signed off as unfit to work; brought the medical profession into disrepute by prioritising her own interests above those of patients; had acted dishonestly, and in so doing breached fundamental tenets of the profession.

36. The Tribunal then went on to consider the level of insight and remediation demonstrated by Dr Datta. It noted that Dr Datta had continued to deny the accusations against her, maintaining her denial of dishonesty in response to the Rule 7 letter from GMC outlining the basis of the fitness to practise investigation. It appears that it was only when drafting her written statement for this Tribunal, (received 21 April 2022), that she accepted that she was dishonest and admitted the Allegation in its entirety.

37. The tribunal did note her extensive reflective diary which spans 2020-2022, that her continuing professional development has included completing modules and courses on probity, honesty, countering fraud within the NHS, and that she has provided medical student teaching on professionalism since the events in question. However, notwithstanding the many positive features of remediation, the Tribunal had concerns about Dr Datta's level of insight into her actions given some of her contentions when she gave evidence at the Impairment stage. For example, Dr Datta expressed the view that her behaviour could have been different if she had had the benefit of a more supportive and communicative colleague base at the Trust, which suggests an unwillingness to take full responsibility for her actions.

38. The Tribunal heard how Dr Datta did not register Dr B's reminder not to do private work because her focus was on returning to work alongside the colleague who had performed her surgery. However, on more than one occasion, it has evidence that Dr Datta was engaged in assessments or communication with her Trust line management and occupational health professionals regarding her sickness from and phased return to NHS work, on the same day that she was seeing patients privately. When Dr Datta was asked about this, she responded: "I don't understand what was going through my head."

38. In her evidence to the Tribunal, Dr Datta did state that *"I do have the insight now to understand my actions"* and was fulsome in her apologies. However, when asked for the motivation for her dishonesty, she appeared unable to answer this. It was put to her that the motivation was financial gain but she denied that this was the case. Rather, she indicated: *"I felt genuinely at the time that I could rationalise it"*, which appeared to separate on call obstetrics work, (XXX), from private work where she would be able to indicate which patients fell outside her specialisms and could be turned down.

40. The difficulty with this explanation, is that this rationale was not shared with her NHS employers openly or permission expressly sought, and Dr Datta could not elaborate on the reason why this had not been done. The Tribunal was concerned that without being able to explain why she had acted dishonestly, simply accepting that these actions were dishonest without demonstrating an understanding and insight of what led to this position, is insufficient to satisfy it that adequate insight has been obtained.

41. The Tribunal attempted to assist Dr Datta in providing opportunities for her to share her mindset, in asking questions about whether she had any misgivings about resuming private work when signed off sick and not working in her NHS role. It found her answer that she

'must have done' to indicate a possible inability to share her thought processes following reflection, as she did not simply indicate that she could not recall her feelings, or provide an understanding of what had being going through her mind. She was unable to provide any additional motivating factors when invited to do so. The Tribunal accepts that individuals may differ in their reflective styles but it would have been more reassured regarding her insight, if a fuller and clearer explanation had been forthcoming. What the Tribunal is presented with is admissions, but a lack of adequate explanation for motivation, and a statement regarding insight which appears incomplete without an understanding of why she acted as she did previously and so can guard against repetition.

42. Dr Datta indicated that she enjoyed having a full work schedule and worked in excess of her conditioned hours. In addition to NHS and private clinical work, she had extensive educational responsibilities through her Deanery work as well as journal editorial work. She also described her work on different councils and how her enjoyment of her different roles meant that she often worked at evenings and weekends. This picture reflects a strong work ethic and suggests that Dr Datta having focused on a course of action in undertaking private work did not allow anything to dissuade her from it, considering it good for her rehabilitation and in the interests of her patients. She has been able to appreciate that these justifications are erroneous and that if she was too unwell to work in the opinion of medical professionals, she should not have done so, and that NHS and private patients are equally deserving of the same care. Further, she has spoken that there is a need for balance in life, and how being open would assist in preventing future difficulties.

43. Whilst acknowledging that Dr Datta has demonstrated some insight and now accepts that she should have been honest and transparent, the Tribunal considered that this insight is a relatively recent development and appears incomplete. Dr Datta now accepts that she was dishonest from the outset, but the Tribunal was concerned at what appeared to be a tendency to minimise her actions, particularly in those of her answers which were framed from an externalised point of view, and referenced how a third party could "perceive" events.

39. The Tribunal welcomes the reflections which Dr Datta has made and acknowledges that the changes in her working and personal life now allow her the time to discuss important decisions. It accepts that Dr Datta has been on a journey and her heartfelt assertions that it has not been an easy one. While the Tribunal recognises that she has undertaken considerable efforts to remediate her past behaviour and that she regrets what occurred, not just in the impact this has had on her but given a situation in which she recognises that

patients were potentially put at risk, when she returned to work while signed off as not fit to do so, it does not consider that her journey is complete. This is because there remain instances of Dr Datta's inability to explain why she acted as she did.

45. Given that Dr Datta's insight appears to be in its early stages and that she has not clearly reflected and explained how her behaviour came about, the Tribunal could not be assured that the risk of repetition was negligible. It determined that Dr Datta's fitness to practise remains impaired.

40. The Tribunal also considered that a finding of impairment was necessary to mark the seriousness of Dr Datta's repeated and persistent departures from the standards expected of a doctor and to send a signal to members of the public and profession alike that such behaviour is wholly unacceptable. It concluded that in light of the seriousness and persistent nature of Dr Datta's misconduct, public confidence and standards in the profession would be undermined were a finding of impairment not made in this case.

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

Determination on Sanction - 11/05/2022

42. Having determined that Dr Datta's fitness to practise is impaired by reason of her 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

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

44. The Tribunal received further evidence, in the form of additional testimonials, on behalf of Dr Datta.

Submissions

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

45. On behalf of the GMC, Mr Horgan submitted that he would seek to demonstrate that, in this case, the appropriate sanction was erasure from the medical register.

46. Mr Horgan drew the Tribunal's attention to several paragraphs of the Sanctions Guidance (SG) in setting out its responsibility and the approach it should take when making a decision on appropriate sanction, balancing the interests of the public against those of Dr Datta.

47. Mr Horgan reminded the Tribunal that it should consider any mitigating factors when making its decision. He stated that the GMC did not have any issue with Dr Datta's clinical skills and abilities or her previous good history up until these events. He also noted that matters such as XXX the lapse of time may be taken into account.

48. Mr Horgan accepted that the Tribunal had found at Stage 2 that Dr Datta's actions were potentially capable of being remedied but noted that the GMC's focus was on the seriousness and persistent nature of the actions.

49. Mr Horgan noted that, in considering whether Dr Datta had shown insight, the Tribunal may take into consideration expressions of regret, and he accepted that Dr Datta admitted the Allegation, accepted she should have behaved differently and had apologised. However, he stated that the question remained as to whether Dr Datta yet fully understands why she behaved as she did.

50. Mr Horgan drew the Tribunal's attention to paragraph 56a of the SG which states:

> *'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):*
>
> > *a. issues relating to probity – i.e. being honest and trustworthy and acting with integrity.'*

51. Mr Horgan noted that that the Allegation in this case concerned Dr Datta's actions in her medical practice, but that nonetheless the issue of probity is still important.

52. Mr Horgan reminded the Tribunal that it should consider all sanctions available, starting with the least restrictive. However, once it found that a sanction was required to satisfy the Overarching Objective, it must impose it.

53. Mr Horgan stated that taking no action was only appropriate when there are exceptional circumstances and submitted that there was no evidence in this case to justify taking no action.

54. Mr Horgan stated that any conditions imposed would need to be appropriate, proportionate, workable and measurable, and submitted that this was not possible given Dr Datta's failings in this case.

55. Mr Horgan drew the Tribunal's attention to the relevant paragraphs of the SG that deal with suspension. In particular he drew the Tribunal's attention to paragraph 97 which sets out some factors which may indicate suspension being appropriate. Mr Horgan reminded the Tribunal of its previous findings that Dr Datta's insight 'appears to be in its early stages' and that it 'could not be assured that the risk of repetition was not negligible'. He submitted that this finding weighs in the balance against Dr Datta and that it is of significant concern that, almost three years after the events' Dr Datta was still unable to demonstrate full insight.

56. Mr Horgan submitted that Dr Datta's actions were 'above and beyond' those which may be suitably dealt with by imposing a period of suspension.

57. Mr Horgan invited the Tribunal to consider the SG in relation to erasure. He submitted that Dr Datta showed a blatant and wilful disregard for measures designed to protect the public and maintain standards in the profession.

58. Mr Horgan drew the Tribunal's attention to paragraph 109 which sets out factors that may indicate where erasure is appropriate. He submitted that the following were all applicable in this case:

> *'109. Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*
>
> > *a. A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.*
> >
> > *b. A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety…*

…d. Abuse of position/trust (see Good medical practice, paragraph 65: 'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession'…

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

i. Putting their own interests before those of their patients

j. Persistent lack of insight into the seriousness of their actions or the consequences.'

59. Mr Horgan submitted that Dr Datta's actions were persistently dishonest and that she had attempted to cover up her actions both during the incidents and in the events that followed. He submitted that Dr Datta had only come to accept her dishonesty in recent weeks and that her insight remains incomplete. He drew the Tribunal's attention to paragraph 128 of the SG which states:

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

60. Mr Horgan stated that Dr Datta is clearly an experienced and competent doctor and that it may be considered, given her work in the NHS, training and education, that she 'brings a lot to the table'. He noted that it may be advanced that there is public interest in not erasing her from the medical register. However, he submitted that this needs to be considered against the decisions she made to persistently act dishonestly and then deny that dishonesty over several years. He stated that Dr Datta put patients at risk by continuing to practise whilst certified as unfit to work.

61. Mr Horgan reminded the Tribunal of its earlier determination where it stated

'41. What the Tribunal is presented with is admissions, but a lack of adequate explanation for motivation, and a statement regarding insight which appears incomplete without an understanding of why she acted as she did previously and so can guard against repetition.'

62. Mr Horgan submitted that, in such circumstances, the only appropriate sanction is one of erasure.

On behalf of Dr Datta

63. On behalf of Dr Datta, Mr Lambis QC submitted that, whilst he does not seek to diminish the Allegation, the sanction of erasure is inappropriate in this case.

64. Mr Lambis QC submitted that the fact no submissions were made on Dr Datta's part at impairment, shows a level of insight and humility on her part. He noted that she admitted the entirety of the Allegation in advance of the hearing and that this should be considered in the context of her apologies to the Tribunal and to the wider profession.

65. Mr Lambis QC submitted that, to her credit, Dr Datta had participated fully in proceedings despite the professional, emotional, physical and mental pressures of doing so.

66. Mr Lambis QC asked the Tribunal to give consideration to two principals, overarching matters whilst he made his submissions. Firstly, he stated that when considering the public interest, the Tribunal should consider what a 'well informed observer' may think. That is somebody cognisant of the particular circumstances and all of the evidence. They are decent, reasonable and fair, not a vindictive individual 'holding the Sword of Damocles' over individuals that make a mistake. Secondly, he reminded the Tribunal that Dr Datta had given evidence herself which, he submitted, was open, consistent and at times against her own interests. He stated that, in her evidence, Dr Datta had been contrite, remorseful and had shown humility.

67. Mr Lambis QC noted that the GMC had, understandably, relied upon the evidence of an email from Dr B to Dr Datta. He submitted that it was clear that this was a warning, and that it was 'astonishing' that Dr Datta continued to act as she did. He asked the Tribunal to consider how somebody with such a good upbringing, education and character could get something so wrong. He invited it to consider her actions in the context and backdrop of what was happening at that time.

68. Mr Lambis QC stated that Dr Datta's actions were a transparent act of dishonesty, lacking in sophistication and with a 'paper trail' leading straight back to her. Why did Dr Datta embark on a 'self-destructive' course of action? He submitted that it is clear something was wrong at the time. He invited the Tribunal to consider Dr Datta's work environment at the time, XXX, the hospital's response XXX, and the long term impacts she faced because of that.

69. Mr Lambis QC drew the Tribunal's attention to paragraph 27 of Dr Datta's witness statement where she stated that after informing her surgeon, she wished to make a report regarding her care, she was told to 'watch your private practice'. He submitted this gives a sense of the kind of environment that Dr Datta was working in at the time, which could help explain her subsequent actions.

70. Mr Lambis QC drew the Tribunal's attention to the documents it had for Dr Datta's 2020/21 appraisal. He submitted that the documents demonstrate somebody that was engaging with the GMC investigation and taking steps to correct the errors she had made.

71. Mr Lambis QC submitted that Dr Datta's humility is further demonstrated by the 360 degree feedback scores where colleagues had rated her above her own self-assessment on every aspect.

72. Mr Lambis QC took the Tribunal through several items of feedback including thank you emails and cards from colleagues, patients and others. He submitted that the comments speak for themselves in showing the public perception of Dr Datta and the interest in her being able to continue to practise.

73. In addressing the many testimonials before the Tribunal, Mr Lambis QC submitted that in cases of dishonesty and misconduct, the authors should be considered as fundamental witnesses. He stated that these individuals had the background and details of the case, yet provided supporting statements, nonetheless. He further stated that the testimonials assist the Tribunal in forming a three-dimensional picture of Dr Datta.

74. Mr Lambis QC took the Tribunal to several of the testimonials and noted how they describe Dr Datta as hard working, honest and trustworthy. He asked the Tribunal to consider whether it was plausible that so many highly skilled and qualified people had got it wrong or whether the 'sad reality' is that Dr Datta is a gifted, talented and high achieving doctor who went through a difficult time and got things very wrong. He submitted that Dr Datta is a respected clinician who has striven to help her community and the nation at a time of extreme need and that she had been an ambassador for the medical profession at every level.

75. Turning to the matter of sanction, Mr Lambis QC reminded the Tribunal of the case of *Bawa-Garba v GMC [2018] EWCA Civ 1879* which states:

'83. The Sanctions Guidance contains very useful guidance to help provide consistency in approach and outcome in MPTs and should always be consulted by them but, at the end of the day, it is no more than that, non-statutory guidance…

85. We consider it is clear that none of those provisions necessarily required the sanction of erasure in the present case. What is an appropriate and proportionate sanction always depends on the facts of the particular case in question. Paragraph 103 makes that explicit with the word "may" in its first sentence, as well as the word "indicate", which is also permissive, not mandatory.'

76. Mr Lambis QC submitted that it would be 'unusual in the extreme' if a case such as *Bawa-Garba v GMC*, which involved a doctor convicted of gross negligence manslaughter, falls within the sanction of suspension and Dr Datta's were to be considered appropriate for erasure. He submitted that erasure would be unfair, disproportionate and would only serve to punish Dr Datta.

77. Mr Lambis QC submitted that the regulatory process itself should not be underplayed and that the regulator's responsibilities towards the public interest have been fulfilled by bringing the case before a Tribunal. He stated that following the Tribunal's findings, the public can be in no doubt as to the standards expected.

78. Mr Lambis QC submitted that, whilst a suspension would deprive the hospital and patients of Dr Datta's skills, it is accepted that a signal needs to be sent out. He noted that there are significant pressures on the NHS at the moment and invited the Tribunal to consider that as highly relevant when reaching its decision. He reminded the Tribunal of the case of *Giele v GMC [2005] EWHC 2084,* which confirmed there is a public interest in not depriving the public of good caring individuals.

79. Mr Lambis QC submitted that there are three reasons why erasure is not appropriate in Dr Datta's case: her previous honest and good character, her conduct and actions since the Allegation, and her full admission prior to the hearing. He submitted that if the contrary were true, and Dr Datta had not in any way participated or complied, the GMC would be seeking erasure, and noted that it does not therefore stand that erasure is appropriate in this case.

80. Mr Lambis QC submitted that there had been no repetition of Dr Datta's actions since these events and that whilst the Tribunal had found insight to be incomplete, it had started

and was ongoing. He submitted that this cannot therefore suggest there to be a 'significant likelihood' of repetition as required in paragraph 97 of the SG.

81. In summary, Mr Lambis QC submitted that Dr Datta had made apologies, reflected significantly and had taken steps to remediate and prevent reoccurrence of her actions. He reminded the Tribunal that three years had passed with no further concern about Dr Datta's behaviour.

82. Mr Lambis QC submitted that a period of suspension would be fair and proportionate in this case. He reminded the Tribunal again of the case of *Bawa-Garba v GMC* which resulted in a 12-month suspension. He submitted that with the particular nuances and backdrop to Dr Datta's case, the Tribunal may wish to find that 'less is more'.

The Relevant Legal Principles

83. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgment. In reaching its decision, the Tribunal has taken into account the SG and borne in mind the overarching objective.

84. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish or discipline doctors, although they may have a punitive effect.

85. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Datta's interests with the public interest.

The Tribunal's Determination on Sanction

Aggravating and mitigating factors

86. The Tribunal first identified the aggravating and mitigating factors in this case.

87. The Tribunal found the following aggravating factors:

- Persistent dishonesty over a significant period of time between Jan-June 2019 during not returning to NHS full practice while doing private work;

- A deliberate failure to declare her ongoing private practice during NHS occupational assessments and return-to-work meetings, providing those who were supporting her return to work with incomplete information, to suit her own purposes, (not to do on-call obstetrics NHS work and carry on with her private practice);
- Breach of trust, given that in so doing she attempted to mislead her employer;
- Denials of dishonesty whilst this matter was being investigated, between 2019 and 2022.

88. The Tribunal found the following mitigating factors:

- Engagement with the regulatory process and full admissions made prior to the hearing in a witness statement provided 21 April 2022.
- There were issues at work in Dr Datta's NHS post XXX due to her on-call obstetrics workload;
- XXX;
- XXX the fact that a colleague had undertaken her surgery and she was conscious that she would need to work alongside him having raised a complaint;
- No previous regulatory history indicated;
- Testimonials – attest to these actions being out of character for Dr Datta and that these individuals have no concern with her probity;
- Development of insight has begun and Dr Datta has been working hard to develop it as evidenced in the stay well plan and remediation plan.

No action

89. The Tribunal determined that there were no exceptional circumstances to justify taking no action in this case. It considered that taking no action would neither be appropriate, proportionate nor in the public interest bearing in mind the seriousness of repeated dishonesty of the kind demonstrated by Dr Datta.

Conditions

90. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Datta in this case.

91. The Tribunal reminded itself that conditions needed to be appropriate, proportionate, workable and measurable.

92. The Tribunal determined that in cases of serial dishonesty, conditions would be inappropriate and would not serve to address the seriousness of Dr Datta's actions.

Suspension

93. The Tribunal reminded itself that it had found Dr Datta impaired because of repeated and persistent dishonesty. It determined that these actions were serious and fell far below the standards required by GMP, and had not been remediated fully given recent and incomplete insight.

94. The Tribunal considered the background to the case, particularly with respect to Dr Datta's XXX. The Tribunal has considered this background in the absence of any explanation being provided for why Dr Datta appeared to act in a manner that did not reflect her best interests, nor was it a sophisticated plan to deceive her employer, given the proximity of her private and NHS practice.

95. The Tribunal noted the volume of evidence submitted by Dr Datta attesting to her ongoing work towards remediation. The Tribunal, whilst mindful that it had found Dr Datta's insight to be incomplete, noted that there have been frank admissions and apologies. It accepted that she is working hard towards gaining full insight and that she has taken specific steps to create safeguards against any repetition of this exact behaviour: i.e., working privately while signed off sick and being dishonest about this, by familiarising herself with different sickness policies in the places at which she works and ensuring that she had good relationships where she can be open with at least some professional colleagues.

96. The Tribunal distinguished having taken measures to prevent an exact duplication of events, from other instances where Dr Datta might place her own interests before others that she had responsibilities to, insofar as a risk of misconduct being repeated exists. In light of the fact that Dr Datta's admissions to dishonesty were only made in April 2022, some three years after the events in question, and weeks before this hearing, the Tribunal considers that the insight that she has is recent and she has not been able to evidence that it has been embedded into practise. However, the Tribunal noted that Dr Datta's reflective diary was not a statement made at a single point in time, but captured her changing perceptions over time. It was of the view, that in undertaking ongoing efforts to reflect on

her actions and what she had learnt, that Dr Datta was in earnest about trying to develop her insight.

97. The Tribunal noted the evidence of Dr Datta's work beyond her clinical practice and found that the testimonials show her to be highly regarded and to have made a significant contribution in her field and to women's health more generally. The Tribunal accepted that the numerous testimonials about Dr Datta from people who have extensive experience of working with her, paint a picture of someone who is willing to give more time than she is paid for to professional and patient interests. She was depicted as someone who gives priority to her work and her area of expertise and whose actions in being dishonest and potentially placing patients at harm were completely out of character.

98. In balancing the interests of the public against those of Dr Datta, the Tribunal were of the view that there is significant public interest in retaining the skills of such a skilled clinician in the healthcare system. Given Dr Datta's recent admissions of dishonesty and reflection about how her efforts to "join the dots" had continued as recently as last month, it is conscious that she has had little time to embed that learning and indicate how it has been used in instances where the same risk of placing her own interests before her patients has arisen. It considers that further time may allow this to be evidenced and that Dr Datta has convinced it that she is sincere in her desire to remediate.

99. Accordingly, the Tribunal was satisfied that a period of suspension would appropriately mark the seriousness of the dishonesty and would send a clear signal to the public and the wider profession that such behaviour is not acceptable.

100. The Tribunal noted that Dr Datta had admitted the Allegation prior to the hearing and had been fully cooperative with the GMC investigation and this hearing. Whilst acknowledging the seriousness of Dr Datta's actions, it was of the view that a fully informed member of the public would not wish to end the career of an otherwise highly skilled and dedicated doctor, in circumstances where she fully admitted her wrongdoing and is committed to working to ensure that there is no repetition, and in view of the mitigating factors detailed above.

101. The Tribunal did consider the ultimate sanction of erasure. It determined that erasure would be disproportionate in all the circumstances of this case. It was of the view that all three limbs of the Overarching Objective can be satisfied by imposing a period of suspension on Dr Datta's registration and that this would be sufficient.

102. In determining the length of suspension, the Tribunal reminded itself that it can impose a period up to 12 months. The Tribunal noted that Dr Datta had undertaken a sustained, conscious period of dishonest behaviour which it had found to be serious misconduct and that she was currently impaired given her incomplete insight and the gravamen of the findings.

103. The Tribunal was of the view that a 12-month period of suspension should be long enough for Dr Datta to fully reflect on her misconduct, now that admissions have been made, and to develop further insight.

104. The Tribunal determined to suspend Dr Datta's registration for a period of 12 months.

105. The Tribunal determined to direct a review of Dr Datta's case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Datta to evidence:

- how her insight has developed further following her recent admissions;
- steps taken to ensure that the risk of repetition of similar instances is reduced;
- that she has maintained relevant Continuing Professional Development in her areas of practice.

Dr Datta will also be able to provide any other information that she considers will assist the reviewing Tribunal.

Determination on Immediate Order - 11/05/2022

106. Having determined to direct that Dr Datta's name be suspended from the medical register for 12 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Datta's registration should be subject to an immediate order.

Submissions

107. On behalf of the GMC, Mr Horgan reminded the Tribunal of the relevant paragraphs of the Sanctions Guidance (SG) but made no submissions on the matter.

108. On behalf of Dr Datta, Mr Lambis QC submitted that an immediate order is not necessary and reminded the Tribunal of its comments in the Determination on Sanction, that there is a public interest in not being deprived of good clinicians. He submitted that the 28 days appeal period would allow the hospital and Dr Datta to 'put their house in order' before the suspension taking effect.

The Tribunal's Determination

109. In reaching its decision, the Tribunal has exercised its own judgement and has taken account of the principle of proportionality. The Tribunal had regard to the relevant paragraphs of the SG which state:

> *'172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. 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.*
>
> *173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*
>
> *178 Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.'*

5. The Tribunal determined that given its findings of serious misconduct and impairment, and the sanction given of 12 months suspension, the test for an immediate order is made out. It determined that an immediate order of suspension is in the public interest given the gravamen of this case and is necessary for patient protection. In making an immediate order of suspension, the Tribunal also determined to revoke the current interim order of conditions.

110. The Tribunal did consider the submission made by Mr Lambis QC regarding the provision of time for Dr Datta and the hospital to organise themselves but took into account paragraphs 174 and 175 of the SG:

'*174 Doctors and their representatives sometimes argue that no immediate order should be made as the doctor needs time to make arrangements for the care of their patients before the substantive order for suspension or erasure takes effect.*

175 In considering this argument, the tribunal will need to bear in mind that any doctor whose case is considered by a medical practitioners tribunal will have been aware of the date of the hearing for some time and consequently of the risk of an order being imposed. The doctor will therefore have had time to make arrangements for the care of patients before the hearing, should the need arise.'

Given its determination of facts, impairment and sanction, and the criteria it included in those findings in reflecting the serious failures of Good Medical Practice with incomplete insight, it is not appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.

7. This means that Dr Datta's registration will be suspended from the date on which notification of this decision is deemed to have been served upon her. The substantive direction of 12 months suspension will take effect 28 days from that date, 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.

8. That concludes this case.

ANNEX A – 04/05/2022

Application to amend the Allegation

111. Mr Horgan, on behalf of the GMC, made an application to amend paragraph 7 of the Allegation, which contained an error in the date stated.

112. Mr Horgan submitted that the Allegation should be amended as follows:

> *"7. During a 'Return to Work Meeting and Work Plan Discussion' with the Trust on 16 July ~~2020~~ 2019 you said that the on-call and obstetric components of your current role were the most difficult for you, and this meant you had not been able to undertake this part of your role, or words to that effect."*

113. This application was made in accordance with Rule 17(6) of the Rules:

> *"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."*

114. Mr Lambis QC, on behalf of Dr Datta, submitted that the application to amend the Allegation was not opposed.

The Relevant Legal Principles

115. The Tribunal reminded itself that it may amend the Allegation in accordance with Rule 17(6) and that it should consider whether doing so would cause any injustice to Dr Datta.

Tribunal's Decision

116. The Tribunal noted that the proposed amendment was not opposed and took the view that it was clear the error was a typographical error, that had not previously been noticed. It recognised that the change of date from '2020' to '2019' reflected the evidence before

it and would cause no detriment to the doctor in understanding the case that she had to meet.

7. The Tribunal determined to grant Mr Horgan's application to amend the Allegation as suggested.

Schedule 1 – Lister Hospital

21 January 2019
22 January 2019
24 January 2019
29 January 2019
5 February 2019
6 February 2019
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12 February 2019
18 February 2019
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21 February 2019
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17 May 2019
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Schedule 2 – Portland Hospital

21 January 2019
22 January 2019
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6 February 2019
9 February 2019
12 February 2019
16 February 2019
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23 May 2019

Schedule 3 – Kings College Hospital

25 January 2019
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8 February 2019

13 February 2019
18 February 2019
1 March 2019
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20 March 2019
25 March 2019
29 March 2019
3 April 2019
4 April 2019
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17 April 2019
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26 April 2019
8 May 2019
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17 May 2019
22 May 2019

Schedule 4

14 - 16 March 2019
18 - 23 March 2019
25 - 27 March 2019
29 – 31 March 2019
2 - 6 April 2019
9 - 13 April 2019
15 - 18 April 2019
23 - 27 April 2019
29 – 30 April 2019
2 May 2019
4 May 2019
7 - 11 May 2019
13 - 18 May 2019
21 - 23 May 2019

Schedule 5

Date	Procedure
31 May 2019	Hysteroscopy (including biopsy, dilation, curettage and resection of polyp(s) +/- Mirena coil insertion)
31 May 2019	Marsupialisation of Bartholin cyst
7 June 2019	Oophorectomy and salpingectomy, +/- biopsy eg. omentum, peritoneum, lymph node (as sole procedure) (including bilateral)
14 June 2019	Caesarean delivery
30 June 2019	Oophorectomy and salpingectomy, +/- biopsy e.g. omentum, peritoneum, lymph node (as sole procedure) (including bilateral)
30 June 2019	Caesarean delivery
2 July 2019	Cauterisation of lesion of cervix uteri (+/- loop diathermy, colposcopy or polypectomy)
26 July 2019	Ovarian cystectomy +/- omental biopsy (as sole procedure and including bilateral)
23 August 2019	Caesarean delivery
31 August 2019	Caesarean delivery

Schedule 6

Recommended phased return to work from 27 May 2019
No surgery for the first two months back at work
No obstetric work for six months from 19 July 2019