

PUBLIC RECORD

Dates: 13/06/2022 - 17/06/2022

Medical Practitioner's name: Dr Sian RAULT

GMC reference number: 6158844

Primary medical qualification: MB ChB 2007 University of Leicester

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

Summary of outcome

Suspension, 2 months.

Tribunal:

Legally Qualified Chair	Mrs Kim Parsons
Lay Tribunal Member:	Mrs Valerie Blessington
Medical Tribunal Member:	Dr John Garner

Tribunal Clerk:	Miss Jennifer Lane
-----------------	--------------------

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Lee Gledhill, Counsel, (Direct Access) Doctors Defence Service
GMC Representative:	Mr Peter Warne, 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 - 16/06/2022

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

Background

2. Dr Rault qualified in 2007 from the University of Leicester. At the time of the events Dr Rault was practising as a GP at XXX Medical Practice in Jersey. She left the practice in October 2018.

3. The allegation that has led to Dr Rault's hearing can be summarised as follows: On 5 December 2017, Patient A died at Lakeside Manor Nursing Home ('Lakeside') in Jersey. Dr Rault was Patient A's GP. It is alleged that Dr Rault, on one or more occasion between 7 December 2017 and 14 December 2017, made statements to four different colleagues that she had seen Patient A's body after death, at Lakeside, before the body was moved to Maillards Funeral Home. It is further alleged that Dr Rault had not seen Patient A's body after death, and that the statements she made to these four individuals were dishonest.

4. At the time of Patient A's death, where a person was to be cremated, the procedure in Jersey was for two doctors to view the deceased separately and for both to complete a form, referred to as a Part 1 and Part 2 Medical Certificate. The Part 1 form was usually completed by the deceased's GP, as the person having the best knowledge of the deceased's medical history. A second independent GP would then review the Part 1 form and complete Part 2 confirming there were no suspicious circumstances.

5. Dr B, a GP from the XXX practice in Jersey, was asked on 7 December 2017, by Dr Rault's practice, to complete Part 2 of the form. When Dr B visited the deceased's body at the funeral home, Part 1 of the form was not there, as would usually be the case. Dr B spoke with Dr Rault later that day, who told her she had visited the deceased's body at the nursing home after death. Dr Rault later that day sent Dr B Part 1 of the form, this showed that Dr Rault had visited the deceased's body '*One day*' after death.

6. On 8 December 2017, Dr B raised her concerns about the Part 1 form completed by Dr Rault with Dr D, who was Primary Care Medical Director for Jersey at the time. Dr D started looking into Dr B's concerns.

7. Dr B and Dr Rault were known to one another as they had previously worked at the XXX medical practice. Their relationship was described by Dr Rault as not being good.

8. Dr D discussed Dr B's concerns with Dr Rault on 12 December 2017. Dr D was persuaded by Dr Rault's explanation and concluded that there had been a '*misunderstanding*' and that Dr Rault had viewed the deceased's body at the nursing home, prior to it being taken to the funeral home.

9. Dr Rault and Dr B were both Informed by Dr D of this conclusion, that there had been '*misunderstanding*'. This led Dr B to make further inquiries, including viewing the CCTV footage at the nursing home between the time of death and the time the deceased's body was moved to the funeral home. Dr B also spoke with funeral home staff and the doctor certifying death, to establish whether Dr Rault's version of events was true.

10. On 14 December 2017, Dr B reported to Dr D that Dr Rault could not be seen on the CCTV footage from the nursing home, during the time in question. Further, she informed Dr D, that Dr Rault had not visited the funeral home to view Patient A's body according to staff there. Dr D brought Dr B's findings to the attention of Dr Rault on 15 December 2017.

11. On 14 December 2017 Dr Rault also informed the Clinical Governance Lead for Jersey, Mrs E, that she had viewed the deceased's body at the nursing home. She also told the practice manager at her own medical practice, Ms C, this on 11 and 13 December 2017.

12. Dr Rault later confessed to Dr D that she had not seen the body of Patient A after death. On 15 December 2017 Dr Rault sent a text and during a phone call admitted to Dr D not seeing the deceased's body. Having been told by Dr D to reflect on issues over the weekend, Dr Rault sent an email to Dr D on 18 December 2017, apologising and admitting her wrongdoing.

13. On 14 June 2018, Dr Rault was convicted at Jersey Magistrates' Court of wilfully making a false representation that she had examined a deceased person and signed and uttered a false certificate in that regard with a view to procuring the cremation of a deceased person contrary to Article 5(2) Cremation (Jersey) Law 1953. She was sentenced to pay a fine of £2,500. It is alleged that the offence, if committed in England and Wales, would constitute a criminal offence.

14. The initial concerns were raised with the GMC on 20 December 2017 by Dr D.

The Allegation and the Doctor's Response

15. The Allegation made against Dr Rault is as follows:

That being registered under the Medical Act 1983, as amended:

1. On one or more occasion, on the dates listed in schedule 1 you told the individuals listed in schedule 1 that you had seen Patient A's body:
 - a. after death; **Admitted and found proved**
 - b. at Lakeside Nursing Home before the body was moved to Maillards Funeral Home. **Admitted and found proved**
2. You had not seen Patient A's body:
 - a. after death; **Admitted and found proved**
 - b. at Lakeside Nursing Home before the body was moved to Maillards Funeral Home. **Admitted and found proved**

3. The statements you made to the individuals listed in schedule 1 was untrue.
Admitted and found proved
4. When you made the statements referred to at paragraph 1 you knew you had not seen the deceased body of Patient A. **Admitted and found proved**
5. Your conduct at paragraph 1, 2 and 3 was dishonest by reason of paragraph 4.
Admitted and found proved
6. On 14 June 2018 at the Magistrate’s Court of Jersey you were:
 - a. convicted of wilfully making a false representation that you had examined a deceased person and signed and uttered a false certificate in that regard with a view to procuring the cremation of a deceased person contrary to Article 5(2) Cremation (Jersey) Law 1953; **Admitted and found proved**
 - b. sentenced to pay a fine of £2,500.00. **Admitted and found proved**
7. The offence outlined at paragraph 4, if committed in England and Wales, would constitute a criminal offence. **Admitted and found proved**

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

- a. misconduct in respect of paragraphs 1-5; **To be determined**
- b. conviction in respect of paragraphs 6-7. **To be determined**

The Admitted Facts

16. At the outset of these proceedings, Dr Rault made admissions to the entirety of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended (‘the Rules’). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced the facts of the Allegation as admitted and found proved in full.

Determination on Impairment

17. 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 Rault's fitness to practise is impaired by reason of her misconduct and conviction.

The Outcome of Applications Made during the Impairment Stage

18. The Tribunal granted the application made on behalf of Dr Rault, pursuant to Rule 41 of the Rules, to hear all matters relating to XXX in private. This application was not opposed by the GMC. In accordance with Rule 41, the Tribunal was satisfied to hear all matters relating to XXX in private.

The Evidence

19. 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:

- Dr D, former Primary Care Medical Director for Jersey, dated 26 February 2020, and 17 September 2020;
- Dr B, General Practitioner, dated 11 March 2020;
- Mrs E, Primary Care Governance Lead for Jersey, dated 17 March 2020;
- Mr F, former employee at Maillards Funeral Directors, dated 13 January 2020;
- Ms C, former Practice Manager of XXX Medical Practice dated 17 March 2020.

20. The Tribunal had regard to the documentary evidence provided by the parties at this stage of the hearing. This evidence included but was not limited to:

- Fitness to practise referral form, dated 20 December 2017;
- Certificate of Medical Attendance (Part 1 form);
- Email correspondence 12-18 December 2017 between Dr D and others;
- Police statements of Dr D, Dr B, Mrs E, Mr F, and Ms C;
- Social Enquiry report, dated 12 June 2018;
- Magistrates Court Charge sheet, dated 14 June 2018;
- Transcript of Magistrates sentencing remarks, dated 14 June 2018;
- Reflective statements of Dr Rault, dated between 14 May 2018 and 2 February 2022;
- Continuing Professional Development (CPD) certificates.

21. Dr Rault provided a number of reflective statements dated from 2018 to 2022 and also gave oral evidence at the hearing.

22. In addition, the Tribunal heard oral evidence from the following witnesses on Dr Rault's behalf:

- Mr G, Practice Business Manager
- Dr H, colleague at current practice

23. The Tribunal also received in support of Dr Rault, a number of testimonials from her colleagues, all of which it has read.

Dr Rault's evidence

24. Dr Rault, in evidence, told the Tribunal that this incident occurred at a time when XXX.

25. Dr Rault said she had taken on a sizeable debt to buy into the XXX practice. She informed the Tribunal that right from the outset she experienced bullying and hostile conduct but was not able to leave for financial reasons. She said she was excluded from partnership decisions.

26. XXX

27. Dr Rault told the Tribunal that in Jersey all GP practices are private, resulting in competition for patients between and within practices. She said professional charges were high. She described this leading to significant tensions and a culture of GPs not taking much time off due to loss of income, leading to burnout. She said at the time she had taken pay cut after pay cut.

28. At the time of events, Dr Rault said her thought process had not been rational and she did not recognise herself. She said now, she would have said to Dr B to stop moaning at her. At the time, she was scared, panicking and at the time she initially spoke with Dr B, she intended to see Patient A's body that afternoon. Dr Rault acknowledged that would still have been a lie.

29. Dr Rault said she spent the week in between Patient A's death and her admission trying to solve the problem in the most illogical way. Her aim was to ensure that Patient A and her family were able to have their funeral, as arranged, before Christmas.

30. Dr Rault described not being able to tell Dr D about her lie because they had been friends previously and it was harder because she meant something to her.

31. By contrast, Dr Rault described her work within the NHS now as care driven and more team focussed and supportive. She said patients were not denied care because they could not afford to pay for it.

32. Dr Rault said she was now working as a full-time salaried GP to avoid the pressures of partnership and to balance family life. She said she loved her life now and was able to manage stressors and spot the signs of when she was under pressure.

33. She told the Tribunal she had been open with colleagues at work about the events in 2017. She said it meant the world to her that they had supported and trusted her.

34. She told the Tribunal about GP recruitment issues in her locality.

Submissions

Submissions on behalf of the GMC

35. On behalf of the GMC, Mr Warne submitted that this was a case with ‘layered’ dishonesty. He referred the Tribunal to relevant caselaw on the subject of impairment, in particular the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in *CHRE v NMC and Paula Grant* [2011] EWHC 297 Admin. Mr Warne noted that any of the following features are likely to be present when a doctor’s fitness to practise is found to be impaired:

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 and/or is liable in the future to bring the medical profession into disrepute; and/or

c. Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

36. In relation to dishonesty, Mr Warne referred the Tribunal to the case of *GMC v Dr Nwachuku* [2017] EWHC 2085 (Admin), in particular paragraphs 45 to 50:

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

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

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

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

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

50. The overarching concern is the public interest in protecting the public and maintaining confidence in the practitioner and medical profession when considering whether the misconduct in question impairs fitness to practise: Yeong v GMC [2009] EWHC 1923 per Sales J at paragraphs [50] and [51]; Nicholas-Pillai (above) at paragraph [27]: "In cases of actual proven dishonesty, the balance ordinarily can be expected to fall down on the side of maintaining public confidence in the profession by a severe sanction

against the practitioner concerned. Indeed, that sanction will often and perfectly properly be the sanction of erasure, even in the case of a one-off instances of dishonesty.”

37. Mr Warne referred the Tribunal to the case of *Cohen v GMC [2008] EWHC 581 (Admin)* and to consider if the conduct is easily remediable, has been remedied and the likelihood of repetition. He submitted that the Tribunal should carefully consider the evidence before it and have in mind that this is a case of repeated dishonesty when considering the matter of impairment. He submitted that the Tribunal should also focus on whether there is a need to send a message to other practitioners not to become involved in similar behaviour and to maintain public confidence in the profession.

Submissions on behalf of Dr Rault

38. On behalf of Dr Rault, Mr Gledhill submitted that the Tribunal could conclude that there was no current impairment in this case. He accepted that the dishonesty was repeated, but submitted that it was short-lived, and the evidence shows that Dr Rault ‘*came clean*’ very close in time to the dishonesty, had made admissions in court, and in this process. He submitted that the dishonesty was committed in an environment of very difficult circumstances and XXX, at a time when Dr Rault was overwhelmed by pressures of an unpleasant work situation. He said she was now working in a supportive and kind environment and doing well.

39. Mr Gledhill submitted that the evidence provided by Dr Rault was honest and credible, and that it is shown in her reflections over time that her thinking has evolved, and it is clear she is now in a better place and her intentions are to remain in a supportive place. He reminded the Tribunal that Dr Rault has apologised for her actions and not sought to minimise her wrongdoing. She said that her behaviour was out of character and reminded the Tribunal of her previous good character and unblemished record. He submitted that not every case of dishonesty requires a finding of impairment, and that while what occurred was serious, Dr Rault has admitted there is misconduct and accepts serious misconduct, but in this case, the Tribunal could conclude that there is no current impairment.

40. Mr Gledhill drew to the attention of the Tribunal that at the time of decision in *Grant* (referred to above) the NMC did not have power to issue a warning where current

impairment was not found. He reminded this Tribunal that it would have power to issue a warning to Dr Rault if it found no current impairment.

Legally Qualified Chair's advice

41. The Legally Qualified Chair informed the parties that during Tribunal discussions on impairment she reminded the tribunal members of the decision of *Bolton v Law Society 1994 1 WLR 519*, in particular, paragraph 16:

'Because orders made by the tribunal are not primarily punitive it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise on this jurisdiction than on the ordinary run on sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and he will not offend again. On applying for restoration after striking off, all these points may be made and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness...'

The Relevant Legal Principles

42. 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.

43. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted in relation to misconduct: 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. The Tribunal also was mindful that it also had to consider impairment in relation to Dr Rault's conviction.

44. The Tribunal must determine whether Dr Rault’s fitness to practise is impaired today, taking into account her conduct at the time of the events, her conviction any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

The Tribunal’s Determination on Impairment

Misconduct

45. In determining whether Dr Rault’s fitness to practise is impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amount to misconduct.

46. The Tribunal was satisfied that falsely telling colleagues, on repeated occasions, that she had viewed a body for cremation purposes, when she knew she had not, was misconduct. In the Tribunal’s view, Dr Rault’s misconduct was serious, in that she dishonestly completed a form and when challenged on her actions over a period of eight days, she told further untruths to a number of colleagues involved in the cremation certification process and to those investigating concerns about her actions.

47. She had twice given the GP responsible for signing Part 2 of the form information she knew to be wrong about seeing the deceased’s body. She had twice told an untruth to her own practice manager about seeing the body. When first challenged, she had convinced her Medical Director that there had been a ‘*misunderstanding*’ and that she had seen the body at the nursing home. The Medical Director conveyed this conclusion to others involved in death certification in Jersey, including the Deputy Viscount, the Medical Officer for Health and the Superintendent Registrar. Dr Rault’s repeated untruths caused Dr B to investigate further, to establish the truth. Dr Rault also repeated this untruth to the Clinical Governance Lead for Jersey whilst matters were being investigated.

48. The Tribunal also found that a result of Dr Rault maintaining her lie whilst these matters were being investigated, a number of other people became unnecessarily involved in verifying the inaccuracy of her version of events. This included staff at the funeral home, staff at the nursing home and the doctor that certified Patient A’s death. Further, in the face of Dr Rault’s continued untruths, arrangements were made to view CCTV footage at the nursing home to verify the accuracy of her recount. The Tribunal found that whilst Dr Rault’s

admission came shortly after the incident, as the magistrate concluded, by then she had been presented with ‘incontrovertible evidence’ that she was not telling the truth.

49. The Tribunal noted that Patient A’s funeral was delayed as a result of Dr Rault’s actions.

50. Dishonest acts are invariably serious matters for the Tribunal’s consideration. The Tribunal noted that Dr Rault accepts that her actions amount to misconduct which was serious.

51. Taking all of those factors into consideration, the Tribunal concluded that Dr Rault’s actions amounted to misconduct, which was serious (‘serious misconduct’). Her conduct would be regarded as deplorable by fellow professionals and the public alike.

Impairment by reason of Misconduct

52. The Tribunal, having found that the facts found proved amounted to serious misconduct, went on to consider whether, as a result of that misconduct, Dr Rault’s fitness to practise is currently impaired.

53. In making its decision on impairment, the Tribunal had regard to paragraphs 1, 65, 68 and 71 of Good Medical Practice (‘GMP’):

***1** Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.*

...

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

...

68 *You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.*

...

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

a *You must take reasonable steps to check the information is correct.*

b *You must not deliberately leave out relevant information.'*

54. The Tribunal found that Dr Rault had breached fundamental tenets of the medical profession by her dishonest behaviour. It also found that Dr Rault's actions had brought the medical profession into disrepute and that paragraphs (b), (c) and (d) of *Grant* above were engaged.

55. The Tribunal went on to consider whether Dr Rault's misconduct was capable of being remediated, has been remediated, and whether it was likely to be repeated.

It balanced those against the three limbs of the statutory overarching objective, namely to:

- protect and promote the health, safety and wellbeing of the public;
- promote and maintain public confidence in the medical profession; and
- promote and maintain proper professional standards and conduct for the members of the profession.

56. The Tribunal was mindful that dishonesty is difficult to remediate but not impossible. The Tribunal noted that Dr Rault was, until this incident, of previous good character. Further that Dr Rault's actions appeared not to be motivated by malice or personal gain. It noted there is no evidence before the Tribunal to suggest that Dr Rault has acted dishonestly since the matters before this Tribunal. The Tribunal noted that the incident occurred over 4 and a half years ago and for the most part Dr Rault had continued working as a GP during this time,

subject to conditions regarding death certification. The Tribunal had seen no recent evidence of any concerns about Dr Rault's clinical practice. Dr Rault's testimonial evidence indicated she was good and competent doctor respected by colleagues and patients. The Tribunal concluded that over the last 4 and a half years, Dr Rault has undertaken a substantial amount of remediation and appeared to be a good and competent doctor.

57. In considering the issue of insight, the Tribunal was of the view that Dr Rault had shown full insight. It also took account of the reflective statements Dr Rault has submitted from 2018 to February 2022. The Tribunal could see a clear evolution of her reflection from the first statement in 2018, to the most recent in 2022. It also noted that she has reflected on her learning following courses on probity, making changes to death certification and managing stress. The Tribunal acknowledged Dr Rault's openness with colleagues and the support she has been provided with by colleagues. The Tribunal further noted that Dr Rault had made changes to her working life to mitigate the pressures she faced and accepted she was likely now more able to identify and deal with any stressors. The Tribunal considered the risk of repetition very low.

58. The Tribunal also took into consideration that Dr Rault had made full admissions to the GMC and to this Tribunal, and that she pleaded guilty in court. It noted immediately upon Dr Rault's admission to Dr D her apology:

'I am deeply sorry to all those this has affected, I have absolutely no excuse for my behaviour on this and it is extremely out of character. I do not wish to make any excuse.'

Further, the Tribunal noted that Dr Rault had engaged fully with the regulatory process post her admission. She also chose to give evidence to the Tribunal in person. The Tribunal found the evidence Dr Rault gave to the Tribunal to be credible, such that it could attach weight to it. The Tribunal took the view that Dr Rault's remorse was genuine.

59. The Tribunal reminded itself of the importance of a doctor's duties as set out in GMP, in particular at paragraphs 1, 65, 68 and 71. The Tribunal was of the view that Dr Rault's actions were a serious breach of GMP.

60. The Tribunal took into account the overarching objective. It reminded itself that doctors occupy a position of privilege and trust and are expected to act in a manner which maintains public confidence in the medical profession, and to uphold proper standards of conduct. In the Tribunal's view, Dr Rault's actions, including her dishonesty, would be considered deplorable by fellow practitioners, and the public, despite her mitigation. The Tribunal accepted Dr Rault's evidence about the difficult work environment that she found herself in at the time of events and XXX. The Tribunal is satisfied that Dr Rault's actions have brought the medical profession into disrepute. The Tribunal has concluded that a finding of impaired fitness to practise is required to meet the wider public interest and to promote and maintain public confidence in the medical profession, and promote and maintain proper professional standards and conduct for members of the profession.

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

Impairment by reason of Conviction

62. The Tribunal took account of the fact that Dr Rault's conviction arose from her dishonest actions in claiming that she had viewed the body of Patient A after death, and that she had filled in a form to that effect, which would have led to the body being cremated. It noted that there were no suspicious circumstances surrounding Patient A's death and that Dr Rault had not done this for personal gain.

63. The Tribunal noted that Patient A's cremation was delayed due to Dr Rault's actions, potentially impacting on members of the family and those attending Patient A's funeral. An earlier admission may have avoided this delay.

64. The Tribunal considered the evidence before it about Dr Rault's insight and remediation for her actions that had led to the conviction. As said before, it determined that Dr Rault has been open and demonstrated genuine remorse for her actions over the last four years. In the Tribunal's view, Dr Rault had demonstrated an awareness of the significance of this conviction in undermining public confidence in the medical profession. Dr Rault made admissions to the police and later pleaded guilty in court. At the earliest opportunity in this hearing, Dr Rault admitted the paragraphs of the Allegation relating to her conviction. As already noted, the doctor was of previous good character with an unblemished career, prior to this conviction.

65. The Tribunal also considered the issue of remediation. The evidence before the Tribunal suggests that Dr Rault fully complied with the criminal investigation or her sentence, and there is no evidence of repetition or other offending. The Tribunal was told she had paid the fine imposed. It also noted that more than four years have now passed since the incident she was convicted of. The Tribunal concluded that, in all the circumstances, the likelihood of repetition was very low.

66. The Tribunal was of the view that the conviction was a serious matter as evidenced by the significant fine that Dr Rault was ordered to pay and the alternative of 12 weeks in prison. The Tribunal considered that her conviction was a breach of the fundamental tenets of the profession and brought the medical profession into disrepute.

67. The Tribunal had regard to the sentencing remarks made by the Magistrate, on 14 June 2018 when Dr Rault appeared before the Jersey court. The Magistrate concluded that this was a serious offence, having a damaging effect upon confidence in the medical profession. The Magistrate noted that whilst Dr Rault was under considerable stress at the time, that was no excuse for departing from professional standards. Further, the Magistrate concluded that an aggravating factor was that Dr Rault lied, several times, until confronted by incontrovertible evidence. The Magistrate concluded that given the size of Jersey, this type of offence could have a greater impact upon the trust that patients felt able to place in their GPs.

68. The Tribunal has taken into consideration Dr Rault's insight and remediation and balanced it against the gravity of her offence. It noted that this offence could only be committed by a doctor, and as such considered this to be an indicator of the importance of this step in safeguarding patients and the wider public interest, where cremation is concerned. The Tribunal noted that the rules surrounding certification had since changed, however Dr Rault was obliged to follow the rules applying at that time. The Tribunal therefore concluded that a finding of impairment was required in the wider public interest, in order 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.

69. The Tribunal has therefore determined that Dr Rault's fitness to practise is impaired by reason of her conviction.

Determination on Sanction - 17/06/2022

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

Submissions

71. On behalf of the GMC, Mr Warne submitted that the appropriate sanction in Dr Rault's case was one of suspension. He referred the Tribunal to the Sanctions Guidance (2020) ('the SG') and the Tribunal's own findings at the previous stages of the hearing.

72. Mr Warne submitted that the Tribunal has already concluded that Dr Rault had breached fundamental tenets of the profession, brought the medical profession into disrepute and that a finding of impairment was required to meet the wider public interest. He stated that any sanction imposed is not intended to be punitive, though it may have a punitive effect, and any sanction imposed needs to be appropriate and proportionate. Mr Warne reminded the Tribunal that the reputation of the profession as a whole is more important than the interests of any individual doctor.

73. Mr Warne stated that, given the findings of the Tribunal, suspension would be the appropriate sanction in this case. He submitted that suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and the public where the behaviour is unbecoming of a registered doctor. He further stated that suspension is appropriate in cases such as this one, involving serious misconduct that falls short of being incompatible with continued registration.

74. Mr Warne submitted that erasure was not necessary in this case, although there had been an element of covering up.

75. On behalf of Dr Rault, Mr Gledhill submitted that he was in agreement with the GMC that an order of erasure would be a '*step too far*' in this case. He submitted that Dr Rault had been bullied in the workplace, XXX, and caused her to act illogically at the time of events. He said XXX was a significant contributory factor. He reminded the Tribunal that Dr Rault had an

otherwise unblemished career and there has been no repetition since. He further submitted that Dr Rault is held in high regard in her current role and has been transparent with her colleagues about her history in Jersey. He stated that Dr Rault is a competent doctor who is clearly making a lot of difference within the community of patients she looks after.

76. Mr Gledhill submitted that suspension would, in many cases, be the *'go to sanction'* in cases of dishonesty, and it may be that the Tribunal takes the view that the nature of the criminal behaviour and the misconduct is so serious it requires an order of suspension. He stated however that the incident was very *'short-lived'* and she *'came clean'* very quickly, and when taken together with the feedback of her current employers, the CPD and reflections, it is clear that the risk of repetition is negligible. He submitted that Dr Rault had begun remediating and reflecting on her wrong-doing soon after events. He said not all evidence of her past remediation and reflection was available now, because she could not access previous emails having moved practices.

77. Mr Gledhill stated that there have been significant difficulties in recruitment in the locality Dr Rault works in, including finding staff cover for periods of leave. He said an order of suspension would have a deleterious impact on her patients and employers and the public interest worked more than one way. He submitted the public interest would not be served by taking this doctor out of circulation for a long period of time. Further he submitted it would have a significant impact on Dr Rault's homelife and her financial obligations.

78. Mr Gledhill submitted that there was a potential to dispose of this case by way of an order of conditions, which would send a message to the public, to Dr Rault and the public that her conduct was unacceptable. He suggested a condition of a period of mentorship focusing on a particular area that the Tribunal considered appropriate, or a period of further study and presenting evidence of these things on a future occasion.

79. Mr Gledhill submitted that Dr Rault was in a much happier place now. Her intention was to remain in GP practice, in an area where she was held in high regard. He highlighted that from her appraisals and testimonials, it could also be seen that there were no current public protection elements.

The Relevant Legal Principles

80. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own independent judgment. In reaching its decision on sanction, the Tribunal had regard to the SG. It bore in mind that the purpose of sanction is not to be punitive, but to protect patients and the wider public interest, although any sanction imposed may have a punitive effect.

81. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Rault's interests against the public interest. It had regard to the overarching objective, which includes the protection of the public, the maintenance of public confidence in the profession, and the promoting and maintaining of proper professional standards and conduct for members of the profession. The Tribunal noted there were no current patient safety concerns.

82. The Tribunal had regard to its findings of misconduct and impairment as well as the submissions made on behalf of the GMC and Dr Rault.

The Tribunal's Determination on Sanction

83. The Tribunal first identified what it considered to be the mitigating and aggravating factors in this case.

84. The Tribunal identified the following aggravating factors:

- Dr Rault lied to a number of people involved in the death certification process;
- She compounded those lies, during the period of investigation, by telling untruths to those looking into concerns. She persuaded those looking into concerns there had been a 'misunderstanding';
- Her further lies resulted in enquiries being made of other people and further evidence being obtained to establish her dishonesty. Doubt was cast on the motives of Dr B for initially raising concerns.

85. The Tribunal identified the following mitigating factors:

- Dr Rault has full insight;
- Her appraisals and testimonials are positive and show her to be a good and competent doctor;

- There has been a significant lapse of time since the events, around 4 and a half years. For the most part Dr Rault has been working in GP practice during this time with conditions;
- XXX, which clouded her judgment. She was working in an environment she found unsupportive and challenging and felt unable to leave;
- She has no fitness to practise history;
- There has been no reoffending;
- She has apologised and shown remorse, taking personal responsibility for her actions since admitting her wrongdoing.
- She has undertaken tailored CPD to specifically address her shortcomings;
- She has taken active steps to improve her work situation, mitigate the personal stressors and to promote her own well-being;

86. The Tribunal balanced these factors throughout its deliberations and went on to consider each sanction in order of ascending severity, starting with the least restrictive.

No action

87. The Tribunal first considered whether to conclude the case by taking no action. It noted that to take no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

88. The Tribunal was satisfied that there were no exceptional circumstances in Dr Rault's case which could justify it taking no action. It determined that, given the seriousness of the misconduct and Dr Rault's criminal conviction, and the Tribunal's findings in respect of impairment, to take no action would not be sufficient, proportionate or in the public interest.

Conditions

89. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Rault's registration. It had regard to paragraphs 81 and 85 of the SG, which state:

'81 *Conditions might be most appropriate in cases:*

a involving the doctor's health

b involving issues around the doctor’s performance

c where there is evidence of shortcomings in a specific area or areas of the doctor’s practice

d where a doctor lacks the necessary knowledge of English to practise medicine without direct supervision.

...

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

90. The Tribunal was of the view that it would be unusual to impose conditions in a dishonesty case like this, and one where the impairment was found to maintain public confidence in the profession and uphold proper professional standards. If it were to depart from the SG. It considered it would need to set out good reasons for doing so.

91. The Tribunal was satisfied that the risk of repetition of Dr Rault’s conduct and dishonest behaviour was very low and that Dr Rault had shown complete insight and made significant remediation. The Tribunal took the view that the conditions proposed by Mr Gledhill were not appropriate, workable or measurable in the circumstances of the Dr Rault’s case. The Tribunal could not see that conditions could appropriately be imposed in Dr Rault’s case to adequately meet the overarching objective in a proportionate way.

Suspension

92. The Tribunal then went on to consider whether a period of suspension would adequately maintain public confidence in the profession and uphold proper standards for its members. In considering whether to impose a period of suspension on Dr Rault’s registration, the Tribunal had regard to paragraphs 91, 92, 93 and 97, in particular (a), (e), (f) and (g) of the SG which provides:

‘91 *Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. ...*

92 *Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (i.e. for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).*

93 *Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions.*

...

97 *Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*

a A serious breach of Good medical practice, but where the doctor’s misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.

...

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor’s unwillingness to engage.

f No evidence of repetition of similar behaviour since incident.

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.’

93. The Tribunal considered the submissions made by the GMC and on behalf of Dr Rault, and the totality of the evidence and findings made by the Tribunal. Overall, the Tribunal decided that this case was not one where Dr Rault's misconduct and conviction is '*fundamentally incompatible with continued registration*'. It therefore took the view that erasure would be a disproportionate outcome. The Tribunal noted that whilst the dishonesty was repeated over a period of eight days, considerable time has lapsed since the events, with Dr Rault continuing to work as a doctor. There has been no repetition of this conduct, there are no other concerns and Dr Rault has received positive testimonials and appraisals since the events. Further, the Tribunal has concluded that Dr Rault has full insight into her actions, has reflected and made positive steps to remediate. She describes being in a happier place in terms of her work, XXX and homelife and the Tribunal concluded that she was now better able to manage the stressors that had contributed towards her poor judgment at the time.

94. The Tribunal was satisfied this case fell squarely within the ambit of paragraphs 91 to 93 of the SG as set out above. It was also satisfied that the matters listed above from paragraph 97 of the SG also apply in this case, such that suspension is clearly an appropriate and proportionate response.

95. In light of the above, the Tribunal determined that a period of suspension would be an appropriate and proportionate sanction balancing Dr Rault's interests against those of the public. The Tribunal took into account the impact that this sanction may have upon Dr Rault. However, in all the circumstances the Tribunal concluded that Dr Rault's interests are outweighed by the need to maintain public confidence in the profession and declare and uphold proper standards of conduct and behaviour.

96. The Tribunal determined therefore that an order of suspension was required in this case. It then went on to determine the length of the suspension.

Length of Suspension

97. In determining the length of the suspension, the Tribunal had regard to paragraphs 99 to 102 of SG and the table following paragraph 102.

98. The Tribunal has set out its rationale for imposing a suspension in the wider public interest in order to maintain confidence in the profession and mark proper professional

standards. The Tribunal considered that although Dr Rault’s misconduct and conviction brought the profession into disrepute, a lengthy period of suspension was not necessary or proportionate given her mitigation, remediation, remorse and insight.

99. The Tribunal went on to consider the mitigating features of the case and their effect on the period of suspension. The Tribunal is satisfied that the risk of Dr Rault repeating her misconduct or her criminal behaviour is very low. She has full insight and taken significant remedial steps. She has apologised and not repeated her conduct over a period of more than four years.

100. The Tribunal is satisfied that all of these factors are relevant to the proportionality of allowing Dr Rault to resume practice as soon as possible and to avoid patients being unnecessarily deprived of an otherwise good doctor. The Tribunal was satisfied that these factors are relevant in assessing the length of the suspension, and that a reasonably informed member of the public or profession would be satisfied there had been a proportionate response to the dishonest misconduct and conviction.

101. Taking the Dr Rault’s personal circumstances and the mitigating elements of this case into account, the Tribunal was satisfied that a period of two months’ suspension was sufficient to satisfy the need to promote and maintain public confidence and to send out a clear message to the profession that this type of conduct is unacceptable, so as to maintain proper professional standards.

102. Accordingly, the Tribunal determined to suspend Dr Rault’s registration for a period of two months.

Review

103. The current case does not involve deficient performance or lack of knowledge of English and therefore the Tribunal was satisfied that the suspension does not require a review under paragraphs 94 and 95 of the SG.

104. Paragraphs 163 and 164 of the SG dealing with review hearings state:

‘163 It is important that no doctor is allowed to resume unrestricted practice following a period of conditional registration or suspension unless the tribunal considers that they are safe to do so.

164 In some misconduct cases it may be self-evident that, following a short suspension, there will be no value in a review hearing.’

105. For the reasons set out above, the Tribunal is satisfied that a review following a short suspension of two months where the doctor has remediated and shown full insight would serve no useful purpose. In the circumstances, the Tribunal determined that it is not necessary to direct a review hearing.

Determination on Immediate Order - 17/06/2022

106. Having determined that Dr Rault’s registration should be subject to an order of suspension for a period of two months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether her registration should be subject to an immediate order.

Submissions

107. On behalf of the GMC, Mr Warne submitted that an immediate order is not necessary in this case. Mr Warne requested that the interim order of conditions should remain in place for the duration of the appeal period.

108. On behalf of Dr Rault, Mr Gledhill submitted that in light of the Tribunal’s findings and the fact there are no public protection issues, an immediate order is opposed. He further submitted that the 28-day appeal period would give Dr Rault time to make arrangements with her employers for her substantive sanction. Mr Gledhill opposed the interim order remaining in place and reminded the Tribunal that the test it should be considering is whether it was necessary in the interests of the public for the order to remain in place.

The Tribunal’s Determination

109. In reaching its decision, the Tribunal considered the relevant paragraphs of the SG and exercised its own independent judgement. In particular, it took account of paragraphs 172, 173 and 178, 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.'

110. The Tribunal determined that there were no patient safety issues in this case, and in its view an immediate order was not necessary to protect members of the public or otherwise in the public or Dr Rault's interests.

111. The Tribunal further considered that it was not necessary or in the public interest for the current interim order of conditions to remain in place. Given its decision not to impose an immediate order and there being no patient safety concerns, the Tribunal determined to revoke the interim order.

112. This means that Dr Rault's registration will be suspended 28 days from the date on which written notification of this decision is deemed to have been served, unless she lodges an appeal. If Dr Rault does lodge an appeal she will remain free to practise unrestricted until the outcome of any appeal is known.

113. The interim order is hereby revoked.

114. That concludes the case.

SCHEDULE 1

Date:	Individual statement made to:
7 December 2017 8 December 2017	Dr B
11 December 2017 13 December 2017	Ms C
12 December 2017	Dr D
14 December 2017	Ms E