

PUBLIC RECORD**Dates:** 20/04/2021 - 30/04/2021**Medical Practitioner's name:** Mr Simon THOMAS**GMC reference number:** 4430399**Primary medical qualification:** MB ChB 1997 University of Glasgow

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	Miss Megan Larrinaga
Lay Tribunal Member:	Ms Colette Neville
Medical Tribunal Member:	Dr Maria Broughton
Tribunal Clerk:	Miss Kanwal Rizvi Mr Laurence Millea

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Duncan Mawby, Brodies Solicitors
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 - 23/04/2021

1. The Tribunal determined, in accordance with Rule 41 of the General Medical Council ('GMC') (Fitness to Practise) Rules Order of Council 2004 ('the Rules'), that the hearing would be heard partly in public and partly in private.
2. This determination will be read in private but as this case concerns Mr Thomas' misconduct, a redacted version of this determination will be published following the conclusion of this hearing, XXX.

Background

3. Mr Thomas gained his primary medical qualification from the University of Glasgow in 1997. At the time of the events which gives rise to these proceedings Mr Thomas was practising as a Consultant Orthopaedic Surgeon at Perth Royal Infirmary ('the Hospital').
4. The allegation that has led to Mr Thomas' hearing can be summarised as follows: on 29 June 2018 NHS Tayside ('the Trust') imposed restrictions on Mr Thomas' practice in relation to hand and wrist surgery. It is alleged that Mr Thomas failed to notify NHS Tayside that he practised privately at the BMI Kings Park ('Kings Park') and BMI Fernbrae ('Fernbrae') Hospitals (collectively the Hospitals'), which meant that neither hospital was notified about the restrictions imposed by the Trust. Further, it was alleged that Mr Thomas failed to comply with the restrictions imposed on his practice by carrying out procedures falling within the restrictions between 10 August 2018 and 3 December 2018.
5. It was further alleged that on two separate occasions in August 2018 Mr Thomas told two colleagues, Mr A (listed as Dr A in the Allegation) and Professor B, that he could not

attend a meeting with Mr A because he had an appointment with his General Practitioner ('GP') and/or had to pick up a family member. It was alleged that Mr Thomas knew that he did not have a GP appointment, did not have to pick up a family member and knew that he was working at Fernbrae.

6. It was also alleged that while on paid sick leave from the Trust Mr Thomas carried out four clinics at Kings Park and that while suspended by the Trust, he carried out one clinic at Kings Park. It was alleged that Mr Thomas knew he should not have been working while on paid sick leave and/or suspended and that his actions were dishonest.

7. Mr Thomas was referred to the GMC by Professor C, Operational Medical Director at the Trust following a local investigation. The Trust investigation arose following the discovery of a surgical error by Mr Thomas in June 2018 where he had incorrectly identified and removed a patient's median nerve believing it to be a tendon. The error was identified and rectified in a post-operative review with the patient. Following the discovery of the surgical error the Trust carried out a Local Adverse Event Review ('LAER') and a meeting took place on 29 June 2018 ('the 29 June meeting'). At the 29 June meeting, the Trust imposed restrictions on Mr Thomas' practice including that he was to hand over his elective hand and wrist surgery cases to consultant colleagues for a period of time until the medical director was satisfied that remedial discussions and actions were in place. In addition, it was recommended that Mr Thomas inform any other employers about the restrictions. Following the 29 June meeting, Mr Thomas was on leave from the Trust for a period of several weeks returning to work on 10 August 2018.

8. On Mr Thomas' return to work he was asked to meet with Mr A at 12:15 on Friday 10 August 2018. Mr Thomas said he was unable to meet Mr A at 12:15 as he had a GP appointment (which was 20 minutes away) and needed to pick up a family member. In any event Mr A and Mr Thomas were unable to meet at 12:15 and the meeting was rearranged for 16:00.

9. Mr Thomas attended the 16:00 meeting and was asked if he had attended his GP and he confirmed that he had. This was not true as he had in fact been working at Fernbrae. Mr A became aware that Mr Thomas may not have been to a GP appointment following discussions with another colleague, Mr D, who also worked at Fernbrae. On receipt of confirmation that Mr Thomas had indeed been working at Fernbrae, Mr A referred the matter to Professor B, who, at the time, was the Associate Medical Director at the Trust.

10. Professor B organised a meeting with Mr Thomas for the 14 August 2018. At that meeting there was a discussion between Professor B and Mr Thomas about the surgical error which led to the LAER and Mr Thomas' whereabouts on 10 August 2018.

11. Following their meeting on 14 August 2018, Professor B had concerns about Mr Thomas' compliance with the restrictions imposed following the LAER and his probity. He contacted Dr E asking for a preliminary investigation into the probity of Mr Thomas and a number of other matters which were not before the Tribunal.

12. In the course of Dr E's preliminary investigation, it came to light that Mr Thomas had not informed his private practice employers that the Trust had imposed restrictions on his practice. In addition, he was continuing to undertake hand and wrist cases, which was considered by the Trust to fall within the scope of the restrictions imposed. Following receipt of this information a further meeting was held with Mr Thomas on 19 October 2018 in which he was told that he should not be carrying out hand and wrist work privately.

13. In November 2018, the Trust became aware that Mr Thomas was also undertaking private work at Kings Park. The Trust contacted Kings Park which advised that Mr Thomas had not informed them of the restrictions and had carried out hand and wrist work 7 times since 9 August 2018. The preliminary investigation by Dr E into Mr Thomas' compliance with the restrictions and his probity was then expanded to include allegations that despite being instructed that he should not undertake injections he continued to do so and that he had continued to perform hand and wrist cases in his private practice.

14. Following the conclusion of Dr E's report, she referred the matter to Professor C who then referred the matter to the GMC.

15. In the course of the GMC investigation, the Trust became concerned about Mr Thomas' XXX. In March 2019, Dr E had a conversation with Mr Thomas and following that conversation it was agreed that Mr Thomas would take sick leave XXX. Mr Thomas XXX was certified as being unfit for work for a period of four weeks from 1 April 2019.

16. After being signed off sick, Mr Thomas saw private patients at Kings Park on 4 occasions between 4 and 18 April 2019. It came to Dr E's attention that while Mr Thomas was certified as being unfit for work, he had continued to see patients in his private practice at Kings Park. Having received written confirmation of this from Kings Park, Dr E held a further meeting with Mr Thomas on 23 April 2019. At the meeting on 23 April 2019, Dr E informed

Mr Thomas that he was being suspended by the Trust. Written confirmation of the suspension was sent to Mr Thomas on 24 April 2019. Dr E informed Professor C of the new information. It subsequently came to light that while suspended from his duties at the Trust, Mr Thomas saw 3 private patients on 24 April 2019 at Kings Park.

The Outcome of Applications Made during the Facts Stage

17. The Tribunal granted the application, made on behalf of Mr Thomas, pursuant to Rule 41 of the Rules, XXX. The GMC did not oppose the application. In the circumstances the Tribunal was satisfied that it was appropriate to grant the application XXX.

The Allegation and the Doctor's Response

18. The Allegation made against Mr Thomas is as follows:

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

1. On 29 June 2018, you attended a Local Adverse Event Review meeting with NHS Tayside, at which they imposed restrictions on your practice ('the Restrictions'), including that which is set out at Schedule 1. **Admitted and found proved**
2. You failed to:
 - a. notify:
 - i. NHS Tayside that you also practised privately at BMI Kings Park Hospital ('Kings Park') which meant that Kings Park was not notified about the Restrictions by NHS Tayside; **Admitted and found proved**
 - ii. BMI Fernbrae Hospital ('Fernbrae'), where you also practised privately, about the Restrictions; **Admitted and found proved**
 - iii. Kings Park about the Restrictions until 20 September 2018; **Admitted and found proved**
 - b. comply with the Restrictions, in that on:
 - i. 10 August 2018 you carried out elective hand and wrist surgery at Fernbrae; **Admitted and found proved**
 - ii. 15 August 2018 and / or 28 August 2018 you carried out elective hand and wrist surgery at Kings Park; **Admitted and found proved**

- iii. 22 October 2018 and / or 3 December 2018 you performed elective local anaesthetic injections, to patients' hands and / or wrists, within NHS Tayside. **Admitted and found proved**
- 3. On one or more occasion on 10 August 2018, you told Dr A that you could not attend a meeting with him at 12:15 ('the Meeting') because you had an appointment with your General Practitioner at 13:30 and / or you had to pick up a family member. **Admitted and found proved**
- 4. You knew that you:
 - a. did not have an appointment with your General Practitioner on 10 August 2018; **Admitted and found proved**
 - b. could not attend the Meeting because you were working at Fernbrae. **Admitted and found proved**
- 5. Your action as described at paragraph 3 was dishonest by reason of paragraph 4. **Admitted and found proved**
- 6. On 14 August 2018 you told Professor B that you could not attend the Meeting as you had an appointment with your General Practitioner and / or you had to pick up a family member. **To be determined**
- 7. Your action as described at paragraph 6 was dishonest by reason of paragraph 4. **To be determined**
- 8. You carried out clinics at Kings Park whilst you were:
 - a. on paid sick leave from NHS Tayside, on:
 - i. 4 April 2019; **Admitted and found proved**
 - ii. 10 April 2019; **Admitted and found proved**
 - iii. 17 April 2019; **Admitted and found proved**
 - iv. 18 April 2019; **Admitted and found proved**
 - b. suspended from practising and being paid by NHS Tayside, on 24 April 2019. **Admitted and found proved**
- 9. You knew that on one or more of the dates set out in paragraph 8 above you should not have been working at Kings Park as you were:
 - a. on paid sick leave from NHS Tayside; and / or **Admitted and found proved**

- b. suspended from practising and being paid by NHS Tayside. **Admitted and found proved**
10. Your actions as described at paragraph 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.

The Admitted Facts

19. At the outset of these proceedings, through his legal representative, Mr Mawby, Mr Thomas made admissions to some paragraphs and sub-paragraphs of the Allegation, 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 these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

20. In light of Mr Thomas' response to the Allegation made against him, the Tribunal was required to determine the outstanding paragraphs.

Witness Evidence

21. The Tribunal heard oral evidence on behalf of the GMC from the following witnesses:

- Professor B, Deputy Operational Medical Director at NHS Tayside, who was Interim Associate Medical Director ('AMD') for surgery at the time of the matters giving rise to these proceedings;
- Mr A, Consultant Orthopaedic Surgeon. He was the lead clinician in the orthopaedic department at the Hospital at the time of the matters giving rise to these proceedings; and
- Mr F, Clinical Care Group Director for Trauma, Orthopaedics and Surgery at Ninewells Hospital in Dundee. He was the Interim Clinical Director for Ninewells Hospital in Dundee at the time of the matters giving rise to these proceedings.

22. The Tribunal also received evidence on behalf of the GMC in the form of witness statements from the following:

- Mr A, Consultant Orthopaedic Surgeon, dated 18 April 2019;

- Professor B, Deputy Operational Medical Director at NHS Tayside, who was Interim Associate Medical Director, dated 1 May 2019;
- Professor C, Health Board Medical Director at NHS Tayside, dated 3 June 2019;
- Dr E, Associate Medical Director for the Surgical Division in NHS Tayside, dated between 15 May 2019 and 26 November 2020;
- Mr F, Clinical Care Group Director for Trauma, Orthopaedics and Surgery at Ninewells Hospital in Dundee, dated between 22 May 2019 and 11 February 2021;
- Ms G, Head of Medical Performance at BMI Healthcare, dated 30 July 2019; and
- Ms H, Clinical Governance and Risk Management Facilitator employed by NHS Tayside, dated 28 January 2021.

23. Mr Thomas provided a witness statement, dated 18 April 2021 and also gave oral evidence at the hearing.

Documentary Evidence

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

- Written account of Mr A, dated 4 October 2018;
- Notes from LAER meeting on 29 June 2018;
- NHS Tayside Enquiry Report, dated January 2019;
- Email correspondence between Professor B and Dr E, dated from 16 August to 19 September 2018;
- Email from Mr F to Dr E, dated 27 March 2019;
- Statement of fitness for work, dated 4 April 2019;
- Letter from Professor B to Mr Thomas, dated 24 April 2019;
- Email from BMI Healthcare to Dr E, dated 7 May 2019;
- Email from BMI Healthcare to NHS, dated 2 May 2019;
- Email from Dr E to Professor C, dated 25 June 2019;
- Email from Mr A to Professor B, dated 26 April 2019;
- Notes from Preliminary Enquiry Meeting, dated 15 February 2019;
- LAER Report, dated 12 July 2018;
- Emails from Mr F between 10 August 2018 and 7 December 2018;
- Letters from Mr F to Mr Thomas, dated 31 October 2018 and 7 December 2018;
- Email from Ms G to GMC attaching letter from BMI Healthcare to Mr Thomas, dated from 28 September 2018 to 7 June 2019;

- Email exchange between GMC and Ms H, dated 20/21 April 2020; and
- Mr Thomas' CV.

The Tribunal's Approach

25. The Tribunal had regard to the advice given by the Legally Qualified Chair regarding the relevant case law and legal principles, which is a matter of record.

26. In reaching its decision on facts, the Tribunal bore in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Mr Thomas does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, namely, whether it is more likely than not that the events occurred.

27. The Tribunal noted that the outstanding matters to be determined involved an allegation of dishonesty and applied the test for determining dishonesty as set out in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67, and which says:

1. the fact-finding tribunal must first ascertain (subjectively) the state of the doctor's knowledge or belief as to the facts. The reasonableness of the belief is a matter of evidence going to whether he genuinely held the belief, but it is not a requirement that the belief must be reasonable; and
2. the fact-finding tribunal must then consider whether that conduct was dishonest by the (objective) standards of ordinary decent people. There is no requirement that the individual must appreciate that what they have done was, by those standards, dishonest.

The Tribunal's Analysis of the Evidence and Findings

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

Paragraph 6:

29. The Tribunal considered the evidence before it in relation to the meeting that took place on 14 August 2018, where it is alleged that Mr Thomas told Professor B that he could not attend the meeting with Mr A on 10 August 2018 as he had an appointment with his GP and/ or that he had to pick up a family member.

30. Professor B, in his oral evidence, told the Tribunal that he had arranged a meeting with Mr Thomas after receiving an email from Mr A on August 13, 2018, outlining his concerns from his conversation with Mr Thomas on August 10, 2018. Professor B told the Tribunal that the meeting lasted approximately an hour and that there were discussions about the surgical error which led to the restrictions imposed before moving on to the meeting between Mr A and Mr Thomas on 10 August 2018. It was Professor B's evidence that he asked Mr Thomas an open question about where he had been when he had been due to meet Mr A. Professor B stated that Mr Thomas initially told him that he had been to a GP appointment and had picked up a family member and met Mr A later that afternoon. Professor B stated that he explained to Mr Thomas that he believed he had been at Fernbrae that afternoon, at which point there was a change in Mr Thomas' posture, tone and demeanour including '*a slight pinkening of [his] cheeks*'. At this stage Mr Thomas then conceded that he had been at Fernbrae and accepted that he had misled Mr A. Professor B described Mr Thomas' account as '*rather muddled*' and confirmed that by the conclusion of the meeting Mr Thomas had told him the truth of where he had been, accepted that he had misled Mr A and that he would apologise to him.

31. Mr Thomas in his evidence said that although the meeting with Professor B was stressful and some time ago, he had a good recollection of it. Mr Thomas agreed with Professor B's recollection that there had been a discussion about the surgical error and that by the end of the meeting he told Professor B that he had lied to Mr A and would apologise for that. However, Mr Thomas' evidence was that his recollection of the meeting was different. Mr Thomas stated to the Tribunal that although he did not go into the meeting with Professor B with the intention of explaining where he had been when was due to meet Mr A, if he had been asked a direct question he would not have lied to Professor B. He stated that he already felt guilty and horrible for lying to Mr A, someone he considered a colleague, friend and father figure, and that he did not wish to compound that lie.

32. Mr Thomas stated that when asked by Professor B to give an account of where he had been he advised Professor B of what he had told Mr A, namely, that he had been to the GP and picked up a family member, but also told Professor B that this was not true. Mr Thomas' evidence was that Professor B may have become confused as to what was being said and may have been under the impression that he was repeating the lie. Mr Thomas stated that this was not the case and he was simply repeating what he had told Mr A. Mr Thomas stated that in the course of the explanation he sought to confirm and emphasise to Professor B that

he had previously had a GP appointment and that may have left him with the impression that he was still claiming to have gone to the GP.

33. Mr Thomas said Professor B asked him whether he had lied to Mr A and he confirmed he had and agreed to apologise.

34. The Tribunal noted that Professor B had given a consistent account of the meeting on 14 August 2018 in his communication with the Trust, in his witness statement and again in oral evidence. The Tribunal considered Professor B to be an open and honest witness who did his best to assist the Tribunal. The Tribunal also considered that Professor B was reflective and conceded that his recollection of events was some time ago.

35. In making its decision, the Tribunal had particular regard to the following passages from Professor B's statement in which he said:

'I also raised the private practice issue with Mr Thomas. He was not aware that I had discussed the private practice issues with [Mr A]. I asked him what he had been doing on the specific Friday that [Mr A] had wanted [to] meet him. He told me that he went to a GP appointment, had been to pick XXX up from school and then met [Mr A] later that afternoon.

I told Mr Thomas that I believed that he had been at a local private hospital, on the Friday afternoon in question. He admitted that he had been at BMI Fernbrae Hospital ('Fernbrae') but then gave a rather muddled story. He said he had been to the GP and the school (in Crieff) but also Fernbrae (in Dundee). All of these places were at least 20 miles from Perth, in opposite directions, so it was my impression that it was highly improbable that this had all taken place that afternoon. He had therefore lied to both [Mr A] and me directly which I found deeply concerning.

I left the meeting with serious concerns regarding Mr Thomas' probity. He had not been straight and honest about attending his private practice.'

36. The Tribunal noted Mr Thomas' evidence that despite feeling guilty for lying to a colleague whom he appeared to hold in high regard, he did not attend the meeting with Professor B with the intention of volunteering the truth of the matter unless asked a direct question. It also carefully considered the explanation put forward by Mr Thomas that rather than lying directly to Professor B, he was simply repeating what he told Mr A.

37. The Tribunal does not accept as credible Mr Thomas' version of events – particularly in light of his admission that he would not have volunteered the truth of the situation unless asked a direct question. The Tribunal considered it highly improbable that on being asked an open question as to his whereabouts, Mr Thomas' initial reaction would have been to set out to Professor B what he told Mr A, particularly as Mr Thomas did not know that Professor B and Mr A had discussed the matter. As such, while Mr Thomas gave evidence that he suspected Professor B already knew of his whereabouts on 10 August 2018, this suspicion arose from the fact that he and Mr D had been operating at Fernbrae the same day.

38. The Tribunal accepted that by the end of the meeting on 14 August 2018, Mr Thomas had told Professor B the truth of his whereabouts on 10 August 2018, that he had been working at Fernbrae. Although Professor B conceded that his recollection was from some time ago, the Tribunal noted he did not wish to change anything in his witness statement. The Tribunal also noted Mr Thomas' evidence that, while he did not intend to lie to Professor B as he had done with Mr A, he did not intend to tell the whole truth unless asked a direct question.

39. The Tribunal noted that the allegation was that Mr Thomas told Professor B that he could not attend the meeting with Mr A as he had an appointment with his GP and had to pick up a family member. The Tribunal accepted that at the conclusion of his meeting with Professor B, Mr Thomas had told the truth about the matter. However, it considered on the balance of probabilities that at some point in the meeting, when initially asked about his whereabouts, Mr Thomas told Professor B that he had gone to see his GP and picked up a family member on 10 August 2018.

40. The Tribunal concluded that the GMC had discharged its evidential burden and found paragraph 6 of the Allegation proved.

Paragraph 7:

41. In reaching its determination on this paragraph of the Allegation, the Tribunal had regard to the test set out in *Ivey v Genting Casinos*. The Tribunal must first ascertain the actual state of the individual's knowledge or belief as to the facts. The Tribunal took into account Mr Thomas' evidence as set out above.

42. The Tribunal noted that at the time Mr Thomas told Mr A that he had an appointment with his GP and needed to pick up a family member, he knew this was untrue as had been

admitted in respect of paragraphs 3 and 4 of the Allegation. Mr Thomas admitted in the course of his evidence to the Tribunal that at the time he told Mr A the lies he had already cancelled his GP appointment and made alternative arrangements for the family member to be picked up. Therefore, when he met with Professor B on 14 August 2018, he knew he did not have an appointment with his GP or needed to pick up a family member. As such Mr Thomas did not and could not have had a genuinely held belief that he had a GP appointment or needed to pick up a family member.

43. The Tribunal next considered whether, by the standards of ordinary decent people, Mr Thomas' actions would be considered to be dishonest.

44. On the basis of the evidence before it, the Tribunal considered that Mr Thomas knew that he did not have a GP appointment or needed to pick up a family member. By telling Professor B that he did, this would be regarded as dishonest by the standards of ordinary decent people.

45. It therefore found paragraph 7 of the Allegation proved.

The Tribunal's Overall Determination on the Facts

46. The Tribunal has determined the facts as follows:

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

1. On 29 June 2018, you attended a Local Adverse Event Review meeting with NHS Tayside, at which they imposed restrictions on your practice ('the Restrictions'), including that which is set out at Schedule 1. **Admitted and found proved**
2. You failed to:
 - a. notify:
 - i. NHS Tayside that you also practised privately at BMI Kings Park Hospital ('Kings Park') which meant that Kings Park was not notified about the Restrictions by NHS Tayside; **Admitted and found proved**
 - ii. BMI Fernbrae Hospital ('Fernbrae'), where you also practised privately, about the Restrictions; **Admitted and found proved**
 - iii. Kings Park about the Restrictions until 20 September 2018; **Admitted and found proved**

- b. comply with the Restrictions, in that on:
 - i. 10 August 2018 you carried out elective hand and wrist surgery at Fernbrae; **Admitted and found proved**
 - ii. 15 August 2018 and / or 28 August 2018 you carried out elective hand and wrist surgery at Kings Park; **Admitted and found proved**
 - iii. 22 October 2018 and / or 3 December 2018 you performed elective local anaesthetic injections, to patients' hands and / or wrists, within NHS Tayside. **Admitted and found proved**
3. On one or more occasion on 10 August 2018, you told Dr A that you could not attend a meeting with him at 12:15 ('the Meeting') because you had an appointment with your General Practitioner at 13:30 and / or you had to pick up a family member. **Admitted and found proved**
4. You knew that you:
 - a. did not have an appointment with your General Practitioner on 10 August 2018; **Admitted and found proved**
 - b. could not attend the Meeting because you were working at Fernbrae. **Admitted and found proved**
5. Your action as described at paragraph 3 was dishonest by reason of paragraph 4. **Admitted and found proved**
6. On 14 August 2018 you told Professor B that you could not attend the Meeting as you had an appointment with your General Practitioner and / or you had to pick up a family member. **Determined and found proved**
7. Your action as described at paragraph 6 was dishonest by reason of paragraph 4. **Determined and found proved**
8. You carried out clinics at Kings Park whilst you were:
 - a. on paid sick leave from NHS Tayside, on:
 - i. 4 April 2019; **Admitted and found proved**
 - ii. 10 April 2019; **Admitted and found proved**
 - iii. 17 April 2019; **Admitted and found proved**
 - iv. 18 April 2019; **Admitted and found proved**
 - b. suspended from practising and being paid by NHS Tayside, on 24 April 2019. **Admitted and found proved**

9. You knew that on one or more of the dates set out in paragraph 8 above you should not have been working at Kings Park as you were:
- a. on paid sick leave from NHS Tayside; and / or **Admitted and found proved**
 - b. suspended from practising and being paid by NHS Tayside. **Admitted and found proved**
10. Your actions as described at paragraph 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.

Determination on Impairment - 28/04/2021

1. This determination will be read in private. However, as this case concerns Mr Thomas' misconduct, a redacted version will be published at the close of the hearing XXX.
2. 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, Mr Thomas' fitness to practise is impaired by reason of misconduct.

The Evidence

3. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence on behalf of Mr Thomas including:
 - A reflective statement, undated;
 - CPD Certificate – *Clinic for Boundaries Studies: Professional Ethics Course*, dated 6 – 8 April 2021 (8 hours CPD);
 - Reflective commentary from Mr Thomas in respect of the surgical error which led to the LAER, undated;
 - XXX; and
 - Testimonials from colleagues dated between 15 and 19 April 2021.
4. Mr Thomas also gave oral evidence at this stage of the hearing.

Submissions

5. On behalf of the GMC, Mr Horgan submitted that the admitted matters and those determined and found proved by the Tribunal were, when taken individually, sufficient to amount to serious misconduct. Therefore, when taken together, they clearly established misconduct which was serious and deplorable.

6. Mr Horgan submitted that Mr Thomas' failure to inform the Hospitals of the restrictions placed on his practice and of his suspension was a direct breach of paragraph 76 of Good Medical Practice (2013) ('GMP'), which states:

76 If you are suspended by an organisation from a medical post, or have restrictions placed on your practice, you must, without delay, inform any other organisations you carry out medical work for and any patients you see independently.

7. Mr Horgan stated that Mr Thomas' explanation that he did not know he was required to inform the Hospitals of the restrictions imposed on him and his suspension, displayed a troubling lack of basic professional knowledge which was more than surprising for a Consultant of his experience and standing.

8. Mr Horgan submitted that Mr Thomas exhibited a consistent and worrying lack of judgment and made his own decisions as to what was acceptable rather than allowing others to make such decisions for him. Mr Horgan reminded the Tribunal that following the LAER, it was recommended to Mr Thomas that he inform the Hospitals of the restrictions imposed on him and he was further reminded of the recommendation in an email dated 10 August 2018. Mr Horgan submitted that Mr Thomas made a conscious and deliberate choice not to follow those recommendations.

9. Mr Horgan accepted that embarrassment and shame may have played a part in Mr Thomas not informing the Hospitals of the restrictions imposed by the Trust. However, he submitted that Mr Thomas deliberately attempted to conceal the information in respect of the restrictions in order to protect his reputation and ability to undertake future private practice work. Mr Horgan submitted that in not informing the Hospitals of the restrictions imposed, Mr Thomas placed his needs before that of his patients.

10. Mr Horgan submitted that Mr Thomas was patently aware of the restrictions after his meeting with Dr E on 19 October 2018. He reminded the Tribunal that Mr Thomas conceded in evidence that he knew the restrictions applied as of the 29 June 2018 meeting and the suggestion that he was unaware of them until the email of 10 August 2018 should be given

no credit at all. Mr Horgan submitted that in any event Mr Thomas continued to flout the restrictions by carrying out hand and wrist surgery at Kings Park between 15 and 28 August 2018. Mr Horgan accepted there was no evidence of patient harm, however he submitted there was a potential impact on patients while Mr Thomas was working subject to restrictions and this was a risk he chose to take.

11. Mr Horgan submitted that Mr Thomas' acts of dishonesty to his colleagues was troubling and that lying to colleagues undermines both trust with colleagues and trust by patients in the profession. Mr Horgan submitted that Mr Thomas' dishonesty was intentional and in breach of paragraphs 1 and 65 of GMP, which state:

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.*

12. Mr Horgan submitted Mr Thomas' fitness to practise is currently impaired by reason of misconduct. He acknowledged that Mr Thomas has made admissions to much of the Allegation including dishonesty but was still, some 2 and a half years later, unable to show complete insight and had still sought to rationalise his dishonesty. Mr Horgan submitted that while Mr Thomas had accepted that he lied to Mr A he did not accept that the motivation was to preserve his private practice and to cover up the fact he was conducting hand and wrist surgery in direct breach of the restrictions. He submitted that the Tribunal would therefore need to consider whether the failure to accept the motivation behind the dishonesty was indicative of a lack of genuine insight.

13. Mr Horgan submitted that Mr Thomas had taken some steps to address his misconduct and remediate, including his reflective piece, apologising to Dr A and attending the ethics course. However, Mr Horgan reminded the Tribunal that Mr Thomas had not taken the time or trouble to apologise to the Hospitals and had not contacted the patients he treated while he was subject to restrictions, while sick or suspended or the solicitors for whom he had completed any medico-legal reports.

14. XXX.

15. Mr Horgan concluded by submitting that the test for misconduct is easily met and clearly surpassed. He stated that on the basis of the evidence of Mr Thomas there were clear and continuing concerns about the level of insight shown. Mr Horgan submitted in order to demonstrate the seriousness of his departures from GMP to the public and members of the profession, and to maintain public confidence a finding of impairment was necessary.

16. On behalf of Mr Thomas, Mr Mawby accepted that Mr Thomas' actions amounted to misconduct which was serious and accepted that Mr Thomas' actions would be regarded as deplorable by fellow practitioners.

17. Mr Mawby submitted that in considering impairment the Tribunal should consider Mr Thomas' fitness to practise as of today, considering the three limbs of the overarching objective and whether public confidence would be undermined were a finding of impairment not made.

18. Mr Mawby submitted that he was not instructed to resist a finding of impairment. He accepted that a finding of impairment may be justified for public interest reasons and to be seen to uphold proper standards of behaviour.

19. Mr Mawby submitted that while Mr Thomas' behaviour is capable of remediation, he acknowledged that he had some way to travel in respect of his insight. Mr Mawby reminded the Tribunal that Mr Thomas had accepted this and had also given evidence that he would not make the same mistakes or repeat this behaviour.

The Relevant Legal Principles

20. 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.

21. 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.

22. The Tribunal must determine whether Mr Thomas' fitness to practise is impaired today, taking into account Mr Thomas' 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.

23. The Tribunal reminded itself of the statutory overarching objective which is 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 the profession.

24. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin*. In particular, the Tribunal considered whether its findings of fact showed that Mr Thomas' fitness to practise is impaired in the sense that 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 or is liable in the future to bring the medical profession into disrepute; and/or*
- c. *Has in the past breached or is liable to breach in the future 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.'*

25. The Tribunal also had regard to the case of *Cohen v GMC [2008] EWHC 581* where the courts said "*it must be highly relevant in determining if a doctor's fitness to practise is impaired that first his or her conduct which led to the charge is easily remediable, second it has been remedied and third that it is highly unlikely to be repeated.*"

The Tribunal's Determination on Impairment

Misconduct

26. In determining whether Mr Thomas' fitness to practise is currently impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amount to misconduct.

27. The Tribunal noted that the facts found proved against Mr Thomas included that he failed to inform the Trust of his work at the Hospitals, failed to notify the Hospitals of the restrictions imposed by the Trust, continued to carry out work in contravention of the restrictions, lied to colleagues with regard to his whereabouts when he was asked to attend a meeting and worked while he was signed off sick and suspended. The Tribunal noted that Mr Thomas' work in contravention of the restrictions persisted including in circumstances where the restrictions had been clarified.

28. The Tribunal noted that Mr Thomas initially lied to Mr A and persisted in his lie even when he was asked a direct question by Mr A. The Tribunal also noted that Mr Thomas persisted with his lie to Professor B. He repeated that lie to Professor B in the meeting on 14 August 2018, although it is accepted by the Tribunal that he later told the truth at the same meeting.

29. The Tribunal also noted that Mr Thomas worked on four separate occasions when he was signed off sick. The Tribunal noted that Mr Thomas did not notify either Kings Park or his patients that he had been signed off sick. The Tribunal also considered the fact that Mr Thomas saw patients when he knew he had been suspended by the Trust. The Tribunal noted that Mr Thomas did not and at the time of the hearing still had not notified or apologised to Kings Park (albeit, it has now closed), his patients or those instructing him that the work completed on 24 April was undertaken when he was suspended.

30. The Tribunal had particular regard to paragraphs 1, 65, and 76 of GMP and accepted Mr Horgan's submissions that each of these paragraphs was engaged. In addition, the Tribunal considered that paragraph 68 of GMP was also engaged. Paragraph 68 states:

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.*

31. The Tribunal accepted Mr Horgan's submission that each of the matters contained in the Allegation individually would amount to misconduct which was serious. It also accepted the submission that when taken together the Allegation amounted to misconduct which was

serious. The Tribunal considered that Mr Thomas continuing to work in contravention of the restrictions placed on his practice was serious. The Tribunal noted that his dishonesty included a range of matters over a period of time such as being dishonest with his colleagues, working while signed off sick and while suspended.

32. The Tribunal was of the view that Mr Thomas' behaviour would be considered deplorable by fellow practitioners. The Tribunal concluded that his actions fell short of the standards of conduct reasonably expected of a doctor and amounted to misconduct which was serious.

Impairment

33. The Tribunal, having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Mr Thomas' fitness to practise is currently impaired.

34. In determining impairment, the Tribunal considered whether the misconduct could be remedied while noting that matters of dishonesty are difficult to remediate. It looked for evidence of insight, remediation and the likelihood of repetition and balanced those against the three limbs of the statutory overarching objective.

35. The Tribunal acknowledged Mr Thomas' admissions to a number of paragraphs of the Allegation and that he had apologised to Mr A for lying to him. It also acknowledged that Mr Thomas had given evidence to the Tribunal at both the Facts and Impairment stages of the hearing. He sought to assist the Tribunal by explaining his state of mind and his personal circumstances at the time of the matters giving rise to the Allegation. The Tribunal, at times found Mr Thomas' evidence and explanations difficult to follow. In particular, his attitude to dishonesty was a cause for concern. The Tribunal noted Mr Thomas' oral evidence that he did not attend the meeting with Professor B with the intention of volunteering the truth, that he failed to disclose a number of matters because he wasn't asked but that he would not lie if he was asked a direct question.

36. The Tribunal also noted from his reflective statement that he sought to rationalise the lie he told Mr A and Professor B by saying that as he did have a GP appointment until a few weeks before the events it was "*almost the truth*". The Tribunal further noted that when explaining not complying with or informing the Hospitals of the restrictions, he referred to a "*grey area*" which allowed him to resolve conflicts in his own favour. The Tribunal accepted

that these statements reflected Mr Thomas' thinking at the time of the events and he now says he better appreciates the implications of what he described as "*minor dishonesty*". He also gave evidence as to the steps he intends to take to ensure that the matters which give rise to these proceedings do not happen again including seeking a mentor and having better and more open relationships with his colleagues.

37. In considering the issue of insight, while the Tribunal determined that Mr Thomas demonstrated some insight into his behaviour, it considered that such insight was at a very early stage of development.

38. Given the Tribunal's concerns with regard to Mr Thomas' insight, it had concerns with regard to the risk of repetition. The Tribunal noted that Mr Thomas gave evidence that he would not act in the way which gives rise to the Allegation again. The Tribunal remained concerned that despite Mr Thomas saying that he would engage with a mentor, there may be circumstances in which he may not volunteer the entire truth of a matter if he does not consider it appropriate or necessary to do so. Given that the Tribunal concluded that Mr Thomas' insight was at a very early stage of development it could not be satisfied that the risk of repetition was low.

39. The Tribunal accepted that instances of dishonesty are difficult to remediate. However, it noted that Mr Thomas had attended a relevant course and applied some of the learning from that course to his conduct. However, the Tribunal also noted that despite his attendance on the course shortly before this hearing, he had not taken steps to apologise to the Hospitals, his patients or instructing solicitors. He had also not realised that his actions may have had an impact on his professional indemnity.

40. While the Tribunal had concerns about Mr Thomas' insight and the risk of repetition, it nonetheless noted that Mr Thomas had engaged with these proceedings, had accepted his conduct was dishonest and demonstrated a willingness to develop insight and remediate. The Tribunal was encouraged by this and the potential for Mr Thomas to further reflect.

41. In considering the test set out by Dame Janet Smith the Tribunal concluded that three out of four limbs were engaged. The Tribunal considered that Mr Thomas' actions had in the past brought the profession into disrepute, he had breached a fundamental tenet of the profession and he had acted dishonestly. In considering the test set out in *Cohen*, the Tribunal concluded that Mr Thomas' actions, particularly his dishonesty, is not easily remediable, and had not yet been fully remediated.

42. The Tribunal, in considering whether Mr Thomas' fitness to practise is currently impaired balanced Mr Thomas' insight and the assessed risk of repetition against the overarching objective. The Tribunal accepted that there was no evidence that Mr Thomas' actions in working in contravention of the restrictions and working while off sick and suspended caused harm to any of the patients involved. However, it considered that Mr Thomas' willingness to expose his patients to a risk of harm undermined his duty to protect, or promote the health, safety or wellbeing of the public. The Tribunal further considered that Mr Thomas' admitted and proven dishonesty would damage public confidence in the profession if a finding of impairment were not made. The Tribunal was satisfied that a member of the public in full knowledge of the facts of this case would be concerned to learn of a doctor, particularly one of Mr Thomas' seniority and experience, acting in the way that he did. The Tribunal was of the view that given its findings of fact and serious misconduct, a finding of impaired fitness to practise was necessary to promote and maintain proper standards of conduct for members of the medical profession.

43. The Tribunal therefore determined that Mr Thomas' fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 30/04/2021

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

Submissions

On behalf of the GMC

2. Mr Horgan reminded the Tribunal there was no burden or standard of proof at this stage of the proceedings and that the sanction, if any, to be imposed on Mr Thomas was a matter for its judgment. He referred the Tribunal to relevant paragraphs of the Sanctions Guidance (November 2020) ('the SG'). Mr Horgan reminded the Tribunal that it should take a staged approach to sanction beginning with the least restrictive and working its way up to the most serious. He submitted that there had been serious and persistent breaches of GMP which had put patient safety at risk and undermined public confidence in the profession. Mr

Horgan submitted that the appropriate and proportionate sanction in this case was one of erasure.

3. Mr Horgan stated there were a number of mitigating factors in this case including that Mr Thomas had made some admissions at the outset of the proceedings and had apologised to Mr A. He also reminded the Tribunal that Mr Thomas had no previous findings of impaired fitness to practise and had brought to the Tribunal's attention a number of personal and professional matters which occurred at the time of the matters giving rise to the Allegation. Mr Horgan submitted that some 2 to 2 ½ years had elapsed since the matters before the Tribunal and there had been some efforts to remediate.

4. Mr Horgan referred the Tribunal to its findings in respect of Mr Thomas' insight and his acceptance that he should have behaved differently. However, Mr Horgan invited the Tribunal to consider whether Mr Thomas' development of insight was timely.

5. Mr Horgan submitted there were a number of aggravating factors in this case. He stated that there had been serious breaches of GMP and a breach of a fundamental tenet of the profession. He stated that Mr Thomas had been dishonest with both Mr A and Professor B and he continued to be dishonest in April 2019 by repeatedly working at a private hospital when he was signed off sick. Mr Horgan characterised Mr Thomas' dishonesty as persistent and involved working the day after he was told he was suspended. He reminded the Tribunal that the matters giving rise to the Allegation occurred 2 to 2 ½ years ago and that Mr Thomas had had significant time to reflect on the issues and remediate. He stated that Mr Thomas had had the benefit of 2 mentors, been on an appropriate course and had significant time to prepare for the hearing. He commented that it was extremely disappointing and concerning that the matters, which were not complex in nature, had not been fully remediated. He stated it was therefore difficult to know how successful remediation could be.

6. In considering sanction in ascending order, Mr Horgan submitted that it would not be appropriate for the Tribunal to conclude the case by taking no action as there were no exceptional circumstances which would justify such a decision. Mr Horgan also submitted that an order of conditions would be inappropriate as conditions would neither be workable, appropriate, address the dishonesty, nor would they be measurable.

7. Mr Horgan reminded the Tribunal that the imposition of a suspension order would send a signal to the profession. However, he submitted that when considering the aggravating factors

and the seriousness of the dishonesty, public confidence would be undermined if a sanction of suspension were imposed.

8. Mr Horgan submitted that Mr Thomas' misconduct was so serious that it was fundamentally incompatible with continued registration. He stated that only a sanction of erasure would protect the public interest and meet the overarching objective.

On behalf of Mr Thomas

9. Mr Mawby submitted that a period of suspension would be the appropriate and proportionate sanction in this case. He conceded that Mr Thomas' case was neither exceptional nor highly unusual which would justify taking no action, and that the imposition of conditions would be insufficient to protect the public interest. Mr Mawby accepted that Mr Thomas' conduct was serious but submitted that it was not so serious as to be fundamentally incompatible with continued registration.

10. Mr Mawby reminded the Tribunal of a number of findings in its determination on impairment including that Mr Thomas had some insight into his conduct, had engaged with the proceedings and given evidence. Mr Mawby further reminded the Tribunal that Mr Thomas had made sweeping admissions to the Allegation including admissions of dishonesty, had accepted that he should have acted differently and how he would avoid acting in that way in the future. Mr Mawby highlighted that Mr Thomas had apologised to Mr A and identified further individuals he would need to apologise to. Mr Mawby submitted that Mr Thomas had offered apologies both in his evidence and his reflective statement and had shown a willingness to further develop his insight, which was encouraging.

11. Mr Mawby stated that Mr Thomas had taken steps to remediate and engaged in considerable amount of reflection. He submitted that Mr Thomas had identified tools that would assist him with consideration of his wrongdoing and its root causes. Mr Mawby highlighted that Mr Thomas had attended a relevant course, XXX. Mr Mawby also reminded the Tribunal that Mr Thomas had taken steps to increase his contacts with colleagues so as to address the problems he identified with feeling isolated at work.

12. Mr Mawby accepted that Mr Thomas' actions may be regarded as 2 separate courses of conduct, one in August 2018 and another in April 2019. He submitted that Mr Thomas' conduct in 2018 and 2019 was unusual, out of character and not reflective of his underlying attitude to professionalism and probity. Mr Mawby referred the Tribunal to the positive testimonials from

Mr Thomas' colleagues who knew him as an individual and member of the profession. He further submitted that the conduct and behaviour in 2018 and 2019 was not reflective of the manner which Mr Thomas appears to have conducted himself either before or after the events giving rise to the Allegation.

13. Mr Mawby submitted to the Tribunal that 2 years had passed since the matters giving rise to the Allegation with no further concern and Dr E's witness statement dated 26 November 2020 in which she said:

“Mr Thomas has demonstrated significant reflection and learning over the intervening period of time. Mr Thomas is fully engaging with the MDT and has been a fully functioning, positive member of the trauma team during what has been an extremely difficult period both in respect of the COVID 19 pandemic and also some extremely difficult personal circumstances.”

14. Mr Mawby referred to the Tribunal's determination on impairment and its observations that it could not be satisfied that the risk of repetition was low. However, he submitted that Mr Thomas was complying with local restrictions imposed by the Trust where he continued to work. He submitted that the absence of any repeat of the misconduct over the last 24 months was a positive indicator with regard to the risk of repetition. Mr Mawby reminded the Tribunal of Mr Thomas' evidence of feeling guilty for lying to Mr A and that he had apologised for lying four days later. He submitted that Mr Thomas felt a significant degree of remorse and shame, regretted his actions and was working out a way to apologise to those who had been negatively impacted by his actions.

15. Mr Mawby submitted that suspension would have a deterrent effect, would send a message to the profession and the public and would uphold public confidence in the profession. He reminded the Tribunal that there had been no actual harm to patients. He further submitted that erasure was not necessary to protect the public interest and that the lower sanction of suspension was sufficient to maintain public confidence in the profession.

16. Mr Mawby submitted that paragraphs 97 (e), (f) and (g) of the SG were all applicable in Mr Thomas' case and indicated a sanction of suspension. He described Mr Thomas as a hardworking individual who had recognised his wrongdoing and had the potential for further insight and remediation. He submitted that erasure was not necessary, was disproportionate and went further than was required to protect the public and maintain public confidence. Mr Mawby

submitted that erasure would deprive Mr Thomas of his career and the NHS and patients of his surgical skills.

The Relevant Legal Principles

17. The Tribunal reminded itself that the decision as to the appropriate sanction to impose, if any, is a matter for it, 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 sanctions is not to be punitive, but to protect patients and the wider public interest, although any sanction imposed may have a punitive effect.

18. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Mr Thomas' interests with the public interest. It considered and 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's Determination on Sanction

19. The Tribunal also had regard to its findings of misconduct and impairment as well as the submissions on behalf of the GMC and Mr Thomas.

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

Mitigating Factors

- Mr Thomas' insight, although limited, is developing;
- He has attended an appropriate ethics course from which there has been learning and has led to further development in his insight;
- He has made attempts to remediate;
- He has produced a frank and self-critical reflective statement;
- He has accepted that his thinking, at the time of the matters giving rise to the Allegation, was flawed;
- He has accepted that he should have behaved differently;
- He has not sought to minimise his conduct before the Tribunal;

- He has started to understand the wider impact of his misconduct on public confidence in the profession;
- He has given consideration to steps he has taken and will undertake to prevent the behaviour recurring;
- Between 2 and 2 ½ years have elapsed since the matters giving rise to the Allegation occurred;
- There is no evidence of repetition since April 2019;
- He has no previous fitness to practise history;
- He has expressed regret and remorse in his evidence;
- He has expressed an intention to apologise to others affected by his actions; and
- Positive testimonials from colleagues.

Aggravating Factors

- Mr Thomas' limited insight which is recent;
- He only apologised to Mr A when he was told to by Professor B;
- He has not yet apologised to the Hospitals and the patients he treated when subject to restrictions or when working while sick or suspended or those instructing him;
- His remediation is limited and his attendance on the ethics course occurred shortly before these proceedings;
- There were serious and multiple breaches of GMP;
- There were 2 separate instances of dishonesty over a period of time;
- The second episode of dishonesty arose when Mr Thomas already knew that there were concerns about his probity;
- Breaches of fundamental tenets of the profession;
- He is a senior and experienced clinician at a Consultant level;
- He gave differing explanations for some of the misconduct;
- He continued to work while he was off sick and suspended; and
- He placed his own interests before that of his patients.

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

No action

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

23. The Tribunal determined that there were no exceptional circumstances in this case. It considered that given the seriousness of the misconduct and its findings of impaired fitness to practise, taking no action would not be sufficient, proportionate, or in the public interest.

Conditions

24. The Tribunal next considered whether to impose conditions on Mr Thomas' registration. It noted the submissions of both parties that conditions were not appropriate in this case. The Tribunal concluded that no measurable or workable conditions could be formulated in this case. Further, it considered given the seriousness of the misconduct and the admitted and proven dishonesty, the imposition of conditions would not address the seriousness of the misconduct found.

Suspension

25. The Tribunal determined that in light of the seriousness of Mr Thomas' misconduct, action must be taken to maintain public confidence in the profession and to uphold proper standards its members.

26. The Tribunal considered Mr Mawby's submission that the appropriate sanction in this case was one of suspension. The Tribunal had regard to paragraphs 91, 92, 93, 97 (a) (e), (f) and (g) of the SG.

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

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 (ie 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.’

27. The Tribunal was of the view that Mr Thomas had breached a number of paragraphs of GMP including 1, 65, 68 and 76 and was concerned by his evidence that he had only read it once in the 9 years since he had been a Consultant.

28. The Tribunal had regard to Mr Thomas' dishonesty and accepted the submissions from both Mr Horgan and Mr Mawby that the conduct could not be considered as a single episode of dishonesty. The Tribunal was of the view that there were two separate courses of dishonesty. The Tribunal noted that the episode of dishonesty in April 2019 occurred at a time when Mr Thomas was already aware that there were concerns by the Trust as to his probity. The Tribunal considered the pre-existing concerns to be an aggravating factor in the April 2019 misconduct. The Tribunal was also of the view that Mr Thomas working while off sick and suspended, no matter for how brief a period and for whatever reason, represented a reckless disregard for the principles set out in GMP and the potential risk of harm to patients.

29. The Tribunal was unimpressed by the limited remediation undertaken by Mr Thomas given the passage of time since the matters giving rise to the Allegation. However, it was satisfied that Mr Thomas' evidence demonstrated that he had learned from the course he attended and planned to attend further courses. The Tribunal also noted that Mr Thomas had begun to apply what he had learned from the course and identified ways to continue that learning such as by working with a mentor. The Tribunal also had regard to the fact that Mr Thomas had worked with mentors at the Trust and had identified others whom he hoped to work with as mentors in the future. The Tribunal noted that no issues had been raised with regard to his engagement in this respect. While the Tribunal still remained concerned as to a risk of repetition given its views on Mr Thomas' insight, it does not consider that attempts at remediation were unlikely to be unsuccessful.

30. The Tribunal considered its findings in respect of Mr Thomas' insight at impairment stage and its view that it was in the very early stages of development. The Tribunal shared Mr Horgan's disappointment that the insight was so late in developing, particularly in light of the passage of time which had elapsed since the matters giving rise to the Allegation. It was nonetheless encouraged that Mr Thomas had begun to develop his insight before and in the course of the hearing. It had regard to his frank and detailed reflective piece in which he demonstrated that he had begun to appreciate the wider implications of his actions and his acceptance of responsibility for his misconduct. The Tribunal noted that Mr Thomas had not sought to excuse his actions by relying on XXX. The Tribunal considered that the apologies contained within the reflective piece which were repeated in evidence appeared to be genuine. It further noted Mr Thomas' shame and regret and his reassurances that he would not act in the way he had done in 2018 and 2019.

31. The Tribunal noted there had been no repetition of the matters giving rise to the Allegation since 2019 and that no concerns had been raised with regard to Mr Thomas' probity before August 2018.

32. The Tribunal considered the submission that Mr Thomas' behaviour was fundamentally incompatible with continued registration. In making its determination on this issue, it considered its findings at the impairment stage of the hearing. The Tribunal was satisfied that Mr Thomas' behaviour had breached a number of paragraphs of GMP, fundamental tenets of the profession and that he had been dishonest on more than one occasion and in different circumstances. The Tribunal considered his conduct when working while subject to restrictions by the Trust and the failure to inform the Hospitals. The Tribunal also considered Mr Thomas' actions in continuing to work in breach of his restrictions and in circumstances where he had been expressly told that he should not be carrying out hand and wrist surgery cases or giving injections. While it was accepted there may have been some issues as to the clarity of the restrictions, the Tribunal noted Mr Thomas did not seek to clarify any confusion. He merely resolved any confusion to his own benefit.

33. The Tribunal also considered that Mr Thomas in not informing the Hospitals of the restrictions despite being under an obligation and recommended to do so abused the trust of the Hospitals, his patients and those instructing him. It considered that Mr Thomas' actions in these respects put his own needs above those of his patients. The Tribunal regarded Mr Thomas undertaking work while off sick and working while suspended to be particularly serious.

34. The Tribunal was satisfied that the matters individually, and when taken together, were capable of being viewed as fundamentally incompatible with continued registration. However, the Tribunal accepted Mr Mawby's submission that Mr Thomas was capable of further insight and remediation. The Tribunal took all of the circumstances into account including the mitigating factors. Mr Thomas' insight, albeit limited, his attempts at remediation, albeit late in the day and the evidence he gave as to the steps he has taken and intends to take to prevent a recurrence satisfied the Tribunal that this was a case which fell just short of fundamental incompatibility with continued registration.

Erasure

35. The Tribunal considered the submission that erasure was the only sanction to maintain high standards and public confidence in the profession.

36. The Tribunal considered the matters in Paragraph 109 (a) (d), (h), (i) and (j) of SG which state:

‘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.

...

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.’

37. The Tribunal has previously set out its views on whether Mr Thomas’ case was fundamentally incompatible with continued registration. It has also previously set out that Mr Thomas’ conduct breached several paragraphs of GMP and fundamental tenets of the profession, abused the trust of the Hospitals and his patients and put his own needs before that of his patients.

38. While the Tribunal had concerns as to Mr Thomas’ lack of insight it, it had found that his insight was developing and had continued to develop during the course of the hearing. Therefore, it does not consider that Mr Thomas demonstrated a persistent lack of insight into his actions or the potential consequences.

39. The Tribunal also considered the guidance on dishonesty in the SG and in particular where it states dishonesty, even in cases where it does not result in harm to patients is particularly serious as it can undermine the trust placed in the medical profession. It also noted that dishonesty where persistent or covered up was likely to result in erasure. The Tribunal has previously set out its views on Mr Thomas' dishonesty and its view of the serious nature of that dishonesty. The Tribunal accepted the dishonesty was serious and occurred on more than one occasion. The Tribunal considered that Mr Thomas working on 5 separate occasions while off sick and once while suspended constituted persistent dishonesty in April 2019. It also considered that the dishonesty was persistent to the extent that there were 2 episodes. It did not consider that the dishonesty was covered up. It concluded that overall the dishonesty in this case did not inevitably mean that erasure was the only appropriate or proportionate sanction in this case.

40. The Tribunal also considered Paragraph 108 of the SG which state:

'108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.'

41. The Tribunal considered that the decision on whether suspension or erasure was the appropriate sanction was extremely finely balanced. In making its final determination the Tribunal considered the SG in detail, the guidance from case law, the aggravating and mitigating factors and the Tribunal's conclusion that this case fell just short of being fundamentally incompatible with continued registration. The Tribunal concluded that a sanction of suspension was the appropriate and proportionate sanction.

42. In imposing a sanction of suspension, the Tribunal bore in mind the need to act proportionately and impose the least restrictive sanction to meet the public interest. Having regard to all of the circumstances, the Tribunal concluded that the sanction of suspension would mark the seriousness of the misconduct and protect public confidence in the profession. The Tribunal also considered that a sanction of suspension would send a message to members of the profession that Mr Thomas' misconduct was wholly unacceptable. The Tribunal further considered that a period of suspension would demonstrate to Mr Thomas how far below the standards of behaviour expected of a doctor his conduct fell.

43. The Tribunal did not consider that a sanction of erasure was “*necessary*” to maintain public confidence in the profession or maintain the high standards of the profession. It was satisfied that a member of the public in full knowledge of the facts before the Tribunal would not be of the view that erasure was the only appropriate sanction.

44. The Tribunal was of the view that erasure would be disproportionate as it was not the only or the least restrictive sanction which would protect the public interest.

Period of Suspension

45. Having determined that a period of suspension was the appropriate and proportionate sanction, the Tribunal went on to consider the appropriate length of suspension. In doing so, it had regard to paragraph 100 of the SG which states:

‘100 The following factors will be relevant when determining the length of suspension:

a the risk to patient safety/public protection

b the seriousness of the findings and any mitigating or aggravating factors (as set out in paragraphs 24–60)

c ensuring the doctor has adequate time to remediate.’

46. The Tribunal accepted that no harm had to come to patients as a result of Mr Thomas’ conduct, however, it noted that Mr Thomas had exposed his patients to a risk of harm. The Tribunal also had regard to the seriousness of the misconduct and the identified aggravating and mitigating factors. Having taken all these factors into account the Tribunal determined to impose a period of suspension of 12 months on Mr Thomas. It considered that a 12 month suspension was the minimum period to mark the seriousness of the misconduct found and would send a signal to Mr Thomas, the profession and the public about what is regarded as behaviour unbecoming of a registered doctor. The Tribunal also considered that a 12 month suspension would ensure that Mr Thomas had adequate time to further develop his insight and undertake further remediation.

Review Hearing

47. The Tribunal determined to direct a review of Mr Thomas' case, to enable proper scrutiny of his stated intention to reflect and fully remediate. 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 Mr Thomas to demonstrate that his fitness to practise is no longer impaired. He should also show how he has developed insight, given further consideration as to the impact that his actions may have on public confidence in the profession and the standards and conduct required of members of the profession.

48. It may assist the reviewing Tribunal if Mr Thomas provides it with the steps he has taken which may include but is not limited to (this list is not intended to be exhaustive):

- Further evidence of remediation;
- Significant development in his insight;
- Evidence that he has kept his medical knowledge and skills up to date including relevant CPD;
- Evidence that he has taken the steps he identified to reassure the Tribunal there would be no repetition of the behaviour;
- Demonstrate greater understanding of the principles of GMP;
- Further reflective piece(s) addressing the concerns raised by the Tribunal; and
- any other relevant evidence Mr Thomas wishes to present to assist the Tribunal.

Determination on Immediate Order - 30/04/2021

138. Having determined to suspend Mr Thomas for a period of 12 months the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Mr Thomas' registration should be subject to an immediate order.

Submissions

139. On behalf of the GMC, Mr Horgan submitted that following the Tribunal's findings in relation to the seriousness of the matter, it was necessary to impose an immediate order to protect public confidence in the profession.

140. On behalf of Mr Thomas, Mr Mawby submitted that an immediate order was not necessary. He stated that such an order was not in Mr Thomas' own interests and that he had been practising at the Trust in compliance with local restrictions without further concerns.

Mr Mawby further submitted that the Trust and Mr Thomas' colleagues would be inconvenienced should an immediate order be imposed. He submitted that public confidence in the profession would not be undermined if there was no immediate order.

The Tribunal's Determination

141. The Tribunal had regard to the submissions made by the GMC and on behalf of Mr Thomas. It took account of paragraphs 172, 173 and 178 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.'

142. The Tribunal determined that, given the seriousness of Mr Thomas' misconduct, its findings on impairment and the sanction it has imposed, it was in the public interest to suspend his registration with immediate effect. It further determined that it would be inappropriate for Mr Thomas to continue in unrestricted practice before the substantive order took effect and that an immediate order was required to uphold public confidence in the profession.

143. This means that Mr Thomas' registration will be suspended immediately. The substantive direction, as already announced, will take effect 28 days from when written

notice of this determination has been served upon Mr Thomas, 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.

144. There is no interim order to revoke.

145. This concludes the case.

Confirmed
Date 30 April 2021

Miss Megan Larrinaga, Chair

SCHEDULE 1

[You] will hand over [your] elective hand and wrist surgery cases to consultant colleagues for a period of time until the medical director is satisfied that all remedial discussions and actions are in place. This will be minimum 90 days from starting clinical duties in 2 weeks and could be up to 180 days.