Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates:
11/11/2019 - 22/11/2019
24/01/2020 - 27/01/2020
26/02/2020

Medical Practitioner's name:	Dr Sivashanmugarajan Tirupur Shanmugasundaram RAMAKRISHNAN
GMC reference number:	6072102
Primary medical qualification:	MB BS 1998 Tamil Nadu Dr MGR Med University
Type of case New - Misconduct	**Outcome on impairment** Not Impaired

Summary of outcome
Warning

Tribunal:

Legally Qualified Chair	Mr Kenneth Hamer
Lay Tribunal Member:	Ms Wanda Rossiter
Medical Tribunal Member:	Mr Julian Williams

Tribunal Clerk:	11/11/2019 to 22/11/2019; and 24/01/2020 to 27/01/2020 Mr Stuart Peachey 26/02/2020 Ms Jean Gleeson

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Alan Jenkins, Counsel, instructed by the DAC Beachcroft
GMC Representative:	Mr Alan Taylor, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 22/11/2019

Background

1. In 1999, Dr Ramakrishnan qualified as a doctor in India. He relocated to the United Kingdom in 2004 where he completed a Diploma in Primary Care Diabetes, MRCP Part 2, DRCOG and MRCGP before qualifying as a General Practitioner ('GP') in 2009.

2. Between April 2003 and June 2017, Dr B was a practicing GP and he singlehandedly ran Roding Lane Surgery ('the Surgery'), a GP Practice Surgery in Essex. Dr Ramakrishnan and Dr A were GP Partners at the Clayhall Clinic ('Clayhall), a neighbouring practice. In April 2013, Dr Ramakrishnan became a GP Partner at Clayhall.

3. In October 2017, the Surgery merged with Clayhall and became the Clayhall Group Practice ('the Practice') with the two branches respectively. Following the Practice merger, Dr B remained at the Surgery and Dr Ramakrishnan and Dr A remained at Clayhall.

4. On 27 December 2017 Dr B raised concerns with the General Medical Council ('GMC') regarding Dr Ramakrishnan's alleged conduct regarding his involvement during an investigation into a patient's complaint.

The Outcome of Applications Made during the Facts Stage

5. The Tribunal granted amendments to Paragraphs 1(d), 4 and 11(b) of the Allegation made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). Those amendments to the Allegation were joint agreed by both Mr Alan Taylor, Counsel on behalf of the GMC, and

Mr Alan Jenkins, Counsel on behalf of Dr Ramakrishnan, at the outset of these proceedings.

6. The Tribunal acceded, in-part, to Mr Jenkins' application made pursuant of Rule 34(1) of the Rules, to admit further documentation. It's determination on this matter is within Annex A.

The Allegation and the Doctor's Response

7. The Allegation made against Dr Ramakrishnan is as follows:

1. By letter dated 28 November 2017 ('the Letter'), together with Dr A, you responded to a patient complaint in the name of your colleague Dr B stating that Dr B had:

    a. led the investigation into the patient's complaint;
    Admitted and found proved

    b. read the patient's concerns;
    Admitted and found proved

    c. reviewed the patient's records; **Admitted and found proved**

    d. ~~held~~ **had** discussions with the colleagues involved.

    Amended under Rule 17(6)
    Admitted and found proved

2. You knew that Dr B had not carried out the activities as set out in paragraph 1 above. **To be determined**

3. Your action as set out in paragraph 1 was dishonest by reason of paragraph 2. **To be determined**

4. On 28 November 2017 at 15:59 you submitted an email to NHS England, sent on behalf of ~~yourself and Dr A~~ **the Clayhall Group Practice ('the Practice')**, which attached a copy of the Letter.

    Amended under Rule 17(6)
    Admitted and found proved

5. You sent the version of the Letter as referred to in paragraph 4 above:

    a. having falsified Dr B's electronic signature on the Letter;
    To be determined

b. knowing that it was sent without Dr B's:

i. knowledge of the content of the Letter;
To be determined

ii. permission to use his electronic signature;
To be determined

iii. consent. **To be determined**

6. Your action as set out in paragraph 4 was dishonest by reason of paragraph 5 b. **To be determined**

7. On or around 29 November 2017, you provided Dr B with a copy of the Letter, knowing that it was not an exact copy of the Letter which you emailed to NHS England as referred to in paragraph 4 above, in that it did not contain Dr B's electronic signature. **To be determined**

8. Your conduct as set out in paragraph 7 was dishonest.
To be determined

9. On or around 6 December 2017, you advised Dr B words to the effect that he should:

a. not discuss the matter with the Medical Defence Union;
To be determined

b. feign a lapse in memory if NHS England questioned him about the Letter. **To be determined**

10. You knew that your conduct as set out in paragraph 9 was inappropriate in that it was encouraging Dr B to act dishonestly. **To be determined**

11. On 6 December 2017 at 17:24, you sent an email to NHS England stating that Dr B had:

a. collated the responses from those involved;
Admitted and found proved

b. ~~drafted the Letter~~ **been requested to write the Practice response**.

Amended under Rule 17(6)
Admitted and found proved

12. You knew that Dr B had not carried out the activities as set out in paragraph 11 above. **Admitted and found proved**

13. Your actions as set out in paragraph 11 were dishonest by reason of paragraph 12. **To be determined**

The Admitted Facts

8. At the outset of these proceedings, through his counsel, Mr Alan Jenkins, Dr Ramakrishnan made admissions to Paragraphs 1, 4, 11 and 12 of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules.

9. 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.

Factual Witness Evidence

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

- Dr B, GP Partner at the Practice, in person; and a witness statement, dated 25 May 2018; and
- Mrs C, Complaints Officer within the NHSE Complaints Team, in person; and a witness statement, dated 16 May 2018.

11. Dr Ramakrishnan provided his own witness statement, dated 27 September 2019, and also gave oral evidence during these proceedings.

12. The Tribunal also received live evidence from:

- Dr D, GP at the Practice, in person; and a witness statement, dated 26 September 2019; and
- Dr A, GP Partner at the Practice, in person; and a witness statement, dated 30 September 2019.

Documentary Evidence

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

- Screenshots of:

  - Internal messages from Dr Ramakrishan to Dr B, dated 28 and 29 November 2017;
  - Internal messages from Dr A to Dr B, dated 29 November 2017;
  - The patient booking system for Dr B's appointments on 28 November 2019; and
  - The patient booking system for Dr Ramakrishnan's appointments on 27 and 28 November 2017;

- A response letter:

  - Provided to Dr B at a Network Meeting, dated 28 November 2017; and
  - With Dr B's signature, dated 28 November 2017;

- WhatsApp messages between Dr B and Dr Ramakrishnan, dated between 3 and 5 December 2017;

- Email correspondence between:

  - Dr Ramakrishnan and Dr B, dated 4 December 2017;
  - Dr Ramakrishnan and NHSE, 28 November 2017; 7, 8 and 9 November 2017; 6 and 7 December 2017;
  - Dr B and Mr E, 20 and 21 December 2017;
  - GMC and Dr B, dated 22 December 2017;
  - Dr B and the GMC, dated 27 December 2017;
  - Dr D to Dr A, dated 27 and 28 November 2017; and
  - Dr F to Dr A, dated 25 November 2017;

- Dr A's response to the complaint with Dr B's comments on Dr A's response, dated between 2 February 2018 to 24 May 2018;
- Dr Ramakrishnan's Curriculum Vitae ('CV');
- 2017 Complaints Policy;
- Minutes of Practice Meeting and email dated 15 November 2017; and 7 August 2017;
- Patient complaint from the National Health Service England ('NHSE');
- NHSE Log;
- Care Quality Commission ('CQC') Report for the Surgery, dated 1 July 2016;
- NHSE Best Practice Guidance for Independent Contractors;
- Dr Ramakrishnan's example complaint response;
- Audit trail of Dr B's electronic signature, dated 28 November 2017;
- Letter from Dr B to Dr Ramakrishnan, dated 15 December 2017;
- Complaint Detail Report, dated 1 November 2017;
- Dr A's CV;
- Audit trail of Dr A's access of the patient's records;

- Appendix 1 and 2 from the Good Practice Guidance;
- Letter from MDDUS to Dr A, dated 20 November 2017;
- Practice Complaints Policy, dated 5 November 2017;
- Witness statement of Mr G dated 8 November2019;
- Statement of Agreed Facts dated 19 November 2019;
- Various testimonials attesting to Dr Ramakrishnan's good character; and
- Various testimonials attesting to Dr A's good character.

The Tribunal's Approach

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

15. In considering the standard of proof, the Tribunal has borne in mind that in a case where the central issue is dishonesty, the evidence must be cogent and the more serious the Allegation the less likely it is to have occurred: *In re H [1996] AC 563*; and *In re D [2008] UKSC 33*. Moreover, the Tribunal has borne in mind that Dr Ramakrishnan is a person of unblemished good character which supports his credibility and may mean that he is less likely to have been dishonest.

16. When considering matters of dishonesty, the Tribunal took account of the principles in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67*. It bore in mind that it should first ascertain, subjectively, the actual state of Dr Ramakrishnan's knowledge or belief as to the facts and should then decide whether his conduct was honest or dishonest by applying the objective standards of ordinary decent people.

17. In *Suddock v NMC [2015] EWHC 3612 (Admin)*, the court said that when reaching decisions on the credibility of witnesses the way in which the witness's evidence fits in with non-contentious evidence or agreed facts, and with contemporaneous documents, and any inherent probabilities and improbabilities of his or her account of events is likely to be a reliable indicator on which the truth may lie.

The Tribunal's Analysis of the Evidence and Findings

Witnesses

18. The Tribunal had regard to the oral evidence of Dr Ramakrishnan, Dr A and Dr B. It considered that there were defects in the evidence of each of them. Therefore, the Tribunal approached this case against the yardstick of paying

particular attention to the contemporaneous documentary evidence and the inherent probabilities and improbabilities of the accounts given by Dr Ramakrishnan, Dr A and Dr B.

19. The Tribunal found Mrs C and Dr D to be good witnesses and accepted their evidence.

Events preceding the Allegation

20. The Tribunal had regard to the background to the index events:

21. On 1 November 2017, the National Health Service England ('NHSE') received a complaint from a patient relating to the care and treatment she had received from two hospitals and those GPs who had treated her at Clayhall. This complaint related to a 6 month period between January 2017 and June 2017. The NHSE complaints team assigned Mrs C to investigate that case.

22. On 2 November 2017, Mrs C informed the Practice about the complaint and asked to speak to the Practice Manager, whom she was informed was Dr Ramakrishnan. However, Dr Ramakrishnan was not available and Mrs C left a message requesting that he telephone her back.

22. On 3 November 2017, Dr A telephoned Mrs C and advised her that Dr Ramakrishnan 'will be taking the lead on this complaint'. Further, during the telephone call, Dr A provided Dr Ramakrishnan's email address to Mrs C.

23. On 6 November 2017, details of the patient's complaint were submitted to the Practice and on 7 November 2017, Mrs C emailed Dr Ramakrishnan details of the complaint.

24. On 8 November 2017, Dr Ramakrishnan emailed Mrs C and confirmed receipt of the patient's complaint and stated:

> '[I] will be asking the doctors involved in the complaint including myself to write a report and compile them and forward it to you in the next two weeks. As there are too many clinicians involved, I may have to request you to extend the timeline to respond to the complaint if needed'.

24. On 9 November 2017, Mrs C emailed Dr Ramakrishnan explaining that the date for his response to the complaint had been extended until 28 November 2017.

25. On 15 November 2017, there was a Practice meeting which included Dr Ramakrishnan, Dr A and Dr B. Within the Practice Meeting Minutes, it stated:

> '7. Significant events and Complaints

Few complaints – [Dr Ramakrishnan] dealing – 2 resolved. 2 ongoing.'

Further, an email was sent at 16:06 from Dr B, to Dr Ramakrishnan and Dr A, following this meeting, which stated:

'Re: CGP Cash Flow – Monthly Statement

…

Hi [Dr Ramakrishnan] & [Dr A]

It was good meeting to discuss a few important issues. In future, need to be planned and reminded everyone to bring any issues…'

The Tribunal noted that there was no specific reference to the patient's complaint within the Practice Meeting Minutes or Dr B's email following the Practice meeting. When the minutes came to be signed in December 2017, Dr B added a manuscript notes that reads: 'Adding sig events'. This was explained as being a reference to the need for better details to be recorded in the minutes of complaints which involved significant events.

26. On 20 November 2017, Mrs C telephoned Clayhall Clinic requesting an update on the complaint response. Dr A telephoned Mrs C back stating that the Practice complaint response should be with NHSE by 28 November 2018.

27. On 28 November 2017, at 09:57, Dr A telephoned Mrs C and said that 'they had completed their response and will be sending this over today'. The response was duly emailed to Mrs C by Dr Ramakrishnan later that day at 15:59 hours. The response letter was in the name of Dr B and signed with Dr B's electronic signature.

Findings

28. At the heart of the case lies the issue to what extent Dr B was involved in or aware of the response Letter. The events giving rise to the complaint occurred before the merger of Dr B's practice with the Clayhall practice and Dr B had never treated or seen the patient concerned. The Tribunal is satisfied that any discussion about the complaint either at the Practice Meeting on 15 November 2017 or at what was described as the Partners' meeting that took place immediately afterwards was cursory despite Dr Ramakrishnan taking with him to the meeting a copy of the complaint letter. It is perhaps significant that despite the NHSE letter being received by Dr Ramakrishnan on 7 November, there was no discussion with Dr B about the complaint before 15 November; and the NHSE log makes no reference to Dr B being involved or informed of how the complaint was being handled and, indeed, it was, as Dr A informed Mrs C, being led by Dr Ramakrishnan. While there was a complaints

folder kept at Clayhall, there is no evidence that Dr B actually saw or read the complaints folder at any stage during November or December 2017.

29. The letter was drafted during the afternoon of 27 November 2017 and into the evening and early hours of 28 November by Dr Ramakrishnan with input from Dr A, and typed up by Dr D, based on responses received from the individual doctors at Clayhall who had treated the patient. It was a long and detailed letter consisting of nine pages, together with attachments in the form of responses from the individual doctors concerned. The Tribunal is satisfied that Dr B was in effect kept in the dark until the last moment, just before the response letter was due to be sent.

30. However, the Tribunal is satisfied that Dr B was shown a copy of the proposed letter (but not the attachments) which was going out in his name, and thereby he learnt the name of the patient and some details about her complaint before the letter was sent. While Dr B was engaged on 28 November 2017 seeing patients and carrying out his other duties as the single doctor on duty at the Roding Lane Surgery the Tribunal is satisfied that he briefly met Dr Ramakrishnan, who had a light day from seeing patients, and who went across from the Clayhall practice that was about a mile away. They met for about 30 minutes at some point between 11:30 am and 1:15 pm, probably nearer 1 pm as the Practice computer records show that Dr B accessed the patient's Medical Records at 13:17, just before he made a telephone call to his next patient at 13:23. In his witness statement, Dr Ramakrishnan says:

> 'Despite Dr [B] being aware of the patient's complaint I do, however, acknowledge that the meeting on 28 November was perhaps not sufficient for Dr [B] to consider the response in as much details as he may have liked."

31. The letter at that stage was in the final form in which it was sent to NSHE but did not have Dr B's electronic signature, which appears to have been appended at around 15:40 shortly before the letter was despatched at 15:49. Dr Ramakrishnan took away the letter and did not leave a copy with Dr B that afternoon.

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

Paragraph 1 of the Allegation

33. At the outset of these proceedings, Dr Ramakrishnan admitted and the Tribunal found proved that, together with Dr A, he responded to the patient complaint on 28 November 2017 in the name of Dr B, stating that Dr B had:

- led the investigation into the patient's complaint;
- read the patient's concerns;

- reviewed the patient's records; and
- had discussions with the colleagues involved.

The Letter stated:

'Thank you for your letter outlining your complaint which we received from NHS England on 07/11/2017. I am [Dr B], one of the other GP Partners at Clayhall Group Practice, since 1st October 2017. Although I was not involved in your care at any stage, it was felt that a doctor not involved directly in the complaint should lead the investigation into this complaint.

I would like to start by saying on behalf of us at Clayhall Group Practice, how extremely sorry we are to learn about your recent poor health and that you are unhappy with the care received. I have read your concerns carefully, and to respond, have reviewed your records as well as having discussions with all colleagues involved'.

Paragraph 2 of the Allegation

34. Dr Ramakrishnan stated that, as the designated Complaints Manager at the Practice at the time of the index events, he followed the usual complaints handling process. He stated that as the Complaints Manager, he was responsible for 'managing, handling and considering complaints, ensuring that action is taken, if necessary and for the effective management of the complaints procedure'.

35. The Tribunal had regard to Paragraph 1 of the Allegation:

<u>Led the investigation into the patient's complaint</u>

36. Dr Ramakrishnan admitted that the information in the letter stating that Dr B had led the investigation into the patient's complaint was untrue, insofar as Dr B did not lead the investigation. However, Dr Ramakrishnan stated that he did not know this information to be untrue at the time of sending the response to NHSE, as Dr B had provided his agreement to the letter, when Dr B reviewed it on 28 November 2017. Further, Dr Ramakrishnan stated that at the time of compiling the letter, he applied his mind to ensuring the substantive response which incorporated the individual doctor's responses was factually correct. The original intention had been to send the letter in Dr Ramakrishnan's name but later it was decided as a result of advice received from Dr A's insurers the MMDUS that the letter should go in the name of a doctor who had not treated the patient. Dr Ramakrishnan accepted that he read through the final form of the letter on the morning of 28 November. He stated that it was an oversight on his part that he did not check the letter sufficiently carefully after it was decided to send it in Dr B's name.

37. The Tribunal accepted Dr Ramakrishnan's explanation, which was to an extent supported by Dr D. However, having read the letter Dr Ramakrishnan must have known it was misleading and that Dr B had not as a fact led the investigation into the patient's complaint. The Tribunal, therefore, found Paragraph 2 of the Allegation proved, in relation to Paragraph 1(a) of the Allegation.

Read the patient's concerns

38. As stated above, the Tribunal is satisfied that Dr Ramakrishnan met with Dr B on 28 November and showed him the letter. Earlier at 07:53 on 28 November 2017, Dr Ramakrishnan has sent an internal screen message to Dr B saying a complaint response was needed to be sent that day and he would give Dr B a print out and talk to him later. An opportunity arose within the busy diaries of both doctors to briefly meet and discuss the complaint and to the extent that Dr B read through or more likely skimmed the Letter he would have learnt the nature and extent of the patient's concerns which are recorded at various points in the Letter. The purpose of the meeting was not for Dr B to 'take ownership' of the response as was suggested during the hearing, but simply to obtain his agreement to the Letter being sent in his name to NHSE.

39. In the circumstances, the Tribunal concluded that the GMC had not proved on the balance of probabilities that Dr Ramakrishnan knew that Dr B had not read the patient's concerns. Therefore, it found Paragraph 2 of the Allegation not proved, in relation to Paragraph 1(b) of the Allegation.

Reviewed the patient's records

40. The Tribunal had regard to the witness statement of Mr G and the agreed facts that an audit trail of the patient's Medical Records shows that Dr B accessed the Medical Records of the patient at 13:17 on 28 November 2017. The audit trail does not show how long Dr B looked at the records on that day, nor does it suggest that he printed off any part of the records. The audit trail does not show which parts of the medical records that he saw.

41. It is quite clear that this occurred after Dr Ramakrishnan left seeing Dr B that day. However, there is no evidence that indicates Dr Ramakrishnan knew, one way or another, whether Dr B had accessed the patient's Medical Records before the Letter was sent to NHSE at 15:59, on 28 November 2017.

42. Accordingly, the Tribunal, found Paragraph 2 of the Allegation not proved, in relation to Paragraph 1(c) of the Allegation.

Held discussions with the colleagues involved

43. The Tribunal noted the Letter, which states that Dr B had reviewed the patient's records '…as well as having discussions with all colleagues involved'.

44. Dr Ramakrishnan stated that, by the meeting of 28 November 2017, Dr B would have had enough time to have discussions with all the colleagues involved in the patient's complaint. However, he acknowledged that it was untrue that Dr B had 'held' any discussions with the colleagues involved in the sense that he had done so in order to lead the investigation.

45. Therefore, the Tribunal found Paragraph 2 of the Allegation proved, in relation to Paragraph 1(d) of the Allegation.

Paragraph 3 of the Allegation

46. In relation to the dishonesty alleged, the Tribunal had regard to all the evidence before it and its earlier findings. Having done so it has applied the test in *Ivey v Genting Casinos* namely:

> *'74 […] When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'*

47. In considering the subjective limb of the *Ivey* test, the Tribunal found that Dr Ramakrishnan knew that Dr B had not:

- led the investigation into the patient's complaint; and
- held discussions with the colleagues involved.

48. In his evidence, Dr D stated that the Letter was 'going to start off' in the name of Dr Ramakrishnan by stating 'I lead the investigation', explaining that those words were typed before the decision was made to switch the author from Dr Ramakrishnan to Dr B.

49. Whilst the Tribunal was concerned that the letter was plainly misleading and would lead NHSE and the patient to believe that Dr B had led the investigation and

was involved in it, the Tribunal are satisfied that Dr Ramakrishnan did not intend to mislead NHSE at the time he sent the Letter. He and Dr A were rushed to get the Letter out on 28 November 2017, and their focus and attention was directed towards ensuring that an accurate description was given of the patient's treatment by all who were involved in her care at Clayhall.

50. The Tribunal had regard to paragraphs 71(a) and (b) of Good Medical Practice (2013 edition) ('GMP') which states:

> **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.'*

51. However, whilst the Tribunal was conscious for the need for doctors to check things through, it was reasonably probable that Dr Ramakrishnan made a genuine mistake when allowing the Letter to go to NHSE in the way it was drafted using Dr B's name.

52. In the circumstances of this case, and applying the objective standards of ordinary decent people, the Tribunal concluded that ordinary decent people would find that Dr Ramakrishnan's actions were not dishonest.

53. Therefore, the Tribunal found Paragraph 3 of the Allegation not proved.

Paragraphs 4 and 5 of the Allegation

54. At the outset of these proceedings, Dr Ramakrishnan admitted and the Tribunal found proved that, on 28 November 2017 at 15:59, Dr Ramakrishnan submitted an email to NHSE, sent on behalf of the Practice, which attached a copy of the Letter.

55. Dr Ramakrishnan stated that Dr B's signature was not falsified. He explained that, as Practice Manager, he held Dr B's electronic signature together with those of others in the Practice for use for sending electronic communications on their behalf. Dr Ramakrishnan said that he had held Dr B's electronic signature since 2016. He said that he genuinely believed that Dr B, having consented on 28 November 2017 for the Letter to be sent in his name, Dr B would not object to the use of his electronic signature being used.

56. Dr Ramakrishnan admitted that there was no discussion at the meeting on 28 November about using Dr B's electronic signature to sign the Letter. He did not seek Dr B's permission to do so, and he accepted that he had never actually used Dr B's electronic signature beforehand.

Paragraph 5(a) of the Allegation

57. The Tribunal has seen a copy of the actual letter that was sent to NHSE on 28 November 2017 at 15:59. It contains Dr B's electronic signature.

58. However, the electronic signature was not 'falsified' in any way. The electronic signature was in no sense altered or used so as to be misleading.

59. In those circumstances, the Tribunal found that Dr Ramakrishnan did not falsify Dr B's signature on the Letter and therefore, it found paragraph 5(a) of the Allegation not proved

Paragraph 5(b)(i) of the Allegation

60. Having found that, on 28 November 2017, Dr Ramakrishnan and Dr B had a meeting where the Letter was presented, the Tribunal found that it was more likely than not that Dr B had knowledge of the contents of the Letter.

61. Therefore, the Tribunal found Paragraph 5(b)(i) of the Allegation not proved.

Paragraph 5(b)(ii) of the Allegation

62. Dr Ramakrishnan accepts that he did not seek Dr B's permission to use his electronic signature. Dr Ramakrishnan may have held Dr B's electronic signature and believed that as Dr B had consented to the Letter being sent in his name his electronic signature could be used to sign the Letter. However, this was a hugely important letter and Dr Ramakrishnan simply never sought Dr B's permission to use his electronic signature.

63. In those circumstances, the Tribunal found that Dr Ramakrishnan allowed the Letter to be sent without Dr B's permission to use his electronic signature, and Paragraph 5(b)(ii) of the Allegation is proved.

Paragraph 5(b)(iii) of the Allegation

64. For the reasons stated, the Tribunal are satisfied that Dr B consented to the Letter being sent, and accordingly Paragraph 5(b)(iii) of the Allegation is not proved.

Paragraph 6 of the Allegation

65. In considering the subjective limb of the *Ivey* test, while the Tribunal found that Dr Ramakrishnan sent the version of the Letter knowing that it was sent without Dr B's permission to use his electronic signature, Dr Ramakrishnan had no intention to be dishonest or to mislead anyone.

66. Moreover, the Tribunal considered that this was not dishonest conduct given that it would be normal business practise that having given consent to use your name on a letter, it may well be signed electronically where it is available. Further, given that Dr Ramakrishnan was occupying the role of Practice Manager at the time of the index events it would have been appropriate for him to send correspondence in other colleagues' names.

67. In the circumstances of this case and applying the objective standards of ordinary decent people, the Tribunal concluded that ordinary decent people would find that Dr Ramakrishnan's actions were not dishonest.

68. Therefore, the Tribunal found Paragraph 6 of the Allegation not proved.

Paragraph 7 of the Allegation

69. On 29 November 2017, at a locality meeting held at a local hospital, Dr Ramakrishnan says he provided Dr B with a copy of the electronically signed and unsigned versions of the Letter and all correspondence sent to NHSE. He said that he provided Dr B with both the signed and unsigned Letters in order that Dr B could check them. However, Dr B had an unsigned copy of the Letter in his possession which he produced to the Tribunal. The Tribunal find it improbable that Dr B was given two copies of an identically worded letter. On the balance of probabilities, the Tribunal find that Dr Ramakrishnan provided Dr B with a copy of the letter without his electronic signature only, and not the signed version, but there was nothing sinister in this and Dr Ramakrishnan was not trying to hide from Dr B that the Letter had been sent to NHSE with his electronic signature.

70. The Tribunal considered that the words 'knowing that it was not an exact copy of the Letter which you emailed to NHS England' imply in the context of this Allegation that the giving of the copy without the signature was a deliberate act. The Tribunal was of the view that it was more likely than not that Dr Ramakrishnan's action in providing Dr B with a copy of the letter he had shown him the day before was entirely innocent, and was not done 'knowing' that it was not an exact copy of the letter which had been sent to NSHE.

71. Therefore, the Tribunal found Paragraph 7 of the Allegation not proved.

Paragraph 8 of the Allegation

72. Given the Tribunal's finding that Paragraph 7 of the Allegation was not proved, the Tribunal therefore did not go on to consider Paragraph 8 of the Allegation.

Paragraph 9 of the Allegation

73. Dr Ramakrishnan stated that he did not have a conversation with Dr B regarding his defence union on 6 December 2017. However, the Tribunal note that earlier on 29 November 2017 Dr Ramakrishnan sent an internal screen message to Dr B saying that he did not need to speak to the MDU on the understanding that advice was not needed as Dr B was not named in the patient's complaint. Dr B was sufficiently concerned to seek guidance from his defence union about the handling of the patient's complaint and says that on 4 December 2017 he called the MDU to discuss issues.

74. On 6 December 2017, Dr H, Medical Director, Londonwide Local Medical Committee, to whom Dr B also turned for advice, sent an email to Dr B at 12:29 in which she said:

> 'It is extremely important that you either see or telephone Dr Ramakrishnan today and ask him to write to NHSE correcting the erroneous signature to the letter which the Clayhall practise has sent'.

75. Dr Ramakrishnan agrees that he spoke to Dr B later that afternoon when he (Dr Ramakrishnan) was at a meeting in Stratford. What was said on the telephone is in dispute and is the subject matter of paragraph 9 of the Allegation.

<u>Paragraph 9(a) of the Allegation</u>

76. The Tribunal considered that, on the balance of probabilities, on the afternoon of 6 December 2017 Dr Ramakrishnan did say something similar to what he had said in his screen message on 29 November 2017, namely that Dr B does not have to speak to the MDU or discuss matters with the MDU. The conversation between Dr Ramakrishnan and Dr B on 6 December 2017 has to be put in context. Dr B was already in contact with the MDU and it was probable that something was said by Dr Ramakrishnan to the effect that he should not discuss the matter with the MDU.

77. In those circumstances, the Tribunal found Paragraph 9(a) of the Allegation proved.

Paragraph 9(b) of the Allegation

78. The Tribunal noted that there is a lack of any contemporaneous record to show that Dr Ramakrishnan went further and told Dr B that he should feign a lapse in memory if NHSE questioned him about the Letter.

79. Given the lack of cogent evidence to support this Allegation and the seriousness of what it is alleged was said by Dr Ramakrishnan, the Tribunal consider that the GMC has not proved this allegation on the balance of probabilities. Therefore, the Tribunal found Paragraph 9(b) of the Allegation not proved.

Paragraph 10 of the Allegation

80. The Tribunal is satisfied that Dr Ramakrishnan did not have a dishonest intention when he advised Dr B to the effect that he should not discuss the matter with the MDU. He was simply repeating albeit in slightly different words what he had said earlier, namely that there was no need for Dr B to speak to the MDU as he was not involved in the treatment of the patient concerned.

81. Given the Tribunal's finding that Paragraph 9(b) of the Allegation was not proved, the Tribunal does not consider that Paragraph 9(a) standing alone could be inappropriate or encouraging Dr B to act dishonestly.

82. Therefore, the Tribunal found Paragraph 10 of the Allegation not proved.

Paragraphs 11, 12 and 13 of the Allegation

83. At the outset of these proceedings, Dr Ramakrishnan admitted and the Tribunal found proved that on 6 December 2017, at 17:24, he sent an email to NHSE stating that Dr B had:

- collated the responses from those involved; and
- been requested to write the Practice response.

84. Dr Ramakrishnan also admitted and the Tribunal found proved, that he knew that Dr B had not carried out the activities as set out above.

Paragraph 13 of the Allegation - Dishonesty

85. Dr Ramakrishnan stated that, following his meeting in Stratford and after speaking to Dr B on 6 December 2017, he went back to Clayhall and amended the response to his name and the signature on the final page of the Letter (replacing Dr B's name and signature). He did not factually change anything within the response.

86. In his covering email to Mrs C sent at 17:24, Dr Ramakrishnan stated:

> 'Please find attached amended practice's response to the Complaint with the individual GPs response. We requested our new GP Partner [Dr B] who was not involved in the complaint to write practice response and We (me and [Dr B]) did collated the response based on all the responses from involved GPs.
>
> [Dr B] told me today that he is not happy to write the practice response on his name and do not want to be involved in future conversations regarding this complaint. Hence I have amended the Practice response as I was fully involved in the whole process. I am very sorry for this inconvenience.'

87. Dr Ramakrishnan explained that his covering email was written with the aim of 'reassuring' NHSE that he was involved in the whole process of collating the responses, and his intention was to clarify his involvement rather than be misleading regarding Dr B's involvement.

88. Dr Ramakrishnan acknowledged that his email to Mrs C was not accurate and could have been drafted better. Further, he accepted that the language used in the email was imprecise and could be seen as misleading, but that it was not a deliberate act. However, he considered that at the time, he had collated what he believed to be the correct information. In evidence he said that his intention was to change the response to his name and he had no intention to mislead NHSE.

89. The Tribunal has given anxious concern to this allegation. Dr Ramakrishnan's email does not suggest in any way that he wanted simply to change the response to his name. The email says that Dr B was requested to write the practice response and that Dr Ramakrishnan and Dr B together collated the response, but that Dr B was no longer happy to have the response in his name. The email perpetuates what was said in the earlier response, namely that Dr B was involved at the time the Letter was sent on 28 November 2017 in investigating the patient's complaint; but he no longer wishes to be involved.

90. The Tribunal has reminded itself of the burden and standard of proof, and that cogent evidence is required before making a finding of dishonesty, and the *Ivey* test is a high bar. The Tribunal have also borne in mind Dr Ramakrishnan's good character and the testimonial evidence and that English is not his first language. The email was also written in a rush. Notwithstanding all these considerations the Tribunal found his explanation for his email unconvincing. The Tribunal is satisfied that in using the language he used in that email Dr Ramakrishnan intended to mislead NHSE into believing that Dr B had written the original response letter which went in his name, and that Dr B, with Dr Ramakrishnan, had collated the response based on the responses from the GPs involved. But Dr B did not. And Dr Ramakrishnan knew that he did not.

91. Applying the objective standards of ordinary decent people, the Tribunal concluded that ordinary decent people would find that Dr Ramakrishnan's action in sending the email in the terms he sent it was dishonest in that he intended to mislead NHSE that Dr B had been involved with writing the response Letter sent on 28 November 2017.

92. Therefore, the Tribunal found Paragraph 13 of the Allegation proved, by reason of Paragraph 12 of the Allegation.

The Tribunal's Overall Determination on the Facts

93. The Tribunal has determined the facts as follows:

1. By letter dated 28 November 2017 ('the Letter'), together with Dr A, you responded to a patient complaint in the name of your colleague Dr B stating that Dr B had:

    a. led the investigation into the patient's complaint;
    Admitted and found proved

    b. read the patient's concerns;
    Admitted and found proved

    c. reviewed the patient's records; **Admitted and found proved**

    d. held discussions with the colleagues involved.
    Admitted and found proved

2. You knew that Dr B had not carried out the activities as set out in paragraph 1 above.

    Determined and found proved in relation to:
    Paragraphs 1(a) and (d) of the Allegation

    Determined and not proved in relation to:
    Paragraph 1(b) and (c) of the Allegation

3. Your action as set out in paragraph 1 was dishonest by reason of paragraph 2. **Determined and not proved**

4. On 28 November 2017 at 15:59 you submitted an email to NHS England, sent on behalf of ~~yourself and Dr A~~ **the Clayhall Group Practice ('the Practice')**, which attached a copy of the Letter.

Amended under Rule 17(6)
Admitted and found proved

5. You sent the version of the Letter as referred to in paragraph 4 above:

   a. having falsified Dr B's electronic signature on the Letter;
   Determined and not proved

   b. knowing that it was sent without Dr B's:

      i. knowledge of the content of the Letter;
      Determined and not proved

      ii. permission to use his electronic signature;
      Determined and found proved

      iii. consent. **Determined and not proved**

6. Your action as set out in paragraph 4 was dishonest by reason of paragraph 5 b. **Determined and not proved**

7. On or around 29 November 2017, you provided Dr B with a copy of the Letter, knowing that it was not an exact copy of the Letter which you emailed to NHS England as referred to in paragraph 4 above, in that it did not contain Dr B's electronic signature.
Determined and not proved

8. Your conduct as set out in paragraph 7 was dishonest.
Determined and not proved

9. On or around 6 December 2017, you advised Dr B words to the effect that he should:

   a. not discuss the matter with the Medical Defence Union;
   Determined and found proved

   b. feign a lapse in memory if NHS England questioned him about the Letter. **Determined and not proved**

10. You knew that your conduct as set out in paragraph 9 was inappropriate in that it was encouraging Dr B to act dishonestly.
Determined and not proved

11. On 6 December 2017 at 17:24, you sent an email to NHS England stating that Dr B had:

a. collated the responses from those involved;
Admitted and found proved

b. ~~drafted the Letter~~ **been requested to write the Practice response**.

Amended under Rule 17(6)
Admitted and found proved

12. You knew that Dr B had not carried out the activities as set out in paragraph 11 above. **Admitted and found proved**

13. Your actions as set out in paragraph 11 were dishonest by reason of paragraph 12. **Determined and found proved**

Determination on Impairment - 27/01/2020

1. Having given its determination on the facts in this case, in accordance with Rule 17(2)(k) of the Rules, the Tribunal has considered whether, on the basis of the facts which it has found proved, Dr Ramakrishnan's fitness to practise is currently impaired by reason of misconduct.

The Evidence

2. The Tribunal had regard to all of the evidence, both oral and documentary adduced during the course of these proceedings.

3. The Tribunal also received a stage two bundle which included, but was not limited to:

- Dr Ramakrishnan's reflective document;
- Testimonials attesting to Dr Ramakrishnan's good character; and
- Continuing Professional Development ('CPD') certificates

Submissions

4. The submissions made by both Counsel at the impairment stage are a matter of record and the following is a non-exhaustive synopsis of those submissions.

Submissions on behalf of the GMC

5. Mr Taylor submitted that Dr Ramakrishnan's fitness to practice is currently impaired by reason of his misconduct. He directed the Tribunal's attention to Good

Medical Practice (2013 edition) ('GMP') and the Sanctions Guidance (November 2019 edition) ('SG') when making its determination.

6. Mr Taylor stated that 'this is clearly misconduct at its worst', which involved a misleading letter to a patient, followed by a dishonest email to NHSE. He reminded the Tribunal that it found Dr Ramakrishnan intended to mislead NHSE that Dr B had led the investigation. Mr Taylor submitted that Dr Ramakrishnan's dishonesty constitutes a serious and significant departure from the standards of honesty and integrity expected of registered medical practitioners. He stated that Dr Ramakrishnan's actions are reprehensible, constituting serious professional misconduct.

7. Mr Taylor submitted that dishonesty does not lend itself to easy remediation, particularly where it has been contested during these proceedings. He stated that the remediation material before the Tribunal since 22 November 2019 carries much less weight than it would with clinical errors or incompetence.

8. Mr Taylor submitted that Dr Ramakrishnan's stage two bundle shows that his insight is limited or 'partial at best'. He stated that Dr Ramakrishnan has not addressed his dishonesty identified by the Tribunal and that there is some way to go before he comes to terms with the truth on what he has done with his intention to mislead NHSE.

9. Mr Taylor submitted that the need to uphold proper professional standards and public confidence would be undermined if a finding of impairment was not made in this case. He stated that it would be insufficient to impose a warning on Dr Ramakrishnan's registration due to the Tribunal's findings of dishonesty in a professional context.

Submissions on behalf of Dr Ramakrishnan

10. Mr Jenkins conceded on Dr Ramakrishnan's behalf that the Tribunal's findings in relation to his dishonesty amount to misconduct. However, he stated that Dr Ramakrishnan's fitness to practise is not currently impaired by reason of his misconduct.

11. Mr Jenkins stated that Dr Ramakrishnan took a sabbatical from all forms of medical practise and stepped back from any role with the Federation, since the Tribunal adjourned on 22 November 2019, as he was overwhelmed with all the responsibility and this case. However, Mr Jenkins submitted that Dr Ramakrishnan anticipates going back to practise, starting to see patients in February 2020 and begin working with the Federation again.

12. Mr Jenkins reminded the Tribunal of the 'toxic' atmosphere at Clayhall. He stated that it is a 'dysfunctional practice'. Further, he reminded the Tribunal that the

responses were collated by the doctors for the Letter and there were no commentaries or opinions added. The Letter was not intended to mislead the patient and the medical content was to be reviewed by NHSE before the patient was updated.

13. Mr Jenkins submitted that Dr Ramakrishnan has an understanding of the importance of honesty and integrity, as demonstrated within Dr Ramakrishnan's reflective statement and the numerous testimonial evidence. He stated that the likelihood of Dr Ramakrishnan repeating his dishonest conduct is 'nil' and there has been no repetition since the events.

The Relevant Legal Principles

14. In approaching its decision, the Tribunal was mindful of the two-stage process to be adopted: first, whether the facts as found proved amounted to serious misconduct and secondly, whether the doctor's fitness to practise is currently impaired by reason of that misconduct.

15. The Tribunal had regard to the advice given by the Legally Qualified Chair as a matter of record.

16. At both stages of the process, the Tribunal was mindful of the overarching objective of the GMC set out in section 1 of the Medical Act 1983 (as amended) which requires the Tribunal to:

a. Protect, promote and maintain the health, safety and well-being of the public,

b. Promote and maintain public confidence in the medical profession, and

c. Promote and maintain proper professional standards and conduct for members of that profession.

17. 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 Dr Ramakrishnan's fitness to practise is impaired in the sense that he:

[…]

b. Has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

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

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

18. The Tribunal bore in mind that it must determine whether Dr Ramakrishnan's fitness to practise is currently impaired by reason of misconduct, taking into account his conduct at the time of the events and any other relevant factors such as any development of insight, whether the matters are remediable or have been remedied and the likelihood of repetition.

Misconduct

19. In determining whether Dr Ramakrishnan's fitness to practise is currently impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amounted to misconduct.

20. As stated in the Tribunal's determination on the facts, at the heart of this case lies the issue to what extent Dr B was involved in or aware of the response Letter. As the Complaints Manager of the Practice, Dr Ramakrishnan was responsible for 'managing, handling and considering complaints, ensuring that action is taken, if necessary and for the effective management of the complaints procedure'.

21. In the instant case, Dr Ramakrishnan took the lead in investigating and answering the complaint. The original intention had been to send the response Letter in Dr Ramakrishnan's name but later it was decided, as a result of advice received from Dr A's insurers the MMDUS, that the letter should go in the name of a doctor who had not treated the patient. Dr B was in effect kept in the dark until the last moment, shortly before the response Letter was due to be sent despite it being sent in his name with his electronic signature.

22. The Tribunal has found Dr Ramakrishnan knew that, contrary to the terms of the Letter, Dr B had not led the investigation into the patient's complaint and had not held discussions with colleagues involved. He must have known that the Letter was misleading. Moreover, Dr Ramakrishnan sent the Letter to NHSE knowing that it was sent without Dr B's permission to use his electronic signature.

23. The Tribunal further found that on 6 December 2017, Dr Ramakrishnan sent an email to NHSE that was untrue and that he intended to mislead NHSE into believing that Dr B had written the original response letter which was sent in his name, and that Dr B, with Dr Ramakrishnan, had collated the response based on the responses from the GPs involved. Dr B had not done so, and Dr Ramakrishnan knew that he had not done so. The Tribunal found that Dr Ramakrishnan acted dishonestly in this respect.

24. The Tribunal considered the paragraphs of GMP which set out the standards that a doctor must continue to meet throughout their professional career. The Tribunal had particular regard to paragraphs 65, 68 and 71 of GMP that state:

> **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.'

The Tribunal applied these standards to the facts found proved.

25. Taking these matters together in the round the Tribunal found that Dr Ramakrishnan's conduct amounted to misconduct within section 35C(2)(a) of the Medical Act 1983, as amended.

Impairment by reason of Misconduct

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

27. The Tribunal first of all noted that Dr Ramakrishnan's conduct took place within his clinical responsibilities and falls within three categories of Dame Janet Smith's *Fifth Shipman Report*, namely: b, c and d (as referred to in paragraph 17 of this determination, above). Further, it considered that his dishonest conduct breached paragraph 124 and 125(e) of the SG and had the potential to undermine public confidence in the profession.

28. It has repeatedly been said that dishonesty lies at the top end of the spectrum of gravity of misconduct, and that, though possible, dishonest conduct is difficult to remediate. In the instant case, dishonesty was not admitted, yet found proved.

29. The Tribunal has no doubt Dr Ramakrishnan's fitness to practise was impaired at the time of these events in November/December 2017, and for some time afterwards. By the time of the hearing on the facts in November 2019 he had begun to gain insight into his behaviour and that has continued since the recent hearing. He does not have full insight today, but his current level of insight is substantial. He has also made real efforts to remedy his actions.

30. The Tribunal noted that Dr Ramakrishnan's dishonest conduct was a one-off incident, and there is no evidence of any dishonest conduct before or since December 2017. Dr Ramakrishnan's dishonest conduct was not for personal gain and no harm came to the patient. It was at the lower end of the spectrum of seriousness.

31. The Tribunal had regard to Dr Ramakrishnan's reflective statement. Dr Ramakrishnan has accepted he was at fault and has stated:

> 'Moral action – as I failed in my Moral Perceptions and Reasoning, my actions were wrong. GMC Good Medical Practice highlights that documents or communications I write should not be misleading and I should take necessary steps to ensure that the information is correct. I should have ensured that my actions can maintain the public's trust and confidence in my profession. The trust in the medical profession has been built over years and I will make every effort to maintain this. I will be honest and trustworthy in all my communication including written communication and I will make sure that I do not convey any misleading information'.

32. Dr Ramakrishnan has also attended a medical ethics course along with other relevant professional courses to help him reflect and learn from his actions.

33. Dr Ramakrishnan has produced 23 testimonials from professional colleagues and 21 testimonials from patients, a total in all of 44 testimonials. They all post-date the recent hearing on facts. They are impressive and speak highly of his abilities as a caring, kind, diligent and considerate doctor. It is clear that Dr Ramakrishnan has spent many hours considering his position and discussing it with colleagues. By way of example:

> Dr I, Academic Reader and GP, in a letter dated 6 January 2020 states:
>
> > 'From working with Dr Ramakrishnan I have no doubt whatsoever, that that he is an exceptionally gifted and conscientious general practitioner who, in his every day-to-day work as a practitioner at Clayhall Group Practice has developed quite outstanding methods to review and improve his own work and that of his colleagues – both in the practice and more widely in the CCG'.

Dr J, Director of Healthbridge Direct Limited, in a letter dated 16 January 2020, stated:

> 'Dr Ramakrishnan has discussed the allegations considered by the tribunal and its findings with me. He has clearly reflected on the actions that have resulted in this outcome. I have no doubt that he will ensure that he will not repeat similar acts and omissions in the future'.

Dr K , GP Principle, in a letter dated 20 January 2020, states:

> 'I have read and understood the GMC's fitness to practise determination regarding Dr Ramakrishnan […] In particular the tribunals findings in relation to dishonesty under allegations 13. I believe Dr Ramakrishnan has reflected profoundly and meaningfully and has come to understand his errors. He understands his behaviour falls short of the high standards expected from a doctor and has set his focus on ensuring this never happens again'.

34. The Tribunal is satisfied that Dr Ramakrishnan has been open about these proceedings with his peers and has reflected deeply on the issues raised by the Tribunal in its determination on the facts. The Tribunal is satisfied that Dr Ramakrishnan does not present a risk to the public and that there is little risk of his actions being repeated.

35. The Tribunal carefully considered the statutory overarching objective contained in section 1 (1B) of the Medical Act 1983, as amended 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. The Tribunal has also borne very much in mind paragraphs 71 and 74 of Mrs Justice Cox's judgment in the *Grant* case, and whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances of this case.

36. The Tribunal concluded after much thought that a fully informed member of the public or profession, made aware of all the facts and Dr Ramakrishnan's level of insight and the steps he has taken to remediate his shortcomings, would be reassured that his response has been sufficiently professional to offset the concerns raised by his dishonest conduct.

37. Taking all the above matters into account, the Tribunal determined that a finding of impairment is not necessary in this case. It therefore determined that Dr Ramakrishnan's fitness to practise is not currently impaired by reason of his misconduct.

Determination on Warning - 26/02/2020

1. As the Tribunal determined that Dr Ramakrishnan's fitness to practise was not impaired it considered whether in accordance with s35D(3) of the Medical Act, 1983, as amended, a warning was required.

Submissions

2. On behalf of the GMC, Mr Taylor submitted that a warning is necessary in this case. He referred the Tribunal to the relevant paragraphs of the Guidance on Warnings document (February 2018) ('the warnings guidance').

3. Mr Taylor submitted that an intention to mislead NHS England is a serious matter, is unacceptable and should be marked with a warning. He submitted that if there was any dishonest conduct by Dr Ramakrishnan during the length of the warning it would very likely result in more serious action. He submitted that if the Tribunal determined to put in place a warning the potential impact of Dr Ramakrishnan's behaviour should be recorded. He said that the dishonesty in this case represents a significant departure from *Good medical practice (2013 edition)* ('GMP'). He further submitted that dishonesty is a serious matter and ordinarily carries with it a presumption of impairment. He reminded the Tribunal that this dishonesty related to the doctor's clinical practice and that it is not a minor matter.

4. On behalf of Dr Ramakrishnan, Mr Jenkins also referred to the warnings guidance. He said that the Tribunal is aware of the background of the case and that it was well placed to make a decision on whether a warning is required. He concluded that in all the circumstances, and following the guidance, it was not necessary or appropriate to issue a warning.

The Tribunal's Determination on Warning

5. The Tribunal took account of the specific circumstances of this case and had regard to the submissions of parties.

6. The decision whether or not to issue a warning is a matter for the Tribunal alone, exercising its own judgement. The Tribunal was mindful of the overarching objective in s1 of the Medical Act 1983.It also had regard to all relevant parts of the warnings guidance including the test at paragraph 16:

> *'A warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:*
>
> - *there has been a significant departure from Good medical practice*

- *…'*

7. The Tribunal considered paragraph 20 which states:

20. The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.

a. There has been a clear and specific breach of Good medical practice or our supplementary guidance.

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

c. A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise. Warnings may be an appropriate response to any type of allegation (subject to the comments in paragraph 7 regarding cases solely relating to a doctor's health); the decision makers will need to consider the degree to which the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear the potential impact of the conduct, behaviour or performance in question, accordingly.

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

8. The Tribunal also had regard to paragraph 24 of the guidance which states:

'There is a presumption that the GMC should take some action when the allegations concern dishonesty. There are, however, cases alleging dishonesty that are not related to the doctor's professional practice and which are so minor in nature that taking action on the doctor's registration would be disproportionate. A warning is likely to be appropriate in these cases. An example of this might include, in the absence of any other concerns, a failure to pay for a ticket covering all or part of a journey on public transport. '

9. The Tribunal had regard to the facts found proved in this case, in particular its finding of dishonesty in relation to the email sent by Dr Ramakrishnan to NHS England, on 6 December 2017, relating to a patient complaint. It considered that, as set out in its determination on impairment, this constituted a clear departure from paragraphs 65, 68 and 71 of Good Medical Practice (2013 edition) ('GMP') as set out below and Dr Ramakrishnan's actions amounted to misconduct which was serious:

> ***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.'*

10. The Tribunal was mindful of its determination that Dr Ramakrishnan's fitness to practise is not impaired and the various factors it considered in reaching that conclusion, for example, Dr Ramakrishnan's dishonest conduct was a one-off incident and did not involve any personal gain and no harm came to the patient, his level of insight which it found to be 'substantial' although not complete, the low risk of repetition and the various testimonials provided.

11. Nevertheless, the Tribunal has had regard to paragraph 24 of the guidance on warnings which relates to dishonesty. It was satisfied that it is appropriate to mark Dr Ramakrishnan's act of dishonesty by issuing a warning. The Tribunal was of the view that it is necessary and proportionate to do so 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.

12. Accordingly, the Tribunal determined to issue the following warning to Dr Ramakrishnan:

> *'Dr Ramakrishnan*
>
> *On 6 December 2017 you sent an email, relating to a patient complaint, to NHS England which contained information which you knew was not true and was dishonest.*
>
> *This conduct does not meet the standards required of a doctor. It risks bringing the profession into disrepute and it must not be repeated. The required standards are set out in Good medical practice (2013) and associated guidance. In this case ,paragraphs 65,68 and 71 of Good medical practice (2013), are particularly relevant:*

> ***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.'*
>
> *Whilst this failing in itself is not so serious as to require any restriction on your registration, it is necessary in response to issue this formal warning.*
>
> *This warning will be published on the medical register in line with our publication and disclosure policy, which can be found at www.gmc-uk.org/disclosurepolicy '.*

13. There is no interim order to revoke.

14. That concludes the case.

Confirmed
Date 26 February 2020 Mr Kenneth Hamer, Chair

ANNEX A – 15/11/2019

Application under Rule 34(1)

1. Mr Alan Jenkins, Counsel, on behalf of Dr Ramakrishnan, made an application under Rule 34(1) of the General Medical Council's ('GMC') ('Fitness to Practise') Rules 2004 (as amended) ('the Rules'), to adduce further evidence.

Submissions

2. The submissions made by Counsel are a matter of record and the following is a non-exhaustive summary of those submissions.

Submissions on behalf of Dr Ramakrishnan

3. Mr Jenkins submitted that there is evidence to suggest that Dr B was acting in a way which was inimical to good relations to his colleagues which should be adduced to the Tribunal. Further, Mr Jenkins submitted that there is evidence of email communications in Spring 2019 from the Practice Manager of the Practice to Dr B in which he was asked 'to be nice to people'. Mr Jenkins submitted that this evidence could assist the Tribunal.

Submissions on behalf of the GMC

4. Mr Alan Taylor, Counsel, on behalf of the GMC submitted that he was concerned about this evidence being adduced. He referred the Tribunal to *R (on the application of H) v NMC [2013] EWHC 4258 (Admin)*, specifically relating to 'satellite litigation' when making its determination.

5. Mr Taylor submitted that the Allegation relates to events in 2017 and this evidence is dated March and May 2019. He stated that this evidence is an attempt to mushroom collateral matters that do not relate to the time of the events in the Allegation. Mr Taylor therefore submitted that he does not know what can be achieved by putting an email from the Practice Manager to Dr B asking about staff and local issues.

Tribunal Decision

6. The Tribunal noted Rule 34(1) of the Rules, which states:

> *'34.*
>
> *(1) The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.'*

7. The Tribunal first considered arguments in favour of admissibility. The Tribunal took account of the wide discretion granted by the above Rule and that, as a professional body, it would ordinarily be able to disregard inadmissible evidence and assess and attach appropriate weight to evidence placed before it.

8. The Tribunal also had regard to the judgment of HJ Pelling QC (sitting as a Judge of the High Court) in *R (on the application of H) v NMC* when making its determination on this matter.

9. The Tribunal considered that there could be grounds that the additional material is inadmissible on the basis that it deals with collateral issues arising long after the index events outlined in the Allegation. However, during the course of these proceedings, the GMC have introduced other concerns against Dr Ramakrishnan and Dr A about the Clayhall Clinic and have agreed to Dr Ramakrishnan adducing evidence of collateral issues within his witness statement, despite any initial reluctance to agree to the evidence being adduced.

10. The Tribunal considered that the admission of further evidence is unlikely to take matters further but faced with the present situation Mr Jenkins may put to Dr B the events of Spring 2019, but not the emails, in cross examination should he wish to do so. Tribunal will consider such evidence in the round.

11. Therefore, the Tribunal accedes to the application.