

Dates: 10/02/2020 - 14/02/2020

Medical Practitioner's name: Dr Sripurna BASU

GMC reference number: 6091362

Primary medical qualification: MB BS 2003 University of London

Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome

Suspension, 12 months.
Review hearing directed
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mr Kenneth Hamer
Lay Tribunal Member:	Ms Gail Mortimer
Medical Tribunal Member:	Dr Michael Morton

Tribunal Clerk:	Ms Lauren Duffy Mr David Salad (14/02/2020)
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Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	n/a
GMC Representative:	Mr Tim Grey, Counsel, instructed by GMC Legal

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.

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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 - 12/02/2020

Background

1. Dr Basu qualified in 2003 from the University of London. At the time of the events Dr Basu was practising as a locum Senior House officer ('SHO') at The Princess Alexandra Hospital NHS Trust ('the Trust') through First Medical Staffing Solutions Ltd. ('the Agency').
2. The Allegation that has led to Dr Basu's hearing relates to her submitting incorrect timesheets to the Agency for work undertaken at the Trust. It is alleged that Dr Basu had not worked at the Trust during all of the dates that she had input on the timesheets. Further, it is alleged that Dr Basu dishonestly recorded her placement at the Trust as good or excellent, and that this caused her placement assessment to be recorded as good or excellent.
3. Alongside the Trust's own investigation in relation to the timesheets submitted by Dr Basu, the initial concerns were raised with the GMC by Dr A, the Associate Medical Director and Consultant Geriatrician at the Trust. In a letter to the GMC, dated 19 October 2016, Dr A confirmed that the case had also been reported to NHS Counter Fraud.

The Outcome of Applications Made during the Facts Stage

4. The Tribunal granted the GMC's application, made pursuant to Rules 15 and 40 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that notice of this hearing has been properly served upon Dr Basu. It also granted the GMC's application, made pursuant to Rule 31 of the Rules, to proceed with the case in Dr Basu's absence. The Tribunal's full decision is included at Annex A.
5. The Tribunal granted Mr Grey's application, made pursuant to Rule 34 (13) and (14) of the Rules, that Ms C, Dr B and Mr D be permitted to give evidence via telephone. The Tribunal took into account that Dr Basu had been given details of the GMC witnesses in this case. It was mindful that video evidence was preferred when witnesses are unable to attend in person but understood that this would not be possible given the on-site technology limitations for doctors. It was also mindful that

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Mr D was going to be giving evidence from India. It therefore considered that it was in the interests of justice to grant Mr Grey's application.

The Allegation and the Doctor's Response

6. The Allegation made against Dr Basu is as follows:
 1. On 15 August 2016 you submitted timesheets ('timesheets') for work undertaken at The Princess Alexandra Hospital NHS Trust (the 'Trust') to First Medical Staffing Solutions Ltd for the following dates when you did not work at the Trust:
 - a. 12 to 15 July 2016; **to be determined**
 - b. 25 to 28 July 2016; **to be determined**
 - c. 30 and 31 July 2016. **to be determined**
 2. Within the timesheets referred to in paragraph 1 you:
 - a. recorded your placement as good and excellent; or
 - b. caused your placement assessment to be recorded as good and excellent. **to be determined**
 3. You knew that:
 - a. you had not worked at the Trust as set out in paragraph 1; **to be determined**
 - b. the placement assessment referred to in paragraph 2 had not been completed by the counter signatories. **to be determined**
 4. Your actions as described at paragraph:
 - a. 1 were dishonest by reason of paragraph 3a; **to be determined**
 - b. 2 were dishonest by reason of paragraph 3b. **to be determined**

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Factual Witness Evidence

7. The Tribunal received evidence on behalf of the GMC from the following witnesses by telephone link:

- Ms C, Medical Staffing Coordinator at the Trust;
- Dr B, Consultant Orthogeriatrician at the Trust;
- Mr D, A&E Divisional Manager at the Agency.

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

- Dr A, Associate Medical Director and Consultant Geriatrician at the Trust;
- Dr E, Senior Registrar in Cardiology at the Trust.

Documentary Evidence

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

- Email correspondence between the Agency and the Trust dated 6 July 2016;
- Email correspondence between Dr Basu and Dr A dated 15 August 2016;
- Audit Accreditation form signed by Dr A;
- Email chain from Dr Basu to Mr F at the Agency, dated 15 August 2016;
- Copies of timesheets submitted to the agency dated July/August 2016;
- Dr A's referral form to the GMC;
- Dr A's letter to the GMC dated 19 October 2016;
- Booking confirmation from the Agency dated 6 July 2016;
- Email trail between Ms C and Mr D dated 14 July 2016 and 25 July 2016;
- Dr B's rota for the week commencing 11 July 2016;
- Dr E's rota for July 2016;
- Call logs from the Agency in respect of their correspondence with Dr Basu;
- Email correspondence between various members of staff at the Trust re Dr Basu;
- Timesheet emailed to the Tribunal by Dr B following her oral evidence.

The Tribunal's Approach

10. 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 Basu 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.

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11. The Tribunal had regard to Lord Nicholls' comments in the case of *Re H (Minors)* [1996] AC 563, that:

'The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability... Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.'

12. The Allegation contains charges that Dr Basu was dishonest. In considering these charges the Tribunal applied the test for dishonesty set out by the Supreme Court in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 that it should first ascertain the actual state of Dr Basu's knowledge or belief as to the facts and then determine whether her conduct was honest or dishonest by applying the objective standards of ordinary decent people.

The Tribunal's Analysis of the Evidence and Findings

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

Paragraph 1a

14. The Tribunal first considered Dr Basu's email to Mr F who worked at the Agency, dated 15 August 2016. Dr Basu stated:

'Dear [Mr F]

These are the timesheets for 3 of the weeks at the princess Alexandra I will have the fourth to you soon.

Sripurna Basu.'

The Tribunal had regard to the timesheets that were attached to the email which covered the following periods:

- 11 July – 15 July 2016;
- 25 July – 29 July 2016;
- 27 July – 31 July 2016.

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15. The Tribunal was satisfied that Dr Basu submitted timesheets for these periods to the Agency. The Tribunal went on to consider whether Dr Basu had worked at the Trust on the dates which the GMC allege she did not.

Paragraph 1a (12 – 15 July 2016)

16. The Tribunal had regard to the booking confirmation form, dated 6 July 2016. In relation to the period 12 – 15 July 2016, it was clear that Dr Basu was due to attend the Harold Ward each day. The Tribunal considered the evidence of Dr B, who was the Consultant on the Harold Ward that week. In her oral evidence to this Tribunal, Dr B confirmed that she was present on the Harold Ward throughout the period and did not see Dr Basu, other than on 11 July 2016. It was Dr B's evidence that on 28 July 2016 she signed a timesheet for Dr Basu for the week commencing 11 July 2016, but that she (Dr B) crossed off the days 12 – 15 July 2016 and at the time explained to Dr Basu that she could not claim for days that she had not worked.

17. In her witness statement, Dr B said that she remembered 'very specifically' crossing off 12 July 2016, 13 July 2016, 14 July 2016 and 15 July 2016. In her oral evidence, Dr B said that she remembered the event as it was very unusual. She said that, in addition to crossing through the dates of 12 – 15 July 2016, she did not tick any of the boxes on the timesheet under the Client Section. During her evidence Dr B was asked to demonstrate on the timesheet exactly what she did, and following her evidence Dr B emailed to the Tribunal a copy of the timesheet showing the lines she had put through the dates 12 – 15 July 2016.

18. The Tribunal considered Dr B's account of events to be consistent. It considered her to be a reliable, clear and credible witness.

19. Accordingly, the Tribunal found paragraph 1a of the Allegation proved.

Paragraph 1b (25 – 28 July 2016)

20. The Tribunal had regard to the email sent by Dr Basu to the Agency on 25 July 2016 at 15:14 which stated:

'Dear [Mr F],

I was unwell. I am fine now. I returned to work

Thank you

Sripurna Basu'

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21. The Tribunal also had regard to Ms C's GMC witness statement. In her statement, she made reference to a conversation that she had with Dr G, a junior doctor on the Fleming Ward where Dr Basu was booked to be working. Ms C confirmed that Dr G had initially informed her that Dr Basu was not on the Fleming Ward on 25 July 2016 however, Dr G did subsequently inform Ms C that, *'she saw Dr Basu at a point of time when she popped in to the ward and had a quick conversation with her. [Dr G] also said that she had asked Dr Basu whether she was working on the ward. Dr Basu said no and that she was floating around'*.

22. The Tribunal also noted the email that Dr Basu sent to Dr A on 28 July 2016 in which she stated, *'I am a floating medical ST2 working on Fleming, CCU, Harold and Harvey Ward'*.

23. The Tribunal went on to consider Dr E's GMC witness statement. It was Dr E who had signed Dr Basu's timesheet for this period. He stated:

'I could not confirm 25 July 2016 and 26 July 2016 as [Dr H] was on the ward however I had no reason to doubt Dr Basu and trusted what she had put on the timesheet...

I think the time she had claimed may be genuine...'

24. Further, the Tribunal noted that Dr B had signed the timesheet for the week commencing 11 July 2016 on 28 July 2016 when Dr Basu was in the hospital.

25. The Tribunal considered that it had been provided with some evidence that Dr Basu was at the hospital during the period 25 – 28 July 2016. Therefore, the Tribunal determined that the GMC had not discharged its burden of proof that, on the balance of probabilities, Dr Basu did not work at the trust during the period 25 – 28 July 2016. Accordingly, it found paragraph 1b of the Allegation not proved.

Paragraph 1c (30 – 31 July 2016)

26. The Tribunal had regard to the Agency booking form, dated 6 July 2016. It noted that Dr Basu was not contracted to work at the Trust on 30 and 31 July 2016. The Tribunal went on to consider the timesheet submitted to the Agency by Dr Basu. It noted that the dates 30 and 31 July 2016 had been put against the incorrect days of the week.

27. The Tribunal has not been provided with any evidence that Dr Basu worked at the hospital on 30 and 31 July and Dr Basu was not booked to work at the Trust on these dates. Accordingly, it found paragraph 1c of the Allegation proved.

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Paragraph 2

28. It is alleged that within the timesheets, in the Client Section, Dr Basu recorded the placement as good or excellent or caused her placement to be recorded as good or excellent.

29. The Tribunal first considered the evidence of Dr B and the timesheet for the period 11 – 15 July 2016. In her GMC witness statement, Dr B stated:

'Further I didn't rate her 'excellent' in the placement assessment section nor did I tick any of the boxes in that section'.

30. In her oral evidence to this Tribunal, Dr B confirmed that she did not fill in any of the assessment rating boxes on the timesheet. She told the Tribunal that there was no way she would have done this as she only saw Dr Basu on one occasion and had concerns with the fact that Dr Basu had entered dates on the timesheet where she had not worked at the Trust. As set out above, the Tribunal found Dr B to be a credible witness who had a clear recollection of the events.

31. The Tribunal went on to consider the assessment section in Dr Basu's timesheets for the periods 25 – 28 July and 30 – 31 July which Dr E had signed. In relation to the assessment section for the period 25 – 28 July 2016, in his GMC witness statement, Dr E stated:

'...I don't recall ticking any of the boxes in the client section. I note that some ticks are 'excellent', although not far from what I would have given her which is 'good' because she was good clinically'.

32. In relation to the timesheet that includes the dates 30 and 31 July 2016, Dr E states in his witness statement:

'The assessment within the client section [of this timesheet] is not completed by me. I did not tick the sections and, I would have rated Dr Basu as 'satisfactory' or 'good' and not 'excellent'.

33. The Tribunal was satisfied that Dr Basu had recorded her placement as good or excellent or caused this to be recorded as good or excellent on all three timesheets that Dr Basu submitted to the Agency on 15 August 2016.

34. Accordingly, the Tribunal found paragraph 2 of the Allegation proved in its entirety.

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Paragraph 3a

35. The Tribunal has found that Dr Basu submitted a timesheet for the period 12 – 15 July 2016 and that she knew she had not worked at the Trust during this period. The Tribunal reached this conclusion based on the clear evidence of Dr B, as set out above at paragraph 16 - 18. The Tribunal determined that it must follow that Dr Basu knew she had not worked at the Trust during these periods. Accordingly, the Tribunal found paragraph 3a of the Allegation proved in relation to paragraph 1a.

36. As to the period 30 – 31 July 2016, the Tribunal took the view that Dr Basu was muddled over the dates on the timesheet which she completed. It noted that the timesheet had been signed by Dr E. The Tribunal noted that the entry in relation to 30 July 2016 had been placed against Thursday and 31 July 2016 had been placed against Friday. In actual fact, 30 July 2016 was a Saturday and 31 July 2016 was a Sunday. Dr Basu later submitted a timesheet for the correct working week commencing Monday 25 July – Friday 29 July 2016. The Tribunal took the view that it was more likely than not that Dr Basu had got her dates muddled up as opposed to knowing that she had not worked at the Trust on 30 and 31 July 2016. Moreover, in her email sent on 8 September 2016 to the Agency, Dr Basu did not include 30 – 31 July 2016 as dates she had worked at the hospital. Accordingly, the Tribunal found paragraph 3a of the Allegation not proved in relation to paragraph 1c.

Paragraph 3b

37. The Tribunal has found proved that Dr Basu recorded her assessment to be recorded as '*good*' or '*excellent*' or caused her placement to be recorded as '*good*' or '*excellent*' in all three of the timesheets described at paragraph 1 of the Allegation. The Tribunal determined that it must follow that Dr Basu knew that the assessment section of the timesheets had not been completed by the counter signatories. Accordingly, the Tribunal found paragraph 3b of the Allegation proved.

Paragraph 4a

38. The Tribunal noted that paragraph 4a of the Allegation alleges that Dr Basu's actions in submitting the timesheets on the dates that she knew she had not worked at the Trust were dishonest. The Tribunal noted that it has found paragraph 1b and paragraph 3a in relation to 1c of the Allegation not proved. Therefore, it considered dishonesty in relation to paragraphs 1a of the Allegation.

Paragraph 4a in relation to paragraph 1a

39. The Tribunal had regard to Dr B's evidence. In her GMC witness statement she stated:

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'When Dr Basu brought me the timesheet, I look at it and noted that she had inserted the other days of the week; 12 July 2016, 13 July 2016, 14 July 2016 and 16 July 2016 (as well as 11 July, when she had attended the Harold Ward). I pressed Dr Basu on why she had included these dates saying 'why have you added these days, you can't claim for work not done' and she replied with 'oh sorry, I was off sick'. I then put a line through...the other days apart from Monday 11 July 2016'.

40. The Tribunal heard evidence from Ms C that the policy of the hospital was not to pay locums if they did not attend by reason of sickness. Mr D also told the Tribunal that it was normal practice that a locum would not be paid if they were ill and this was common knowledge amongst locums.

41. The Tribunal noted that the timesheet that Dr Basu sent to the Agency on 15 August 2016 did not have any of the dates crossed out. Dr B confirmed that the dates had been struck out in Dr Basu's presence and prior to Dr B returning the timesheet to Dr Basu.

42. As the dates were not struck off on the timesheet that Dr Basu submitted to the Agency, the Tribunal was satisfied that the only explanation was that Dr Basu knowingly and deliberately altered the form to appear that she had been working on all the dates in the week commencing 11 July 2016. This was dishonest and she knew it.

43. Having established Dr Basu's knowledge or belief as to the facts at the time of submitting the timesheet, the Tribunal moved on to decide whether her conduct was dishonest by the objective standards of ordinary decent people. It considered that, applying these standards, Dr Basu's conduct was dishonest.

44. Accordingly, the Tribunal found paragraph 4a insofar as it relates to paragraph 1a of the Allegation proved.

Paragraph 4b in relation to paragraph 1a, 1b & 1c

45. The Tribunal has found proved that Dr Basu recorded her assessment to be recorded as 'good' or 'excellent' or caused her placement to be recorded as 'good' or 'excellent' in all three of the timesheets described at paragraph 1 of the Allegation and that she knew that the assessment section in each of the timesheets had not been completed by the counter signatories. The timesheets clearly indicate that the Client Section should be signed for by an authorised signatory. The Tribunal took the view that Dr Basu must have known that this section should only have been completed by an authorised signatory.

46. The Tribunal has found proved paragraph 2 of the Allegation in its entirety and that neither Dr B nor Dr E completed any of the boxes in the Client Section of

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the timesheets. These parts of the timesheet could only have been recorded by Dr Basu or someone acting on her behalf and in submitting the timesheets to the Agency on 15 August 2016, she knew that these sections had not been completed by an authorised signatory. Her actions were dishonest.

47. Further, applying the objective test, the Tribunal is in no doubt that ordinary decent people would find Dr Basu's actions dishonest.

48. Accordingly, the Tribunal found paragraph 4b of the Allegation proved.

The Tribunal's Overall Determination on the Facts

49. The Tribunal has determined the facts as follows:

1. On 15 August 2016 you submitted timesheets ('timesheets') for work undertaken at The Princess Alexandra Hospital NHS Trust (the 'Trust') to First Medical Staffing Solutions Ltd for the following dates when you did not work at the Trust:

- a. 12 to 15 July 2016; **Found proved**
- b. 25 to 28 July 2016; **Found not proved**
- c. 30 and 31 July 2016. **Found proved**

2. Within the timesheets referred to in paragraph 1 you:

- a. recorded your placement as good and excellent; or **Found proved in relation to 1a, 1b and 1c**
- b. caused your placement assessment to be recorded as good and excellent. **Found proved in relation to 1a, 1b and 1c**

3. You knew that:

- a. you had not worked at the Trust as set out in paragraph 1; **Found proved in relation to 1a. Found not proved in relation to 1c**
- b. the placement assessment referred to in paragraph 2 had not been completed by the counter signatories. **Found proved in relation to 1a, 1b and 1c**

4. Your actions as described at paragraph:

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- a. 1 were dishonest by reason of paragraph 3a; **Found proved in relation to paragraph 1a. Found not proved in relation to paragraph 1b and 1c**
- b. 2 were dishonest by reason of paragraph 3b. **Found proved in relation to paragraph 1a, 1b and 1c**

Determination on Impairment - 13/02/2020

1. The Tribunal now has to decide in accordance with Rule 17(2)(I) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Basu's fitness to practise is impaired by reason of misconduct.

The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.

Submissions

3. On behalf of the GMC, Mr Grey submitted that Dr Basu's fitness to practise is impaired by reason of her misconduct. He reminded the Tribunal of the two-stage process to be adopted. Firstly, whether the facts found proved amount to misconduct and secondly, whether Dr Basu's fitness to practise is currently impaired by reason of her misconduct.

4. Mr Grey submitted that Dr Basu had knowingly submitted a timesheet covering the period 12 – 15 July 2016 and that this was a *'lying document'*. He submitted that the *'lying document'* was submitted to the Agency for Dr Basu's own financial gain. Further, Dr Basu had completed the Client Section on three timesheets, rating herself as *'good'* or *'excellent'* when she knew that this section should have been completed by an authorised signatory. Mr Grey submitted that Dr Basu's conduct put pressure on her colleagues at the Trust and could have had an impact on patient care. Further, whilst not all of the information submitted on the timesheet was *'lying information'*, some of the information Dr Basu submitted was inaccurate. Mr Grey submitted that doctors have a duty to ensure that the information submitted is accurate and Dr Basu's conduct fell far short of what is expected of a doctor.

5. Mr Grey referred to Good Medical Practice (2013 edition) ('GMP') and submitted that Dr Basu's conduct had breached a fundamental tenet of the medical profession. He submitted that Dr Basu's conduct had the potential to place patients at unwarranted risk of harm, was financially motivated and that the Tribunal could readily conclude that her actions amounted to misconduct.

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6. Mr Grey submitted that Dr Basu’s fitness to practise was clearly impaired at the time of her dishonest conduct. He submitted that there is no evidence to suggest that Dr Basu’s dishonest conduct has been remedied. Further, there is no evidence to demonstrate whether Dr Basu accepts that her conduct had breached a fundamental tenet of the medical profession. He submitted that, without any evidence of insight or remediation, there remains a real risk of repetition.

7. Mr Grey further submitted that Dr Basu’s conduct breached paragraphs 36 and 37 of GMP which provide that doctors must work collaboratively with colleagues to maintain or improve patient care, and must be aware of how their behaviour may influence others within an outside the team.

8. Given the serious nature of the findings, Mr Grey submitted that a finding of impairment is necessary to satisfy all three limbs of the overarching objective.

The Relevant Legal Principles

9. 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.

10. 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.

11. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted. Firstly, whether the facts as found proved amounted to misconduct. Secondly, whether the finding of that misconduct could lead to a finding of impairment.

12. The Tribunal took account of *Roylance v GMC [2000] 1 AC 311* in which Lord Clyde stated that misconduct is conduct that relates to the profession of medicine and is a serious breach of the expected professional standard. It was also mindful of *Meadow v GMC [2007] 1 AER 1* in which it is stated that misconduct could not be viewed as anything less than serious professional misconduct.

13. 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*,

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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 Basu's fitness to practise is impaired in the sense that she:

'a. Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

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

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

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

The Tribunal's Determination on Impairment

Misconduct

14. The Tribunal first considered whether Dr Basu's actions amounted to misconduct.

15. The Tribunal has found that Dr Basu knowingly and deliberately submitted an incorrect timesheet to the Agency on 15 August 2016. Dr B gave clear evidence that she crossed out the days on the timesheet that Dr Basu had not worked at the hospital (12 -15 July 2016). The Tribunal noted that Dr Basu went to considerable efforts to falsify the timesheet and submit a doctored version to the Agency for her own financial gain. The Tribunal also had regard to Dr Basu's email to the Agency, dated 8 September 2016, where she repeated untruthfully that she had worked the dates 12 – 15 July 2016. The Tribunal has also found that Dr Basu completed the Client Section of the timesheets when she knew this section should have been completed by an authorised signatory.

16. The Tribunal went on to consider the paragraphs of GMP which set out the standards that a doctor must continue to meet throughout their professional career. It noted that the following paragraphs of GMP had been engaged in this case:

'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.

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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.

77 You must be honest in financial and commercial dealings with patients, employers, insurers and other organisations or individuals.'

17. The Tribunal considered that doctors have an obligation to be honest and act with integrity and that this is a key principle set out in GMP. The Tribunal was in no doubt that Dr Basu's dishonest conduct would be considered deplorable by fellow practitioners and amounted to misconduct which was serious.

18. The Tribunal noted that Dr Basu's conduct in failing to communicate with the Agency and the Hospital about her non-attendance at shifts at the Trust could have potentially put pressure on colleagues and thus could have had an impact on patient safety. Whilst the Tribunal heard evidence that some staff had to be re-allocated, it heard no evidence that Dr Basu's conduct impacted on patient care. The Tribunal considered the evidence of Dr E who confirmed that, in his experience, Dr Basu was a clinically 'good' doctor. The Tribunal considered that essentially the present case was not about working collaboratively with colleagues and patient care, and concluded that Dr Basu's conduct in this context did not breach or significantly breach paragraphs 36 and 37 of GMP and were not sufficiently serious as to amount to misconduct.

19. The Tribunal concluded, however, by reasons of matters in paragraphs 15 - 17 that Dr Basu's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

Impairment

20. The Tribunal, having determined that the facts found proved in relation to dishonesty amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Basu's fitness to practise is currently impaired.

21. The Tribunal first considered its findings in light of the factors indicating that a doctor's fitness to practise might be impaired as set out by Dame Janet Smith in the *Grant* case, as set out above.

22. The Tribunal has not received any evidence to suggest that Dr Basu has or is liable in the future to pose a clinical risk to patients. Nevertheless, the Tribunal was

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satisfied that the remaining three factors set out by Dame Janet Smith are engaged in this case. It was satisfied that Dr Basu's dishonesty brought the medical profession into disrepute, that Dr Basu had breached one of the fundamental tenets of the medical profession, and had acted dishonestly.

23. In respect of the level of insight that Dr Basu has shown into her misconduct, its seriousness, and its consequences, the Tribunal was of the view that Dr Basu has thus far shown no insight. It has not been provided with any evidence that demonstrates Dr Basu's understanding of how her actions could have impacted on public confidence in the profession. Further, the Tribunal has not been provided with any testimonials on behalf of Dr Basu.

24. The Tribunal acknowledged that dishonesty is capable of being remedied although remediation may be difficult to demonstrate. However, the Tribunal has not been presented with any evidence that Dr Basu has remedied her dishonest misconduct or attempted to do so. Given the absence of this evidence, the Tribunal was satisfied that there remains a real risk that her misconduct might be repeated.

25. Given the nature of its findings and their seriousness, the Tribunal was satisfied that, the need to promote and maintain public confidence in the medical profession and the need to promote and maintain proper professional standards and conduct for members of the profession would be undermined if a finding of impairment were not made in this case. The Tribunal therefore determined that a finding of impaired fitness to practise was necessary in order to satisfy the second and third limbs of its statutory overarching objective as set out above.

26. Accordingly, the Tribunal determined that Dr Basu's fitness to practise is impaired by reason of her misconduct.

Determination on Sanction - 14/02/2020

1. This determination contains references to XXX and will be read in private. As this case concerns Dr Basu's misconduct, a redacted version will be published at the close of the hearing.

2. Having determined that Dr Basu's 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.

The Evidence

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

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Submissions

4. On behalf of the GMC, Mr Grey submitted that the appropriate sanction in this case is erasure. He reminded the Tribunal that in exercising its judgment on the appropriate sanction it must start with the least restrictive.

5. Mr Grey submitted that, given the serious nature of the Tribunal's findings, taking no action in this case would not be appropriate. He submitted that Dr Basu has not participated in these proceedings and the GMC has been unable to contact her. He stated that imposing conditions on Dr Basu's registration would not be appropriate, workable, or measurable.

6. Mr Grey referred the Tribunal to the relevant paragraphs of the Sanctions Guidance (November 2019) ('the SG'). Whilst, at a first glance the sanction of suspension may appear to be appropriate in this case, Mr Grey submitted that the serious nature of Dr Basu's dishonest conduct means that this was not the proportionate sanction. He submitted that the conduct found proved involved dishonest conduct against the NHS and the Trust. Furthermore, he submitted that Dr Basu had put her own interests above those of patients.

7. Mr Grey referred to paragraph 109 of the SG, which states:

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, ...
...

h. Dishonest, especially where persistent and/or covered up

i. Putting their own interest before those of their patients (see Good medical practice, ...'

8. Mr Grey submitted that Dr Basu's misconduct was fundamentally incompatible with her continued registration on the Medical Register and invited the Tribunal to impose an order of erasure. He submitted that it is necessary for Dr Basu to be erased from the medical register in order to protect public confidence in the medical profession and to uphold and maintain proper professional standards.

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The Tribunal's approach

9. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal alone, exercising its own judgement.

10. Throughout its deliberations the Tribunal bore in mind that the purpose of sanctions is not to be punitive, but to protect the public interest. The public interest includes protecting the health, safety and wellbeing of the public, maintaining public confidence in the profession, and declaring and upholding proper standards of conduct and behaviour. In making its decision, the Tribunal also had regard to the principle of proportionality, weighing the interests of the public against those of the doctor.

11. It also considered and balanced the mitigating and aggravating factors in this case.

The Tribunal's Determination on Sanction

Aggravating and mitigating factors

12. The Tribunal identified the following aggravating factors:

- Dr Basu's actions are a serious departure from GMP;
- Dr Basu's actions in doctoring the dates on the timesheet that Dr B had put a line through was a serious abuse of the relationship between a doctor and their supervisor;
- In submitting the doctored timesheet and dishonestly completing the Client Section of all three timesheets, Dr Basu abused her position of trust;
- There is no evidence, at all, of any insight or remediation, or any response to the Allegation against her (in the absence of such, the Tribunal can infer that she has little or no insight into her misconduct);
- Dr Basu's dishonest misconduct in falsifying the timesheet was for her own financial gain.

13. The Tribunal identified the following mitigating factors:

- Dr Basu's dishonest conduct related to a limited period of time;
- The Tribunal reminded itself of its earlier finding that Dr Basu appeared '*muddled*' when completing the timesheets for the week commencing 25 July 2016. There is some evidence that Dr Basu was in a state of confusion at the time of these events;
- Dishonest conduct at the lower end of the spectrum. The Tribunal considered Dr Basu's dishonest misconduct in attempting to claim for days when she had not worked as low level fraud with no financial gain;
- There is evidence that she is clinically a good doctor;

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- The incident happened almost 4 years ago and there is no evidence of repetition;
- Whilst Dr Basu's absence and lack of communication inevitably led to adjustments having to be made at the hospital, there was no direct impact on patient care.

XXX

15. The Tribunal has not been provided with any evidence of XXX. Given that XXX, along with Dr Basu's lack of engagement in these regulatory proceedings, the Tribunal considered that it would not be appropriate to adjourn the hearing to XXX before determining the appropriate sanction.

16. Moreover, the Tribunal is satisfied that Dr Basu is fully aware of this hearing and the possible sanctions that could be imposed upon her. The Tribunal note that Dr Basu received the GMC's Notice of hearing dated 11 November 2019, which drew her attention to the MPTS proceedings, the SG, and the possible sanction that the Tribunal could impose.

No Action

17. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Basu's case, the Tribunal first considered whether to conclude the case by taking no action.

18. The Tribunal considered that there are no exceptional circumstances in which it might be justified in taking no action against Dr Basu's registration. The Tribunal determined that, given its serious findings of dishonesty and its concerns as to Dr Basu's honesty and probity, it would not be sufficient, proportionate or in the public interest, to conclude this case by taking no action.

Conditions

19. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Basu's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

20. The Tribunal is of the opinion that a period of conditional registration would not adequately reflect the serious nature of Dr Basu's dishonest misconduct, nor could conditions be devised that would protect the public interest and maintain public confidence in the medical profession. Additionally, it has no evidence of Dr Basu's current state of employment. Further, Dr Basu has not engaged with this regulatory process therefore the Tribunal determined that it would not be possible to formulate a set of workable conditions.

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Suspension

21. The Tribunal then went on to consider whether a period of suspension would be an appropriate and proportionate sanction to impose on Dr Basu's registration. The Tribunal took into account paragraphs 92 and 97(a) and (f) of the SG, which state:

'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).*

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.*

...

f. *no evidence of repetition of similar behaviour since incident.'*

22. In relation to Dr Basu's dishonesty, the Tribunal also had regard to paragraphs 124 and 125(a) of the SG, which state:

'124 *Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor's clinical responsibility (eg providing false statements or fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities should be able to trust the integrity of doctors, and where a doctor undermines that trust there is a risk to public confidence in the profession. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.*

125 *Examples of dishonesty in professional practice could include:*

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a. *defrauding an employer...'*

23. The Tribunal also considered the case of *GMC v Walton [2019] EWHC 3537 (Admin)* where Mr Justice Henshaw referred to the case of *Khan v GMC [2015] EWHC 301 (Admin)*. In *Khan* Mostyn J stated:

'The decisions from this court have demonstrated that a very strict line has been taken in relation to findings of dishonesty. This court and its predecessor, the Privy Council, has repeatedly recognised that for all professional men and women, a finding of dishonesty lies at the top end of the spectrum of gravity of misconduct...'

In cases of proven dishonesty, the balance can be expected to fall down on the side of maintaining public confidence in the profession by a severe sanction against the doctor concerned. See Nicholas-Pillai v GMC [2009] EWCH 1048 (Admin) per Mitting J at [27] where he stated:

"That sanction will often and perfectly properly be at the sanction of erasure, even in the case of a one-off instance of dishonesty"

Where proven dishonesty is combined with a lack of insight (or is covered up) the authorities show that nothing short of erasure is likely to be appropriate.'

24. The Tribunal has given much consideration to the GMC's overarching statutory duty in Section 1 of the Medical Act 1983, and that the present case is one of proven dishonesty coupled with a lack of insight. The Tribunal reminded itself of its earlier determination on impairment. It has found that Dr Basu went to considerable efforts to falsify the timesheet in respect of 12 – 15 July 2016 and submit a doctored version to the Agency for her own financial gain.

25. While the Tribunal has found that Dr Basu dishonestly recorded her own assessments in the Client Section of the timesheets and these were not signed for by an authorised signatory, the Tribunal did not consider that her conduct in this respect would necessarily lead to a more restrictive sanction than suspension. The more serious conduct was in relation to the alteration of the entries relating to the dates worked on the timesheet signed by Dr B.

26. However, after fully weighing the aggravating and mitigating factors in this particular case, the Tribunal was of the view that Dr Basu's dishonesty was related to a limited time period and falls at the lower end of the spectrum. The Tribunal took the view that, whilst Dr Basu's misconduct was serious, it falls just short of being fundamentally incompatible with continued registration. The Tribunal was conscious that at the time of the events in July and August 2016 Dr Basu was undoubtedly 'muddled' and that her email sent to the Agency on 8 September 2016 also shows a confused picture. XXX Whilst Dr Basu's misconduct cannot be excused, it is

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nonetheless clear that XXX in this case. Whilst dishonesty can be difficult to remediate, it is not impossible to do so. The Tribunal noted that there was no evidence before it to suggest that Dr Basu had repeated her dishonest conduct.

27. Given that the dishonesty was at the lower end of the spectrum, the Tribunal is of the opinion that erasure in this case is a step too far and would be disproportionate. Had the Tribunal determined that erasure was appropriate, it concluded that in the event that Dr Basu fully remediates her behaviour, it would deprive the public of an otherwise clinically competent doctor.

28. The Tribunal was satisfied that a period of suspension would sufficiently mark the seriousness of Dr Basu's dishonesty and uphold the overarching objective to maintain public confidence in the profession and uphold proper professional standards.

29. The Tribunal went on to consider the length of the period of suspension for Dr Basu. The Tribunal determined to suspend Dr Basu's registration from the medical register for a period of 12 months. The Tribunal concluded that a suspension of this length would mark the seriousness of its findings and provide Dr Basu with an opportunity to develop insight into her dishonesty and remediate appropriately.

30. The Tribunal determined to direct a review of Dr Basu's case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, it will be Dr Basu's responsibility to demonstrate how she has addressed this Tribunal's concerns. It therefore may assist the reviewing Tribunal if Dr Basu provides:

- A personal statement setting out her reflections on her misconduct;
- Evidence of any remediation and learning;
- Evidence that Dr Basu has maintained her clinical skills and that her CPD is up to date;
- Testimonials from colleagues;
- XXX
- XXX
- Any further evidence which may assist the Tribunal.

Determination on Immediate Order - 14/02/2020

1. This determination contains references to XXX and will be read in private. As this case concerns Dr Basu's misconduct, a redacted version will be published at the close of the hearing.

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2. Having determined to suspend Dr Basu’s registration for a period of 12 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether her registration should be subject to an immediate order.

Submissions

3. On behalf of the GMC, Mr Grey, Counsel, submitted that, in the light of the findings made by the Tribunal, an immediate order of suspension was necessary in the public interest.

The Tribunal’s Determination

4. In deliberating on the matter, the Tribunal took into account the paragraphs of the Sanctions Guidance (November 2019) which deal with the matter of immediate orders, in particular paragraph 172 and 173 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.

5. The Tribunal had regard to the principle of proportionality and balanced Dr Basu’s interests with the public interest. It has already noted the seriousness with which it regards her dishonesty. Although the Tribunal noted that there are no patient safety concerns present in this case, it was of the view that, given the lack of insight into her misconduct it has identified, it would be inappropriate for Dr Basu to be permitted to resume unrestricted practice before the substantive suspension comes into effect. The Tribunal was therefore satisfied that an immediate order was necessary in the public interest. XXX

6. This means that Dr Basu’s registration will be suspended from when notification is deemed to have been served upon her. The substantive direction, as already announced, will take effect 28 days from when written notice has been served upon Dr

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Basu, 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.

7. There is no interim order to revoke.

Confirmed

Date 14 February 2020

Mr Kenneth Hamer, Chair

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ANNEX A – 10/02/2020

Application to proceed in Dr Basu's absence

Service

1. Dr Basu is neither present nor represented at these proceedings. The Tribunal has considered whether notice of this hearing has been properly served upon Dr Basu in accordance with Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (the Rules) and Schedule 4, Paragraph 8 of the Medical Act 1983 (as amended).
2. Mr Grey provided the Tribunal with a copy of a Service bundle which included a letter from the GMC to Dr Basu, dated 11 November 2019, confirming the hearing date and providing notice of the Allegation. Mr Grey confirmed that this was successfully delivered to Dr Basu's registered address and signed for by 'Basu' on 13 November 2019. The letter was also emailed to Dr Basu.
3. Mr Grey also drew the Tribunal's attention to a copy of the Notice of Hearing dated 15 November 2019, sent by the Medical Practitioners Tribunal Service (MPTS), in accordance with the Rules. Mr Grey confirmed that this was successfully delivered to Dr Basu's registered address and signed for by 'Basu' on 16 November 2019. The Notice was also successfully emailed to Dr Basu.
4. Having considered the evidence before it, the Tribunal was satisfied that notice of this hearing has been made in accordance with Rules 15 and 40 of the Rules, and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.

Proceeding in absence

5. Having been satisfied that notice was properly served upon Dr Basu, the Tribunal then considered whether to proceed with this hearing in her absence, in accordance with Rule 31 of the Rules.
6. Mr Grey invited the Tribunal to proceed with the hearing in Dr Basu's absence. He submitted that Dr Basu is aware of the hearing today and it is therefore fair and in the interests of justice to proceed in her absence. Mr Grey submitted that Dr Basu has waived her right to attend the hearing and has voluntarily absented herself.
7. He submitted that the GMC has made more than reasonable efforts to contact Dr Basu. He provided the Tribunal with email correspondence and telephone notes which demonstrate the GMC's efforts to try and contact Dr Basu during the course of the investigation. He also confirmed that XXX had been contacted in an effort to establish contact with her. Mr Grey went on to explain that, in light of today's bad

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weather and potential travel disruption, efforts have been made to contact Dr Basu by telephone this morning, however the GMC have been unable to get through to her. Mr Grey submitted that there is no indication that if the hearing was adjourned Dr Basu would attend a future hearing. He submitted that, given the concerns in this case, it is in the public interest to proceed with the hearing today.

8. The Tribunal took into account the submissions made by Mr Grey on behalf of the GMC but exercised its own judgement. In accordance with the principles in *R v Jones (2001) EWCA Crim 168* and *Adeogba (2016) EWCA Civ 162*, it bore in mind that the discretion to proceed in the doctor's absence should be exercised with the utmost care and caution. The Tribunal has balanced Dr Basu's interests with the public interest in deciding whether to proceed in her absence.

9. The Tribunal was satisfied that all reasonable efforts have been made to serve Dr Basu with notice of this hearing in accordance with the rules, and that Dr Basu is aware of the hearing today. The Tribunal considers that Dr Basu has deliberately and voluntarily absented herself and waived her right to attend well knowing that if she chooses not to attend the GMC's case against her may proceed in her absence.

10. The Tribunal had regard to the following matters in particular:

- The GMC's letter dated 11 November 2019 stated: 'If you do not attend the hearing, the Tribunal may proceed in your absence without your involvement. You should be aware that the Tribunal could impose a sanction, without seeking further representations, which could severely restrict your ability to practise. You will not have the opportunity to advance a defence or demonstrate insight and remediation, which could influence the Tribunal's decision.'
- The MPTS's letter dated 15 November 2019 stated: 'If you do not attend, and are not represented, the Tribunal may hear and make a decision about your case in your absence, under rule 31 of the GMC (Fitness to Practise) Rules.' A copy of the Rules was attached to the letter dated 11 November 2019 and available by link to the letter of 15 November 2019.
- The MPTS's letter of 15 November 2019 and the GMC's letter dated 3 February 2019 both drew attention to where Dr Basu could obtain help and support.
- Following the Medical Protection Society and her legal representatives (BLM) being no longer instructed in late 2018/ early 2019, the GMC wrote to Dr Basu on 12 February 2019 stating that they needed to correspond with her directly in the absence of any other nominated person. They asked her to contact the GMC in order to discuss progressing the matter. Dr Basu did not reply, and the GMC has received no communication or contact from her.
- On 15 March 2019, the GMC tried unsuccessfully to contact Dr Basu on her land line and mobile telephone numbers previously supplied to the GMC.

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- On 11 April 2019, the GMC sent a letter to Dr Basu via XXX inviting her to contact the GMC. On 13 June 2019, XXX telephoned the GMC stating that he had forwarded the letter to her on 24 April 2019.
- Dr Basu was sent an invitation to participate in the Pre-Hearing Meeting held on 13 December 2019 and was notified of the date and time change but as she had not indicated that she was unable to attend, the meeting proceeded in her absence.
- On 10 February 2020, the first morning of this hearing, the GMC at the request of the Tribunal again tried to contact Dr Basu leaving messages on her land line and mobile and sent her an email asking whether she would like to participate in the hearing.

11. The Tribunal considers that no purpose would be served by an adjournment as there appears to be no prospect of Dr Basu attending a future hearing. The Tribunal has no information that Dr Basu is unable to participate in these proceedings or is unable to attend XXX. The proceedings go back to events in 2016 and the Tribunal has therefore determined that it is in the public interest and in Dr Basu's own interests to proceed with the case in her absence.