PUBLIC RECORD

Dates: 09/05/2022 - 17/05/2022

Medical Practitioner's name: Dr Sundeep KAUL

GMC reference number: 4195029

Primary medical qualification: MB ChB 1995 University of Birmingham

Type of case
New - Misconduct

Outcome on facts
Facts relevant to impairment found proved

Outcome on impairment
Not Impaired

Summary of outcome
Warning

Tribunal:

Legally Qualified Chair	Mr Simon Bond
Lay Tribunal Member:	Mrs Catherine Moxon
Medical Tribunal Member:	Dr Stephen Duxbury

Tribunal Clerk:	Mr Francis Ekengwu

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Ms Zoe Johnson, QC, instructed by BLM
GMC Representative:	Mr Kevin Slack, 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 and Impairment - 16/05/2022

Background

1. Dr Kaul qualified from the University of Birmingham in 1995 with an undergraduate MB ChB degree in Medicine. He had previously obtained an intercalated BSc in Pathology, which was funded via a scholarship awarded by the Arthritis and Rheumatism Council. As an undergraduate, Dr Kaul won a number of prizes for his work, including the Sampson Gangee Memorial Prize in Surgery, the Joseph Sankey Prize in Clinical Surgery, the Cyril Raison Prize for Surgical Diseases in Children and the Douglas Marsh Prize in ENT.

2. In 2009 Dr Kaul was awarded a Darzi Fellowship, which focused on leadership and the implementation of key patient safety performance indicators in the clinical arena.

3. Dr Kaul is qualified with triple accreditation and, in April 2009, completed his training in general internal medicine, respiratory medicine and intensive care. He was subsequently offered a role as a Consultant at Harefield hospital ('Harefield'), where he still works.

4. In 2011, Dr Kaul was awarded a PhD which focussed on ventilator technology, respiratory mechanics, respiratory failure and improving the tolerability and success of non-invasive ventilation in patients.

5. The Allegation that has led to Dr Kaul's hearing can be summarised as follows. It is alleged that, between 13 February 2014 and 20 April 2014, Dr Kaul inappropriately transcribed, signed and issued 167 private prescriptions (the 'Prescriptions') for third party patients (the 'Patients'), based outside the UK, whilst he was working in a private role for Medical Express Clinic (the 'Clinic'). It is alleged that Dr Kaul inappropriately completed the Prescriptions at the request of the Clinic and/ or Kool Pharma Limited (the 'Pharmacy'); that he failed to adequately investigate or monitor the system of prescription requests used by the Pharmacy or Clinic; that he completed the Prescriptions based on insufficient information to allow for safe prescribing; that he failed to identify a number of 'red flags' relating to the Prescriptions; that he failed to contact the Patients or other relevant parties in relation to the Prescriptions; that he failed to adequately assess or examine the Patients; that he failed to review the Patients' medical records or arrange for specialist assessment or examination of the Patients in the UK; that he failed to query the quantity or type of medication that he prescribed; that he failed to ensure that the Prescriptions were safe, clinically appropriate or were being administered appropriately; that he failed to arrange or conduct any follow up,

safety netting, supervision, near patient testing, monitoring or review of the Patients; that he failed to provide details of the medications prescribed by him to the Patients' GPs, overseas consultants or specialists; that he failed to keep adequate records; that the Prescriptions were for medications in inappropriate quantities and without adequate knowledge, by him, of the relevant surrounding circumstances, such as value, monitoring arrangements, who was collecting them or where they were being sent; that by completing the Prescriptions he prescribed medicines in an irresponsible and unsafe manner; and that Dr Kaul's issuing of the Prescriptions could have led to Patient harm or death. It is further alleged that one or more of the Patients did not exist.

6. The initial concerns were raised with the GMC in 2014 by Mr C, a Pharmacy Manager at King Edward VII Hospital (the 'Hospital'). Mr C's report to the GMC followed inspections and investigations by the Care Quality Commission ('CQC') and General Pharmaceutical Council ('GPhC'). Those enquiries by the CQC and GPhC highlighted concerns that highly specialised medications were being dispensed by the Hospital, in response to prescriptions issued by the Clinic. Mr C's own investigations established that three doctors at the Clinic, including Dr Kaul, had issued prescriptions for high risk and high value medications, which had been collected from the Hospital by Kool Pharma Ltd.

7. Mr C reported his concerns to the Medicines and Healthcare Products Regulatory Agency (the 'MHRA'). Those concerns were investigated by Mr D, a Financial Investigator employed by the MHRA. Mr D's investigation commenced in February 2015 and established that the Clinic had issued 621 prescriptions to the Hospital, for patients residing outside the UK, of which 167 prescriptions had been signed by Dr Kaul. During the course of his investigation Mr D established that a number of the patients to whom the prescriptions related did not exist; in fact, by 2019, Mr D had received no evidence of the existence of any of the patients to whom the Clinic's prescriptions related.

8. In his witness statement, which was before the Tribunal, Mr D set out his understanding of how the Pharmacy was obtaining medication from the Hospital. He stated that the Pharmacy would present the Clinic with a prescription request form, outlining the details of a foreign patient and the medication they required. The Pharmacy would also supply the Clinic with a blank prescription sheet and a memo purporting to be from a foreign consultant doctor, confirming that the patient required the medication. Mr D established that a doctor at the Clinic would then transcribe the requested prescription onto the prescription sheet and sign it. The Pharmacy would then submit the prescription to the Hospital and collect and pay for the medication. Mr D concluded that the Pharmacy was fraudulently sourcing medicines from a number of hospital pharmacies and selling them on for an increased price, probably overseas.

9. Mr D interviewed Dr Kaul, under caution, on 5 April 2019. At that interview Dr Kaul supplied a prepared written statement and the Tribunal was provided with a copy of that statement, together with a transcript of the interview. Mr D was of the view that Dr Kaul was the most cooperative of the Clinic's doctors that he interviewed during his investigation. He stated that Dr Kaul went to, '*great lengths*' to provide relevant documentation, even though

it had not been requested. Mr D felt that fact was to Dr Kaul's credit. Mr D's investigation completed on 2 August 2019 with no further action being taken against Dr Kaul. Mr D concluded that Dr Kaul had not committed any criminal offence and that he did not possess any, '*mens rea, the dishonest mental element required in the commission of a criminal offence such as fraud*'. In his witness statement, Mr D opined that Dr Kaul had been duped by the Pharmacy into believing that he was providing humanitarian support, namely providing individuals in the third world with medicines that they could not otherwise access. Mr D further concluded that there was no evidence that Dr Kaul had derived any financial benefit from the Clinic, over and above that which he could expect to receive in the ordinary course of his practice.

The Outcome of Applications Made during the Facts Stage

10. On behalf of Dr Kaul, Ms Johnson QC made an application, pursuant to Rule 16 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that Dr Kaul and his legal representatives be permitted to attend the hearing remotely following submissions on impairment. The Tribunal granted that application and determined that the hearing would resume on a virtual basis, via Microsoft Teams, following its in camera discussions on impairment. The Tribunal's full decision on the application is included at Annex A.

The Allegation and the Doctor's Response

11. The Allegation made against Dr Kaul is as follows:

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

1. Between 13 February 2014 and 20 April 2014 you transcribed, signed and issued 167 private prescriptions for third party patients outside of the UK ('the Prescriptions') and:

    a. one or more of the patients named on the Prescriptions did not exist; **Admitted and found proved**

    b. you did so at the request of Kool Pharma Ltd ('the Pharmacy') and/or Medical Express Clinic ('MEC'):

        i. which was inappropriate; **Admitted and found proved**

        ii. without adequately investigating and/or monitoring the system of prescription requests used by the Pharmacy and/or MEC; **Admitted and found proved**

        iii. based on information provided by the Pharmacy which contained insufficient information to allow for safe prescribing because it did not contain patient:

1. gender; **Admitted and found proved**
2. age; **Admitted and found proved**
3. contact details; **Admitted and found proved**
4. GP or specialist medical records; **Admitted and found proved**
5. community GP contact details; **Admitted and found proved**
6. proof of identity; **Admitted and found proved**
7. medical history, including any:
    a. presenting complaint; **Admitted and found proved**
    b. capacity and/or competence; **Admitted and found proved**
    c. mental health history; **Admitted and found proved**
    d. work history; **Admitted and found proved**
    e. addiction history; **Admitted and found proved**
    f. drug monitoring; **Admitted and found proved**
    g. current prescribed medication and/or over the counter medication; **Admitted and found proved**
    h. allergies; **Admitted and found proved**
    i. recent blood test results; **Admitted and found proved**
    j. follow up and/or monitoring arrangements in place; **Admitted and found proved**

c. you failed to:

i. identify red flags, including:

1. overseas consultants requesting medication to be transcribed for patients in a different country to themselves; **Admitted and found proved**
2. patients residing in more economically developed countries where they could be reasonably expected to obtain the medications; **Admitted and found proved**

3. the medications requested being:

a. of high value; **Admitted and found proved**

b. specialist in nature which should only have been used:

i. in an inpatient hospital setting; **Admitted and found proved**

ii. under the observation of secondary care in a community setting; **Admitted and found proved**

c. potentially fatal if the patient was not properly monitored; **Admitted and found proved**

ii. contact:

1. patients; **Admitted and found proved**

2. patients' community GP(s); **Admitted and found proved**

3. patients' overseas consultant and/or specialist(s); **Admitted and found proved**

4. a relevant specialist in the UK; **Admitted and found proved**

iii. adequately assess the patients, including that you did not:

1. ascertain:

a. their:

i. gender; **Admitted and found proved**

ii. age; **Admitted and found proved**

iii. presenting complaint; **Admitted and found proved**

iv. capacity and/or competence; **Admitted and found proved**

b. any:

i. mental health history; **Admitted and found proved**

ii. addiction history; **Admitted and found proved**

iii. work history; **Admitted and found proved**

iv. recent blood test results; **Admitted and found proved**

v. current prescribed medication and/or over the counter medication; **Admitted and found proved**

vi. allergies; **Admitted and found proved**

vii. follow up and/or monitoring arrangements already in place; **Admitted and found proved**

2. review the patients' medical records; **Admitted and found proved**

iv. examine the patients, including that you did not:

1. measure:

a. blood pressure; **Admitted and found proved**

b. weight; **Admitted and found proved**

2. conduct:

a. blood tests; **Admitted and found proved**

b. electrocardiogram screening; **Admitted and found proved**

v. arrange for specialist assessment and/or examination of the patients in the UK; **Admitted and found proved**

vi. query the:

1. quantity of medication requested; **Admitted and found proved**

2. type of medication requested; **Admitted and found proved**

vii. ensure that the Prescriptions were:

1. safe; **Admitted and found proved**

2. clinically appropriate; **Admitted and found proved**

3. being administered:

a. in an inpatient hospital setting; **Admitted and found proved**

b. under the observation of secondary care in a community setting; **Admitted and found proved**

viii. arrange and/or conduct with the patients any appropriate:

1. follow up; **Admitted and found proved**

2. safety netting; **Admitted and found proved**

3. supervision; **Admitted and found proved**

4. near patient testing; **Admitted and found proved**

5. monitoring and/or review, including:

a. blood tests; **Admitted and found proved**

b. blood pressure; **Admitted and found proved**

c. electrocardiogram screening; **Admitted and found proved**

d. weight; **Admitted and found proved**

e. clinical response; **Admitted and found proved**

f. dosage; **Admitted and found proved**

g. side effects; **Admitted and found proved**

ix. provide details of the medication prescribed to the patients':

1. community GP(s); **Admitted and found proved**

2. overseas consultant(s) and/or specialist(s); **Admitted and found proved**

x. keep adequate patient records; **Admitted and found proved**

d. you prescribed medications:

i. in inappropriately large quantities; **Admitted and found proved**

ii. without adequate knowledge of:

1. what they were for; **Admitted and found proved**

2. their indications; **Admitted and found proved**

3. the monitoring arrangements they required; **Admitted and found proved**

4. their value; **Admitted and found proved**

5. who was collecting them; **Admitted and found proved**

6. where they were being sent; **Admitted and found proved**

iii. in an irresponsible and unsafe manner; **Admitted and found proved**

e. your issuing of the Prescriptions could have led to patient:

i. harm; **Admitted and found proved**

ii. death. **Admitted and found proved**

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

The Admitted Facts

12. At the outset of these proceedings, through Ms Johnson QC, Dr Kaul made admissions to all paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

13. Ms Johnson QC also submitted that Dr Kaul admitted misconduct.

Witness Evidence

14. Dr Kaul provided his own written witness statements dated 04 and 28 April 2022 and also gave oral evidence at the hearing from 09 – 10 May 2022. In addition, the Tribunal received oral evidence, on Dr Kaul's behalf, from the following character witnesses:

- Mr E, Medical Science Liaison professional, by video link;
- Dr F, Specialist in Mechanical Circulatory Support, Harefield, by video link; and
- Dr G, Divisional Director, Harefield, by video link.

Expert Witness Evidence

15. The Tribunal also received and relied upon the GMC's Expert Report of Dr H, dated 27 March 2020.

Documentary Evidence

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

- Witness statement of Mr C, dated 28 April 2015;
- Witness statement of Mr D, dated 10 December 2019;
- CQC inspection report for King Edward VII's Hospital, dated 15 July 2014;
- Letter from Professor I to Pharmacy Department, King Edward VII's Hospital, dated 01 June 2013;
- Handwritten letter from Pharmacy Department, King Edward VII's Hospital to MEC, dated 31 July 2013;
- Email from Mr C to Kool Pharma and MEC, dated 06 May 2014;
- Email from Kool Pharma to Mr C, dated 14 May 2014;
- Emails from Mr C to MHRA, dated 14 and 16 May 2014;
- Email from MHRA to Mr C, dated 15 May 2014;
- Email from Mr C to Kool Pharma, dated 15 May 2014;
- Mr D's MHRA Witness Statement, dated 08 August 2019;
- 167 prescriptions signed by Dr Kaul, with various dates between 13 February 2014 and 20 April 2014;
- Prescriptions sent to Australia, with various dates;
- Prescriptions sent to Poland, with various dates;
- Polish Authorities response to MHRA, with various dates;
- Seven prescriptions discussed in Dr Kaul's MHRA interview, with various dates;
- Dr Kaul's Curriculum Vitae, undated;
- List of talks given by Dr Kaul since 2013, dated 2021;
- Dr Kaul's statement provided to the Medicines and Healthcare products Regulatory Agency ('MHRA') investigation, dated 05 April 2019;
- The transcript of Dr Kaul's interview with MHRA, dated 05 April 2019;
- Human Factors Masterclass slides and information, dated 2012;
- Dr Kaul's 2020 Reflections (as disclosed to the GMC's Case Examiners), dated September 2020;
- Dr Kaul's 2022 Appraisal (full and summary), both dated 22 March 2022;
- Dr Kaul's Appraiser's summaries for years 2017, 2018 and 2019, with various dates;
- Learning Log for Reflections on GMC and local prescribing guidelines, undated;
- Bundle of testimonial letters, with various dates; and
- Recent patient feedback received by the Trust, with various dates.

Submissions

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

17. Mr Slack submitted, on behalf of the GMC, that the facts admitted by Dr Kaul amounted to serious misconduct, such that his fitness to practise is currently impaired. He said that Dr Kaul's misconduct was directly linked to his practice of medicine, in that it involved the completion of 167 prescriptions.

18. Mr Slack reminded the Tribunal that, although Dr Kaul had admitted the Allegation, and conceded that it amounted to misconduct, it was a matter for the Tribunal's own independent assessment as to whether his fitness to practise was thereby impaired.

19. Mr Slack submitted that the serious nature of the misconduct means that Dr Kaul is currently impaired. He said that the GMC contended that Dr Kaul's actions comprised a sustained course of conduct over a period of two months during which Dr Kaul had attended at the Clinic on a weekly basis. Mr Slack stated that, on any view, Dr Kaul's misconduct was not an isolated aberration, albeit that it occurred during a limited period of time.

20. Mr Slack stated that it was astonishing that Dr Kaul signed the Prescriptions on the basis of *'scant'* patient information. He submitted that Dr Kaul did not act on his suspicions, did not chase written assurances that he had sought from the Clinic and could have refused to sign the Prescriptions.

21. Mr Slack submitted that Dr Kaul had no way of knowing if the medications he prescribed were safe, and he prescribed without conducting any Patient examination, checking their medical history, warning of side effects or ensuring that adequate monitoring or follow-up was in place. Mr Slack stated that Dr Kaul's serious misconduct was remarkable given his evidence that patient safety was at the forefront of his mind as a practitioner and that, for example, Dr Kaul had been involved in presenting to his peers on safe prescribing. Mr Slack submitted that Dr Kaul had been, '*flying blind*' when completing the Prescriptions, in that he had very limited information and, in some cases, not even confirmation of the Patient's medical condition.

22. Mr Slack referred the Tribunal to guidance on 'Good Practice in Prescribing and Managing Medicines and Devices', 2013 ('GPP'), and he submitted that there had been a wholesale disregard of Dr Kaul's obligations under GPP. Mr Slack also referred the Tribunal to paragraph 16 of Good Medical Practice ('GMP'), which, he said, plainly set out a practitioner's obligations when prescribing.

23. Mr Slack submitted that Dr Kaul never adjusted the dosage of the medications he was prescribing nor did he request further information for any of the Prescriptions.

24. Mr Slack confirmed that the GMC's position was that the Prescriptions should not have been signed by Dr Kaul, who had simply been transcribing what was in front of him. Mr Slack stated that even the mechanical approach by Dr Kaul had been done inadequately, and he referred the Tribunal to those prescription request forms where the Patient's medical

condition had not been set out. Mr Slack said that, on any view, Dr Kaul took a cavalier and reckless approach to the signing of the Prescriptions.

25. Mr Slack submitted that, although the signing of the Prescriptions was described as a humanitarian venture, many involved Patients in developed countries where the medications could have been accessed. Mr Slack said that Dr Kaul had failed to heed a number of red flags, and he reminded the Tribunal that paragraph 1e of the Allegation highlighted that the issuing of the Prescriptions could have led to patient harm or death.

26. Mr Slack reminded the Tribunal that it had received very powerful evidence about Dr Kaul's skills and attributes that demonstrated that he was of good standing. Mr Slack acknowledged that Dr Kaul did not present a risk to public safety and that the Tribunal might be easily persuaded that the risk of repetition was low. In addition, he stated that a number of testimonials pointed to Dr Kaul's skills and achievements, which needed to be weighed in the balance. Mr Slack submitted that, whilst Dr Kaul had provided considerable evidence of reflection, he contended that there is a disconnect between the evidence of insight provided by Dr Kaul and the wholesale disregard of safety measures in relation to the Prescriptions.

27. Mr Slack submitted that, even if the Tribunal was satisfied that Dr Kaul had full insight, it did not follow that his fitness to practise was not impaired. He stated that the need to maintain public confidence in the profession, as well as the need to uphold proper standards, required a finding of impaired fitness to practise.

28. Mr Slack submitted that the GMC's position was that Dr Kaul had engaged in remediation but added that some forms of impairment are harder to remediate than others and that this went to the original seriousness of the Allegation. He added that, although Dr Kaul had reflected long and hard, and had taken steps to ensure that this would not happen again, the wider public interest demanded a finding of current impairment.

Dr Kaul

29. Ms Johnson QC submitted that if there was ever a case of an isolated lapse in an otherwise brilliant career, it is this. She stated that if someone makes a mistake, they deserve a second chance. She added that some types of misconduct, such as dishonesty, sexual misconduct and violence, are so egregious that it would be difficult for a doctor to remediate, but that this was not such as case. Ms Johnson QC contended that a finding of impairment was not required in the public interest.

30. Ms Johnson QC submitted that the true gravamen of Dr Kaul's misconduct was that he had not undertaken further enquiries, had not examined Patient records or complied with the requirements as to the need for review or safety netting. She stated that the dosages prescribed by Dr Kaul were not innately dangerous but had the potential to be so. Ms Johnson QC submitted that these were clinical failings. She added that, had Dr Kaul flouted GMC guidance for his own ends, then the public interest might demand impairment. She

reminded the Tribunal that this was not a conviction case or one involving allegations of dishonesty or probity issues.

31. Ms Johnson QC submitted that it would be harsh in the extreme to conclude that this misconduct was so egregious, when Dr Kaul had found himself caught in a web of deception. She added that there had, during the hearing, been suggestions that Dr Kaul must have known that the prescribing scheme was improper and that he turned a blind eye. However, she submitted that such suggestions were contrary to the evidence and that they should not influence the Tribunal's judgement. She reminded the Tribunal that this was not a fraud, probity or dishonesty case.

32. Ms Johnson QC submitted that Dr Kaul's misconduct was not so serious as to make it necessary to find current impairment. She stated that the context of Dr Kaul's misconduct was very important and had been notably absent from the GMC's submissions. She added that those behind the scheme were sophisticated and that other doctors had also been deceived; she said that it was only Mr C's doggedness and tenacity that exposed the scheme.

33. Ms Johnson QC stated that what seems obvious now was not necessarily obvious in 2014 and she said it was inconceivable that, if Dr Kaul appreciated the red flags at the time, he would have signed the Prescriptions. That, she submitted, would run counter to everything he stood for. Ms Johnson QC submitted that Dr Kaul did not derive any tangible benefit in signing the Prescriptions, either personally or professionally. She added that working for the Clinic would not have enhanced Dr Kaul's NHS career and she questioned why he would risk imperilling such a career.

34. Ms Johnson QC reminded the Tribunal that Mr Slack had asked why Dr Kaul's *'antennae were not alert to the red flags'*; she answered that question by stating that, once his blinkers were on and he missed them at the outset, there was no reason why his blinkers would be removed at a later stage. She submitted that Dr Kaul viewed his contribution as humanitarian service. Ms Johnson QC stated that, although the GMC had poured scorn on the notion of First World countries requiring access to medications, Mr E confirmed that even countries with sophisticated healthcare systems, such as Germany, can have supply problems.

35. Ms Johnson QC submitted that Dr Kaul regarded his role in the signing of the prescriptions as one of transcriber, rather than prescriber. She said that once that idea was fixed in Dr Kaul's mind, he had no reason to further question it. She added that Dr Kaul's work at the Clinic was minuscule, relative to his overall responsibilities. Ms Johnson QC contended that repetition, in this context, '*did not make it more serious, because the dye was cast at the beginning and the blinkers went on'* and the longer it continued, the less reason he had to question it.

36. Ms Johnson QC submitted that impairment might be engaged if his conduct had seeped into his NHS work, but it had not done so. She added that, in his NHS work, Dr Kaul does everything that he had failed to do at the Clinic, namely conducting his work

meticulously. Ms Johnson QC asserted that it was that contrast which means that a finding of impairment cannot be justified.

37. Ms Johnson QC submitted that Dr Kaul's motivation was an important issue. She stated that he wrongly believed that he was providing a service and she reminded the Tribunal that dishonest intent had not been alleged. She asserted that Dr Kaul had insight into his misconduct and that he had remediated. She added that it was instructive that Mr D, an experienced investigator, said that Dr Kaul was the most cooperative of the three doctors he investigated and believed that Dr Kaul was duped.

38. Ms Johnson QC submitted that Dr Kaul did not charge the twenty pounds per prescription which he was entitled to. She added that Dr Kaul was not interested in money or fame and that his motive was to help patients in need and in other jurisdictions. She stated that, however misguided Dr Kaul had been, there were no deep seated or attitudinal reasons why his fitness to practise is impaired. She reminded the Tribunal that Dr G said that Dr Kaul wanted to help people.

39. Ms Johnson QC acknowledged that Dr Kaul had struggled to explain why he had acted in a way that was out of character. However, she said that Dr Kaul believed that he had been very busy, naïve, trusting and mechanistic. Ms Johnson QC added that the accumulation of these factors had led to the issues in this case.

40. Ms Johnson QC made submissions as to Dr Kaul's remediation. She submitted that in 2014, Dr Kaul did not want to disappoint anyone; he knew and trusted Professor I, who had offered him work at the Clinic. She added that, at the Clinic, Dr Kaul was isolated, in contrast to his NHS work setting. She stated that, around the time of the misconduct, Dr Kaul had a significant workload which included sole responsibility for setting up a new respiratory unit as a '*voluntary adjunct*' to his substantive role as Consultant. In addition, she said that he had teaching and other commitments, as well as XXX children and a lengthy commute. Ms Johnson QC submitted that, since 2014, Dr Kaul has established a new team, is no longer responsible for intensive care, is able to delegate more work and is no longer overloaded with work. She stated that, in 2010, Dr Kaul had the assistance of one junior doctor, whereas in 2017 he had two cohorts of staff. She added that Dr Kaul was now better able to manage his time, was no longer, '*running at 100 miles per hour*' and had learned to say, '*no*'.

41. Ms Johnson QC submitted that Dr Kaul recognised that his misconduct was a shameful experience, but stated that Dr Kaul had reorganised his responsibilities, such that the Tribunal could be sure that he had remediated and could properly focus on his responsibilities.

42. Ms Johnson QC contended that Dr Kaul trusted his colleagues and that such trust is embedded in professional life. She added that Professor I was older, more experienced and that Dr Kaul had no reason to distrust him. She said that Dr Kaul did not want to be unhelpful to Professor I and had been naïve. She also reminded the Tribunal of Dr Kaul's evidence that he does not enjoy confrontation and achieves things by *'bringing people with him'*. She added

that the impact of this event on Dr Kaul was devastating and was highly unlikely to be repeated.

43. Ms Johnson QC reminded the Tribunal that the Allegation related to events 8 years ago and stated that there was an obvious contrast between the circumstances relating to the Allegation and Dr Kaul's everyday practice. She acknowledged that, in failing to properly investigate matters relating to the Prescriptions, Dr Kaul could have jeopardised patient safety. She stated that Dr Kaul is meticulous in his work at Harefield and had achieved a 100% survival rate in very critical patients; she added that the complex prescribing undertaken by Dr Kaul during the pandemic had not only been safe but life enhancing. Ms Johnson QC reminded the Tribunal that Dr Kaul, in 2009, was one of the first Darzi fellows and that his work as a fellow had concentrated on safety and patient care. She stated that that Dr Kaul has taught the Human Factors masterclass and had shown that he was fascinated by patient safety, which was central to his way of working. Furthermore, Ms Johnson QC reminded the Tribunal that Dr Kaul had established a patient safety committee, and has led other patient safety initiatives, at Harefield.

44. Ms Johnson QC submitted that Dr Kaul is committed to never becoming involved in third-party prescribing again. She added that the average-minded person would have confidence in Dr Kaul and she said that the testimonials indicated that patients, even with knowledge of his misconduct, had the utmost confidence in him. She stated that Dr Kaul had progressed from anger, at being told of the Allegation, to deep reflection of his own failings. Ms Johnson QC contended that Dr Kaul's use of the word '*slip*', to describe the 2014 incident, should not be emphasised as he had clearly acknowledged that it was a significant failing. She stated that Dr Kaul has not sought to diminish or dilute his culpability and he had been open in disclosing that he had signed other prescriptions for the Clinic. She asserted that there was clear evidence from Dr Kaul's appraisals, and reflections, that he was a safe doctor. Ms Johnson QC submitted that, in such circumstances, a finding of impairment was not necessary.

The Tribunal's Approach and the Relevant Legal Principles

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

46. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct, which was serious, and secondly whether, as a result of any serious misconduct, fitness to practise is impaired.

47. The Tribunal took into account that Dr Kaul had admitted that his actions in relation to the Allegation had amounted to misconduct and reminded itself that it was required to establish whether Dr Kaul's misconduct was serious. The Legally Qualified Chair advised the Tribunal that, in the case of *Nandi v General Medical Council [2004] EWHC*, the Court

emphasised the need to give the issue of seriousness proper weight. In that case, the Court observed that, in other contexts, serious professional misconduct had been referred to as '*conduct which would be regarded as deplorable by fellow practitioners*'. Collins J stated that, '*obviously dishonest conduct can very easily be regarded as serious professional misconduct, but conduct which does not amount in any way to dishonesty can constitute serious professional misconduct if it falls far short of the standard that is considered appropriate by the profession*'.

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

49. The Tribunal reminded itself of the statutory overarching objective which is to protect the public and which includes 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.

The Tribunal's Determination on Impairment

Serious Misconduct

50. The Tribunal first considered whether the facts, as found proved in the Allegation, are a sufficiently serious departure from the standards of conduct reasonably expected of Dr Kaul, to amount to serious misconduct. The Tribunal noted that Dr Kaul made full admissions to the Allegation and also admitted that his actions amounted to misconduct. However, through Ms Johnson QC, Dr Kaul denied that his conduct amounted to serious professional misconduct.

51. The Tribunal had regard to the provisions of GPP and, in particular, those paragraphs of the guidance highlighted in the GMC's Expert Report ('the Expert Report') prepared by Dr H. The Tribunal also had regard to the provisions of GMP, specifically the following elements of paragraph 16:

> *'16 In providing clinical care you must:*
>
> *a. prescribe drugs or treatment, including repeat prescriptions, only when you have adequate knowledge of the patient's health and are satisfied that the drugs or treatment serve the patient's needs*
>
> *b. provide effective treatments based on the best available evidence*
>
> *d. consult colleagues where appropriate*

f. check that the care or treatment you provide for each patient is compatible with any other treatments the patient is receiving, including (where possible) self-prescribed over-the-counter medications'.

52. The Tribunal noted that the Expert Report concluded that Dr Kaul's conduct was seriously below the expected standard in that he:

- prescribed hospital only medications in the community, unsupervised or without review or monitoring, which in Dr H's opinion could have led to patient harm or death;
- prescribed large quantities of hospital only medication (some outwith the BNF recommendation), with no monitoring arrangements agreed;
- prescribed in an irresponsible and unsafe manner, being unfamiliar with some of the medications he was prescribing;
- inappropriately transcribed and issued third party prescriptions at the request of a pharmacy;
- did not have sufficient clinical information from the third-party prescription request form, but prescribed anyway;
- should have contacted the Patients but he did not;
- failed to arrange assessments and examinations of the Patients;
- failed to have adequate knowledge of the third-party Patients' health by not reviewing their medical records or contacting their overseas doctors;
- failed to discuss the Patients with their overseas specialist or family doctor/ GP;
- failed to ensure that the Patients were adequately monitored; and
- failed to ensure that safeguards were in place in respect of any of the Prescriptions.

53. The Tribunal took the view that the potential consequences of Dr Kaul's misconduct were relevant. It was apparent from Mr C's statement that some, if not all, of the Patients were fictitious. The Tribunal considered that, if any of the Patients did exist, then they had potentially been at risk of harm for the reasons set out in the Expert Report. However, the effect of Dr Kaul's actions, in relation to the non-existent Patients, was that a large quantity of hospital only medication had potentially been released to the unregulated market, as described by Mr C, causing a possible risk of harm to any person to whom those medications were sold or otherwise provided.

54. The Tribunal considered that Dr Kaul's actions were not a one-off. He accepted in his evidence that, between 13 February 2014 and 20 April 2014, he had attended at the Clinic on nine separate occasions, during which he had transcribed, signed and issued the Prescriptions. Dr Kaul also stated that he had, to a more limited extent, continued to attend at the Clinic up to August 2014, although his actions from 21 April 2014 formed no part of the Allegation.

55. In view of the conclusions set out in the Expert Report, and in light of the potential consequences, which included the risk of harm to patients or the general public, the Tribunal considered that Dr Kaul's actions amounted to misconduct which was serious.

Impairment by reason of misconduct

56. Having determined that the Allegation amounted to misconduct which was serious, the Tribunal went on to consider the issue of impairment.

57. The Tribunal first considered the context in which the misconduct had occurred. The Tribunal noted that it was not alleged by the GMC that Dr Kaul had been dishonest, or that his actions had involved the commission of any criminal offence.

58. Dr Kaul's evidence to Mr D was that he first met Professor I, and his associate Dr J, in late 2010 at a lecture, being given by Dr Kaul. He stated that Professor I had, at that time, told him about the Clinic and made the suggestion that Dr Kaul could undertake private work there. Dr Kaul said that he did not, initially, take up Professor I's offer until it was repeated, in around 2012/13, when they met again at another lecture.

59. The work that Dr Kaul undertook for the Clinic was two-fold – first, he would have a consultation with a private patient at the Clinic's premises in Harley Street; secondly, he would be left with a 'clip' of prescription request forms, from which he transcribed, signed and issued the Prescriptions. Dr Kaul told the Tribunal that he would typically attend at the Clinic after 6pm and spend around an hour there. He said that he split the two parts of his work at the Clinic roughly, '50/50', spending 30-45 minutes with the private patient and around 30 minutes completing the Prescriptions. He described his completion of the Prescriptions as, '*mechanistic*'; he said he believed that his role was to transcribe the request forms and that the, '*primary Physician*', namely the foreign doctor who completed the request form, had seen the relevant Patient and had taken into account their medical history.

60. Dr Kaul said he had been told by Professor I and Dr J that the Prescriptions were being completed for humanitarian purposes. Dr Kaul said that he may have charged the Clinic the agreed fee for one or two of the private patients he saw but had not charged the Clinic any fee for completing the Prescriptions. Dr Kaul confirmed that, in around August 2014, he stopped attending at the Clinic because it was not worth his while travelling across London for a small number of referrals.

61. The Tribunal took the view that Dr Kaul had trusted Professor I and Dr J because he had met them in a professional context, namely the lecture circuit that Dr Kaul attended. He said that Professor I and Dr I had asked relevant and probing questions at the lectures and the Tribunal considered it likely that this had reinforced their credibility in the mind of Dr Kaul.

62. Dr Kaul told the Tribunal that, in 2014, he had limited experience of undertaking private work in addition to his responsibilities at Harefield. He stated that, since 2015, he has

held private practising privileges at Cromwell hospital, but has seen only a few private patients because his interest lies in his NHS work. Given his limited experience of private work, the Tribunal considered that Dr Kaul's work for the Clinic fell outside his normal, 'comfort zone', and the network of trust and governance that the NHS brings. The Tribunal considered it likely that the Clinic had, in Dr Kaul's mind, an air of legitimacy given that he trusted Professor I and Dr J and that he was seeing private patients at the Clinic, which was based on Harley Street.

63. The Tribunal concluded that Dr Kaul had attended at the Clinic in good faith and genuinely believed, albeit wrongly, that his completion of the Prescriptions was part of a humanitarian service. That Tribunal noted that Dr Kaul's agreed fee for issuing the Prescriptions would have been in excess of £3,000, but that he had not made any charge for them. Dr H opined that she would not have expected Dr Kaul to charge for a humanitarian service, which reinforced the Tribunal's view as to Dr Kaul's belief in the altruistic nature of his work in issuing the Prescriptions. The GMC had highlighted that a number of the Prescriptions were for, 'First World' countries such as the USA, Australia and Belgium; it was suggested, as a result, that Dr Kaul's belief in the humanitarian nature of his work was not credible. However, the Tribunal noted the evidence of Mr E, a professional within the pharmaceutical industry, that countries (such as Germany) with sophisticated healthcare systems can have supply problems for certain medications.

64. Given that context, the Tribunal considered that, although he had been naïve, Dr Kaul had unwittingly allowed himself to be involved in the potentially criminal scheme being operated by the Clinic and the Pharmacy. It agreed with Mr D's opinion that Dr Kaul had been, '*duped*'.

65. The Tribunal considered whether Dr Kaul's misconduct was easily remediable, whether it had been remedied and whether his misconduct was likely to be repeated.

66. The Tribunal took the view that Dr Kaul's misconduct, though serious, was capable of remediation. It considered that the misconduct had largely been the result of Dr Kaul's naivety and his misguided, but genuine, belief that his role was to transcribe the Prescriptions as part of a humanitarian effort. Dr Kaul had, in the Tribunal's view, been deceived as to the true nature of his work and had been too trusting, and insufficiently aware of the 'red flags' that should have caused him to pause and reflect. The Tribunal concluded that, in such circumstances, Dr Kaul's misconduct was not so egregious as to be irredeemable or incapable of remediation.

67. In his witness statement, Dr Kaul explained that, in 2014, he had a very heavy workload at Harefield which was focussed on ICU work. He stated that, in addition to those responsibilities, he provided regular teaching sessions to colleagues and was also, outwith his job plan, trying to establish a respiratory service at Harefield. He stated that his respiratory work, which included 4 half day clinics, was in addition to his ICU commitments, and was unpaid, being a, '*voluntary adjunct*' to the ICU work. The Tribunal accepted Dr Kaul's evidence that, in 2014, he was being, '*dragged from pillar to post*' and that his workload was

very heavy. It considered that the pressure of Dr Kaul's work commitments, in 2014, had been a significant factor which had led him to ignore the red flags in relation to his work at the Clinic, and to adopt a mechanistic approach to the completion of the Prescriptions.

68. The Tribunal noted Dr Kaul's evidence that, since 2017, his job plan at Harefield has been split 50/ 50 between ICU work and respiratory work. He described having relinquished much of his previous responsibility for management of the ICU team, such that he could focus on his role as Head of the Respiratory Department. He stated that, since April 2020, he has had a team of junior doctors and a nurse specialist assisting him with respiratory work, so that he is able to delegate and share responsibility for in-patient referrals. Dr Kaul expressed the view that his working week was now more structured, than it was in 2014, and that he was better able to manage his workload. He also expressed the view that his promotion to Head of Harefield's lung division, and the appointment of colleagues to the respiratory team, had enabled him to say, '*no*', to work which, in 2014, he might have felt obliged to accept. Dr Kaul also stated that he now undertakes less research than he used to, such that he can focus on the respiratory department.

69. In his statement, Dr Kaul explained that, since December 2015, he has, on a number of occasions, delivered a full-day training course, with others, entitled, 'The Human Factor in Patient Safety'. He regarded his teaching of that course as an important component of his reflection and learning. The Tribunal was provided with the presentation slides for the Human Factors course, which seeks to highlight the, '*vulnerability of the human condition and the realisation that even outstanding clinical knowledge and skill may not be enough to deliver safety*'. The course notes state that, '*when overloaded we all become incompetent… and our judgement goes*'.

70. The Tribunal noted a written reflective statement that Dr Kaul prepared in 2020. In that statement he acknowledged that he had not given the completion of the Prescriptions the attention it deserved and he said he took full responsibility for his conduct. In the reflective statement, Dr Kaul confirmed that he had re-familiarised himself with the GMC and national prescribing guidelines and was now fully aware of the guidance on remote prescribing. In addition, he stated that he has undertaken a detailed review of the local prescribing guidelines at Harefield. The Tribunal was provided with Dr Kaul's learning log, updated in April 2021, relating to GMC good practice in prescribing and managing medicines. In that log, Dr Kaul set out a number of the learning points he had derived from his review of guidelines for Harefield.

71. Dr Kaul, in his witness statement, confirmed that, in September 2020, he completed mandatory training on medicines management awareness, which is to be repeated in September 2022. He stated that he has read, '*Appropriate Prescribing of Medications: An Eight Step Approach*' by Madelyn Pollock, and is currently undertaking a 9-module, '*Prescribing Safely Assessment (PSA) Crash Course*'.

72. The Tribunal was provided with copies of Dr Kaul's appraisal summaries from 2017, which acknowledge that he has reflected on the extent and balance of his workload. Dr G,

who conducted a number of Dr Kaul's appraisals, described his reflections as, '*mature*' and said that he had no concerns about Dr Kaul's practice generally, or in relation to prescribing. In Dr Kaul's appraisal summary dated March 2022, Dr G noted that, '*Dr Kaul keeps up to date with safe prescribing practice and advises on aspects of safe prescribing in an ever-evolving field (examples include innovative therapies for Covid and other respiratory conditions).*

73. The Tribunal was provided with a number of testimonials from colleagues at Harefield, other professionals and from patients all of whom were aware of the Allegation. The testimonials provided evidence that Dr Kaul is an outstanding and dedicated clinician. For example, Dr G stated that Dr Kaul is a hard-working, diligent and conscientious doctor and that he had no reason to question his competence in any aspect of his clinical practice. He took the view that Dr Kaul's failings, as described in the Allegation, were, '*considerably out of character*' and that his dedication to patients and the profession was, '*exemplary and quite humbling*'.

74. Dr F, in his testimonial, said that Dr Kaul, '*embodies the attributes of an outstanding doctor*' and that he has never had any concerns about Dr Kaul's prescribing practices. Dr F stated that Dr Kaul's efforts for Harefield's patients during the Covid19 pandemic had been, '*truly remarkable*'. He said that Harefield's 100% post-discharge survival rate for Covid patients reflected Dr Kaul's, '*outstanding leadership*'.

75. Mr E, in his testimonial letter, expressed the view that Dr Kaul was a, '*leader in his field*' in relation to the safe prescribing of medication. He was aware that Dr Kaul had given presentations to colleagues on the issue of medicine safety, and he expressed the view that Dr Kaul was a, '*hero*', who deserved a medal, for his work in relation to Covid19.

76. The Tribunal considered that Dr Kaul's remediation had been comprehensive and detailed. It took the view that Dr Kaul had addressed the issues that had led him to issue the Prescriptions. In particular, the Tribunal was satisfied that Dr Kaul understood that his heavy workload in 2014 had been a factor in his misconduct. The Tribunal noted that Dr Kaul's working schedule was more manageable than it had been in 2014, and it was satisfied that he would, now, be less trusting of Professor I and Dr J and that he has learned to say, '*no*'. The Tribunal considered that Dr Kaul, through his teaching of the Human Factors Masterclass, understood (and was able to convey to others) that an overloaded work schedule can lead to errors and risks to patient safety.

77. The Tribunal concluded that Dr Kaul had, in the eight years since the events relating to the Allegation, remediated his misconduct.

78. Dr Kaul told the Tribunal that, when he received contact from the GMC in 2015 in relation to the Allegation, he thought they had the, '*wrong man'*. He accepted that, at that time, he did not believe that he had done anything wrong whilst working at the Clinic. The Tribunal took the view that, although Dr Kaul had no insight into his behaviour in 2015, he had now developed full insight, having reflected maturely and deeply about his work for the

Clinic and having taken the steps, described above, to address the causes of his misconduct and to remediate.

79. In his witness statement, Dr Kaul confirmed that he had no intention of entering into similar private prescribing arrangements to those in 2014. The Tribunal considered that Dr Kaul's expressions of remorse, and his apologies to his colleagues and the wider profession, were genuine. It was satisfied that Dr Kaul understood what had led to his misconduct and had reflected substantially on his behaviour. The Tribunal concluded that Dr Kaul had full insight into his misconduct, which was highly unlikely to be repeated.

80. The Tribunal had regard to each of the three limbs of the overarching objective, namely to:

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

81. In relation to the first limb, the Tribunal noted Dr Kaul's admission that issuing the Prescriptions could have led to Patient harm or death. The Tribunal also had regard to its own finding that the effect of Dr Kaul's misconduct had been to create a potential risk of harm, either to the Patients (if they existed) or to any other person to whom the medications were sold or otherwise provided. The Tribunal noted that the Allegations related to a period of nine days, eight years ago. Whilst the Allegation could not properly be described as a, 'one off' (in that the misconduct had been repeated), the Tribunal observed that Dr Kaul's misconduct had occurred within a limited, and relatively, short period of time in an otherwise unblemished and distinguished career. The evidence before the Tribunal was of an excellent clinician who is well regarded by his colleagues and patients and about whom there are otherwise no concerns. In the view of the Tribunal, Dr Kaul had, through his remediation, addressed the patient safety concerns arising from the Allegation. The Tribunal concluded that Dr Kaul did not present a risk to the health, safety or well-being of the public.

82. In relation to the second limb of the overarching objective, the Tribunal reminded itself of its finding that, whilst Dr Kaul's misconduct was serious, it was not so egregious as to be irredeemable or incapable of remediation. The Tribunal considered that Dr Kaul has fully remediated his misconduct and has full insight; further he is an excellent clinician who has the confidence and respect of his colleagues and patients, notwithstanding the Allegation. Dr G described Dr Kaul as the, 'go to' person for members of staff at Harefield who required medical advice. The Tribunal noted that the character witnesses, who gave oral evidence to the Tribunal, all described how they, or members of their family, had sought medical advice from Dr Kaul since 2014. It considered that, in all the circumstances, a well-informed member of the public would not expect a finding of impairment against Dr Kaul. The Tribunal took the view that, such a member of the public, would take into account that Dr Kaul had been duped by those who ran the Clinic, that he had fully remediated the Allegation and that Dr Kaul was a valued and respected member of the profession. The Tribunal concluded that

public confidences in the medical profession would not be undermined by a finding that Dr Kaul's fitness to practise is not currently impaired.

83. With regard to the third limb of the overarching objective, the Tribunal noted its earlier findings as to Dr Kaul's remediation and level of insight. It also took into account the efforts of Dr Kaul to improve patient safety standards, for example by his teaching of the Human Factors course. In light of its findings, the Tribunal considered that, in all the circumstances, a well-informed member of the public would not expect a finding of impairment against Dr Kaul. The Tribunal concluded that the promotion and maintenance of proper professional standards and conduct for members of the medical profession would not be undermined by a finding that Dr Kaul's fitness to practise is not currently impaired.

84. The Tribunal determined that Dr Kaul's fitness to practise is not currently impaired by reason of misconduct.

Determination on Warning - 17/05/2022

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

Submissions

On behalf of the GMC

2. Mr Slack submitted that the Tribunal is required to consider issuing a Warning in connection rule 17 (2) (m) of the Rules. Mr Slack submitted that paragraphs 10 – 11, 13 – 14, 16, 20 – 21, 26 and 32 of the Warning Guidance ('WG') was engaged, specifically paragraph 20:

> *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)'.

3. Mr Slack submitted that that the GMC was of the view that all of paragraph 20 of WG applied in this case, noting that the Tribunal found a specific breach of the guidance on 'Good Practice in Prescribing and Managing Medicines and Devices', 2013 ('GPP'). He also submitted that although the GMC's position was that the risk of repetition was low, it was not ruled out altogether.

On behalf of Dr Kaul

4. Ms Johnson, QC submitted that in this specific case that no further action should be taken by the Tribunal, and she added that a Warning was a serious matter.

5. Ms Johnson, QC accepted that Dr Kaul was found guilty of serious professional misconduct, and which had been searing criticism. She added that Dr G stated that Dr Kaul's appearance before his regulator was something that he had taken very seriously.

6. Ms Johnson, QC submitted that Dr Kaul saw his misconduct as a spectacular fall from grace and, as such, the conduct will never be repeated. She added that any suggestion of a repetition was fanciful. She added that the primary purpose of a Warning is to ensure that there is no repetition.

7. Ms Johnson, QC reminded the Tribunal that Warnings are deterrents and there was no need for a deterrent either in Dr Kaul's personal or professional capacity.

8. Ms Johnson, QC further submitted that there was no need for a deterrent for the profession more widely due to the unique circumstances of this case as Dr Kaul was *'duped'* into a criminal enterprise. As such the issuance of a Warning would be disproportionate given the unusual circumstances and Dr Kaul's otherwise unblemished career. Ms Johnson, QC said that Dr Kaul's professional achievements had brought prestige to the profession and raised the profile of his hospital and the Trust internationally. She reminded the Tribunal that in the Facts and Impairment determination at paragraphs 81 – 83, it had found that there was no risk to patient safety, no loss of public confidence in finding that Dr Kaul's fitness to practice was not currently impaired and that the maintenance of proper standards in the profession was not undermined by a finding of no impairment. Ms Johnson, QC stated that with these findings in mind it would be rationally and logically inconsistent to issue a Warning.

9. Ms Johnson, QC submitted that Dr Kaul's insight is mature, developed, and deep. She stated that Dr Kaul had been critical of his conduct and had made a heartfelt apology. Given

all the circumstances and Dr Kaul's remediation and otherwise unblemished career, justification for a Warning was not made out.

Legally Qualified Chair's ('LQC') Advice

10. The LQC advised the Tribunal that, once a Tribunal is satisfied that the doctor's fitness to practise is not impaired, it must consider whether the concerns raised are sufficiently serious to require a formal response by way of a Warning. The LQC advised the Tribunal as to the relevant provisions of the WG.

12. The LQC advised that a Warning will be appropriate if there is evidence to suggest that a doctor's behaviour has fallen below the standard expected, to a degree warranting a formal response, such as a significant departure from GMP. There is no definition of 'significant' in the Medical Act or in the Rules.

13. The LQC advised that even in an exceptional case involving an isolated lapse in an otherwise unblemished career, where the risk of repetition is extremely low, a Warning may be required to uphold professional standards, particularly where there has been a clear departure from GMP.

15. There was no comment by Counsel on the LQC's advice.

The Tribunal's Determination on Warning

16. The Tribunal has had regard to the WG and to paragraphs 61 to 65, of the GMC Sanctions Guidance 2019 in relation to its power to issue Warnings. The Tribunal reminded itself of the overarching objective. The Tribunal noted that 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.

17. In deciding whether to issue a Warning the Tribunal has applied the principle of proportionality, weighing the interests of the public with those of the doctor. The Tribunal has borne in mind that Warnings do not restrict the doctor's practice and should only be considered once it was satisfied that the doctor's fitness to practise is not impaired.

18. The Tribunal reminded itself that Dr Kaul had admitted misconduct and that the Tribunal had found that misconduct to be serious, albeit fully remediated. The Tribunal also reminded itself that Dr Kaul had acted in good faith (albeit misguidedly) and had been duped by individuals engaged in a fraudulent enterprise.

17. The Tribunal considered that the case was unusual given the lapse of time since the misconduct, Dr Kaul's impressive testimonials and his full remediation and insight. However, the Tribunal was persuaded that a Warning was necessary and proportionate, balancing the interests of Dr Kaul against the wider public interest. The Tribunal considered that, although

the risk of repetition was very low indeed, a risk nevertheless remained. The Tribunal reminded itself that it had found that Dr Kaul's conduct had clearly breached specific provisions of GMP and GPP. In addition, Dr Kaul had admitted that his issuing of the Prescriptions could have led to patient harm or death. Whilst the Tribunal considered that the threshold for impairment of fitness to practise had not been met, the case was a finely balanced one.

18. The Tribunal determined that there was a need to formally record Dr Kaul's serious misconduct because, in the very unlikely event of any repetition, patient care, public confidence in the profession or the reputation of the profession could be affected.

19. The Tribunal therefore determined to impose the following Warning on Dr Kaul's registration:

> 'Dr Kaul
>
> Between 13 February and 20 April 2014, you transcribed, signed and issued 167 private prescriptions for third party patients outside the UK.
>
> Your conduct in issuing those prescriptions did not meet with the standards required of a doctor. It risked undermining public confidence and professional standards in the profession and it must not be repeated. The required standards are set out in Good Medical Practice and associated guidance (particularly that relating to prescribing). In this case, the following elements of paragraph 16 of Good Medical Practice are particularly relevant:
>
> *'16 In providing clinical care you must:*
>
> *a. prescribe drugs or treatment, including repeat prescriptions, only when you have adequate knowledge of the patient's health and are satisfied that the drugs or treatment serve the patient's needs*
>
> *b. provide effective treatments based on the best available evidence*
>
> *d. consult colleagues where appropriate*
>
> *f. check that the care or treatment you provide for each patient is compatible with any other treatments the patient is receiving, including (where possible) self-prescribed over-the-counter medications'*.
>
> Although this Warning does not place any restriction on your registration, it is a necessary response to your misconduct.'

20. This Warning will be published on the List of Registered Medical Practitioners (LRMP) in line with our publication and disclosure policy, which can be found at www.gmc-uk.org/disclosurepolicy.

21. The Interim Order currently in place is revoked.

22. That concludes this case.

ANNEX A – 16/05/2022

Determination under Rule 16 of the Rules

Submissions

On Behalf of Dr Kaul

107. Ms Johnson QC made an application under Rule 16 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004 ("the Rules") that Dr Kaul and his legal representatives be permitted to attend the hearing remotely following submissions on impairment.

On Behalf of the GMC

108. Mr Slack submitted that the GMC did not oppose the application.

The Tribunal's Decision

109. The Tribunal considered the application and noted that, although Rule 16 did not specifically refer to the power of Tribunal to direct a virtual, or hybrid, hearing, the MPTS had issued guidance on, 'Handling requests for changes to hearing venue'.

110. Having considered that guidance, the Tribunal considered it fair and proportionate to grant Ms Johnson's application. It noted that the GMC had not opposed the application, and it considered that there would no injustice to either party if Dr Kaul and his legal representatives attended the Hearing remotely, following submissions at Stage two.

111. The Tribunal considered it unlikely that directing a hybrid hearing would have any impact on the length of the Hearing.

112. The Tribunal determined that the Hearing would resume on a virtual basis, via Microsoft Teams, following its in camera discussions at Stage two.

113. Accordingly the Tribunal determined to grant the application under Rule 16 of the Rules.