PUBLIC RECORD

Dates: 07/11/2022 - 25/11/2022

Medical Practitioner's name:	Dr Susan OAKLEY
GMC reference number:	4187440
Primary medical qualification:	MB ChB 1995 University of Sheffield

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

Summary of outcome

Conditions, 18 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Nicholas Flanagan
Lay Tribunal Member:	Mr John Elliott
Medical Tribunal Member:	Dr Ann Wolton

Tribunal Clerk:	Ms Maria Khan (7-10 & 15-25 November) Ms Emma Saunders (11 November) Mr Sewa Singh (14 November)

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Ben Rich, Counsel, instructed by the MDU
GMC Representative:	Ms Harriet Tighe, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 22/11/2022

1. This determination will be handed down in private. However, as this case concerns Dr Oakley's misconduct, a redacted version will be published at the close of the hearing with those matters relating to personal matters removed.

Background

2. Dr Oakley qualified as a doctor in 1995 and undertook various posts in emergency medicine, general medicine, and histopathology until 2006 when she commenced General Practitioner (GP) training. Dr Oakley qualified as a GP in 2009.

3. At the time of the events, Dr Oakley held three roles. She was working as a salaried GP at Cripps Health Centre ('the Practice'), part of the University of Nottingham Health Service, as the GP Lead for diabetes. In addition, between 2009 and 2019 Dr Oakley worked at BUPA Healthcare ('BUPA') as a self-employed GP responsible for performing health assessments. In 2015, Dr Oakley was appointed Lead Physician at BUPA and started to undertake GP consultations. Between 2016 and 2020 Dr Oakley also worked as an out of hours GP for Nottingham Emergency Medical Services ('NEMS').

4. The allegations that have led to Dr Oakley's hearing relate to concerns raised regarding Dr Oakley's alleged misuse of the Practice's appointment and record system, misrepresenting whether patients had made appointments or attended for consultations. Dr Oakley was suspended by the Practice in January 2019 and, following the conclusion of an investigation, was dismissed in March 2019 for gross misconduct, which included probity concerns.

5. It is further alleged that whilst undergoing an NHS England appraisal between 19 February 2019 and 12 March 2019, Dr Oakley failed to disclose that she was under investigation by the Practice for gross misconduct and that she was scheduled to attend a disciplinary hearing on 5 March 2019.

6. Between 31 August 2018 and 6 December 2019, whilst working at BUPA, it is alleged that Dr Oakley inappropriately inputted non-contemporaneous notes into the clinical records of patients prior to seeing, evaluating and/or examining them. In addition, Dr Oakley failed to notify BUPA until 18 April 2019 that she had, firstly, been suspended and, secondly, been

dismissed by the Practice for gross misconduct and that she had not been exonerated by the practice's investigation as stated in her Statement of Appeal to BUPA dated 9 April 2020.

7. Finally, it is alleged that Dr Oakley failed to inform NEMS without delay that she had been suspended and subsequently dismissed from BUPA when she knew that she should have, and did not divulge the true reason for her dismissal from the Practice.

The Outcome of Applications Made during the Facts Stage

8. On day 1 of the hearing, the Tribunal granted the GMC application, made pursuant to Rule 17(6) of the GMC (Fitness to Practise Rules) 2004 as amended ('the Rules'), to amend a typographical error in paragraph 14c of the Allegation. The Tribunal was satisfied that the amendment could be made without injustice to either party.

9. On day 1 of the hearing, Mr Rich on Dr Oakley's behalf applied under Rule 17(6) for paragraphs 3, 4, 11, 12, 13-15, and 19-21 of the Allegation to be deleted, as they were oppressive and unlawful under the principle set out in *GMC v Misra* [2003] UKPC 7. Mr Rich further submitted that the paragraphs were of insufficient seriousness to justify inclusion within the Allegation, and were also inconsistent with the GMC's *Guidance: Drafting Charges.* The Tribunal granted Mr Rich's application in relation to paragraphs 3 and 4 only.

10. The Tribunal's full decision on both applications is included at Annex A.

11. On day 2 of the hearing, the Tribunal granted Dr Oakley's application, made pursuant to Rule 34(1) of the Rules, that the evidence of a witness be excluded. The Tribunal's full decision on the application is included at Annex B.

The Allegation and the Doctor's Response

12. The Allegation made against Dr Oakley is as follows:

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

<u>NHS</u>

1. Between 2 October 2018 and 9 January 2019, whilst working at Cripps Health Centre ('the Practice') you used patients' medical records to book the appointments as set out in Schedules 1-4 and you:

    a. recorded the patients in Schedules 1 and 2 as having:

        i. arrived for the appointment;
        Admitted and found proved

ii. been sent in to see you;
Admitted and found proved

iii. left the appointment;
Admitted and found proved

b. recorded the patients in Schedule 3 as having not attended the appointment;
Admitted and found proved

c. did not make any consultation notes in the patients' medical records in relation to the appointments set out in Schedules 1 and 2;
Admitted and found proved

d. did not access the patients' records in relation to the appointments set out in Schedules 2 and 3;
Admitted and found proved

e. created the appointments as set out in Schedule 4 for a patient who had left the Practice by 21 September 2018;
Admitted and found proved

f. knew that:

i. you had not conducted the appointments as set out in Schedules 1-4;
Admitted and found proved

ii. you would be likely to have empty appointment slots for the dates and times set out in Schedules 1-4;
To be determined

iii. the appointments you created as set out in Schedules 1-4 were false.
To be determined

2. Your actions as described at paragraph 1. a. – 1. e. were dishonest by reason of paragraph 1. f.
To be determined

3. ~~On 23 January 2019 you signed and returned a witness statement dated 17 January 2019 to the Practice:~~

~~a. in which you stated:~~

i. ~~*'On occasions where the appointment records show that a patient has arrived, been seen and left but there is no consultation recorded this may be because I have sometimes omitted to record all consultations within the clinical record. This is because when I have seen patients I sometimes make handwritten notes that might not have been*~~

~~*transferred onto the system due to memory slip when having to multi-task.'*;~~
Withdrawn following an application made under Rule 17(6)

ii. ~~'*On occasions where the appointment records show that a patient has arrived, been seen and left but there is no consultation record and the system audit shows that the records have not been accessed. This is because I may have been undertaking an admin task relating to that patient and have not had reason to access the medical record, for instance I may simply have relayed admin information.*';~~
Withdrawn following an application made under Rule 17(6)

~~b. and you knew that:~~

i. ~~you had not conducted the patient consultations to which you were referring in the statement set out at paragraph 3. a. i.;~~
Withdrawn following an application made under Rule 17(6)

ii. ~~you had not undertaken any administration tasks for the patients involved in the consultations to which you were referring in the statement set out at paragraph 3. a. ii.;~~
Withdrawn following an application made under Rule 17(6)

iii. ~~the information set out at paragraph 3. a. was untrue.~~
Withdrawn following an application made under Rule 17(6)

4. ~~Your actions as described at paragraph 3. a. were dishonest by reason of paragraph 3. b.~~
Withdrawn following an application made under Rule 17(6)

5. Between 19 February 2019 and 12 March 2019 you underwent an NHS England appraisal with Dr A:

a. which involved you:

i. submitting appraisal evidence on 19 February 2019;
Admitted and found proved

ii. attending an appraisal meeting on 27 February 2019;
Admitted and found proved

iii. reviewing the final appraisal report between 6 March 2019 and 12 March 2019, which included the wording: '*Trust… A signed GMP probity declaration was evidenced. No issues or concerns were raised in relation to probity and no outside interests were declared…*';
Admitted and found proved

b. and you failed to disclose that you:

i. were being investigated by the Practice for gross misconduct which included probity concerns;
Admitted and found proved

ii. had been suspended from working at the Practice on 25 January 2019;
Admitted and found proved

iii. had been sent a notification of disciplinary hearing by the Practice dated 15 February 2019 which set out the allegations against you including probity concerns;
Admitted and found proved

iv. were due to attend and/or had attended a disciplinary hearing at the Practice on 5 March 2019 to discuss the allegations against you including probity concerns;
Admitted and found proved

c. and you knew that you should have disclosed the information set out at paragraph 5. b.
To be determined

6. Your actions as described at paragraphs 5. a. and 5. b. were dishonest by reason of paragraph 5. c.
To be determined

<u>BUPA</u>

7. Between 31 August 2018 and 6 December 2019 whilst working at BUPA you inappropriately inputted non-contemporaneous notes into the clinical records of patients prior to seeing, evaluating and/or examining them, including recording:

a. examination findings;
Admitted and found proved

b. whether or not a patient consented to having their NHS GP informed of the findings of their health assessment;
Admitted and found proved

c. a 'review of systems' and/or historic symptoms, including the absence of:

i. abdominal pain;
Admitted and found proved

ii. cough;
Admitted and found proved

iii. shortness of breath;
Admitted and found proved

iv. difficulty swallowing.
Admitted and found proved

8. You failed to notify BUPA without delay and not until 18 April 2019 that the Practice had:

a. suspended you on 25 January 2019;
Admitted and found proved

b. dismissed you on 14 March 2019.
Admitted and found proved

9. you knew that you should have informed BUPA, as your employer, without delay of your:

a. suspension from the Practice;
To be determined

b. dismissal from the Practice.
To be determined

10. Your actions as described at paragraph 8 were dishonest by reason of paragraph 9.
To be determined

11. On 18 April 2019:

a. you stated to BUPA that the reason for your dismissal from the Practice was due to '*…blocking out appointments…*' or words to that effect;
Admitted and found proved

b. you knew that you had been dismissed from the Practice for gross misconduct which included probity concerns;
Admitted and found proved

c. you knew that your submission to BUPA as described at paragraph 11. a. did not reflect the true reason(s) for your dismissal from the Practice.
To be determined

12. Your actions as described at paragraph 11. a. were dishonest by reason of paragraphs 11. b. and 11. c.
    To be determined

13. You submitted a Statement of Appeal dated 9 April 2020 to BUPA which stated '*During my period at BUPA Health, whilst also working in the NHS at [the Practice] I blocked a few 10-minute GP appointment slots in order to create additional time for patients with more complex medical problems. Other GP's at [the Practice] also did this, including one of the Senior Partners. An investigation took place at [the Practice] and I was exonerated.*'
    Admitted and found proved

14. You knew that:

    a. you had not been exonerated by an investigation at the Practice;
    Admitted and found proved

    b. you had been dismissed from the Practice for gross misconduct which included probity concerns;
    Admitted and found proved

    c. your submission to BUPA as described at paragraph ~~12~~ 13 was not true.
    Amended under Rule 17(6)
    Admitted and found proved

15. Your actions as described at paragraph 13 were dishonest by reason of paragraphs 14. a., 14. b., and 14. c.
    To be determined

NEMS

16. You failed to inform an organisation you carried out medical work for, NEMS Community Benefit Services ('NEMS'), without delay:

    a. that you had been suspended from BUPA between 9 May 2019 and 18 July 2019;
    Admitted and found proved

    b. and not until 21 May 2020, that you had been dismissed from BUPA on 20 March 2020.
    Admitted and found proved

17. You knew that you should have informed NEMS, as an organisation you carried out medical work for, without delay of your:

a. suspension from BUPA;
To be determined

b. dismissal from BUPA.
Admitted and found proved

18. Your actions as described at paragraph 16 were dishonest by reason of paragraph 17.
To be determined

19. At a performance meeting with NEMS on 14 January 2020 you stated that your reasons for '…*leaving*…' the Practice had been because you '…*had been booking double appointments for diabetic and mental health patients but if they cancelled only one slot was cancelled and they were left with a ghost slot*…' or words to that effect.
Admitted and found proved

20. You knew that:

a. you had been dismissed from the Practice for gross misconduct which included probity concerns;
Admitted and found proved

b. the wording set out at paragraph 19 did not reflect the true reason(s) or your dismissal from the Practice.
To be determined

21. Your actions as described at paragraph 19 were dishonest by reason of paragraphs 20. a. and 20. b.
To be determined

22. At a grievance appeal hearing with BUPA on 2 June 2020 you stated that '…*[NEMS] are aware of dismissal from [BUPA] – took place a couple of weeks after dismissal*…' or words to that effect.
Admitted and found proved

23. You knew that:

a. you had:

i. been dismissed from BUPA on 20 March 2020;
Admitted and found proved

ii. informed NEMS on 21 May 2020 of your dismissal from BUPA;
Admitted and found proved

iii. taken over eight weeks to inform NEMS of your dismissal from BUPA;
To be determined

b. the statement described at paragraph 22 was not true.
To be determined

24. Your actions at paragraph 22 were dishonest by reason of paragraphs 23. a. and 23. b.
To be determined

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

13. At the outset of these proceedings, through her counsel, Mr Ben Rich, Dr Oakley made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved. On 11 November 2022, a further admission was made in respect of paragraph 17(b) of the Allegation. This was announced as admitted and found proved.

The Facts to be Determined

14. In light of Dr Oakley's response to the Allegation made against her, the Tribunal is required to determine the disputed allegations.

Witness Evidence

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

- Mr C, Chief Operating Officer for University of Nottingham and University of Lincoln Health Services (UNHS). Mr C was Dr Oakley's direct line manager for non-clinical matters at the Practice, at the time of the events, and conducted the disciplinary investigation into Dr Oakley. Mr C provided a witness statement dated 4 October 2019 and a supplemental statement dated 8 September 2022, as well as giving evidence by video link;
- Ms D, Practice Manager at the Practice. Ms D had attended Dr Oakley's disciplinary hearing on 5 March 2019 in a note-taking capacity. She provided a witness statement dated 27 September 2019, as well as giving evidence by video link;
- Ms F, Centre Manager at BUPA. Ms F was Dr Oakley's line manager at BUPA, at the time of the events. She provided a witness statement dated 11 November 2019, as well as giving evidence by video link;

- Dr E, Medical Director of NEMS Community Benefit Services. Dr E was Dr Oakley's line manager at NEMS, at the time of the events. She provided a witness statement dated 11 February 2021, as well as giving evidence by video link;
- Dr A, Health Assessment Clinician at BUPA in Nottingham and NHS GP. Dr A undertook an appraisal for Dr Oakley in February 2019. He provided a witness statement dated 12 November 2019 and a supplemental statement dated 20 March 2022, as well as giving evidence by video link;
- Dr G, GP for the NHS and BUPA and Associate Clinical Director at BUPA, provided a witness statement dated 13 November 2019, and two supplemental statements dated 20 March 2021 and 20 September 2022 respectively, as well as giving evidence by video link.

16. The Tribunal also received evidence on behalf of the GMC in the form of a witness statement from the following witness who was not called to give oral evidence: Ms H, Case Referrals Adviser for BUPA, who provided a statement dated 7 May 2021.

17. Dr Oakley provided her own witness statement, dated 25 July 2022 which included a number of attachments, and also gave oral evidence at the hearing. In addition, the Tribunal received evidence in the form of written testimonials from the following colleagues on Dr Oakley's behalf. All confirmed they had had sight of the GMC Allegation in its entirety:

- Dr I, GP colleague at the Practice;
- Mrs J, medical receptionist at the Practice until May 2019;
- Dr K, GP colleague at the Practice;
- Dr L, GP colleague at BUPA;
- Dr M, GP colleague at Meadows Health Centre, Nottingham;
- Dr N, GP colleague at NEMS and Meadows Health Centre;
- Dr O, GP colleague at Meadows Health Centre;
- Dr P, GP colleague;
- Ms Q, Practice Manager at Meadows Health Centre;
- Ms R, colleague at BUPA.

18. The Tribunal also received a witness statement on Dr Oakley's behalf from Mr S, former patient at the Practice, dated 1 July 2022.

Expert Witness Evidence

19. The Tribunal also received evidence from Dr T, expert witness on behalf of the GMC, and from Dr U, expert witness on behalf of Dr Oakley. The Tribunal had regard to the following expert reports:

- GMC Expert Report of Dr T, dated 17 December 2020;
- Expert Report of Dr U, dated 27 June 2022
- Joint Expert Report of Dr T and Dr U, dated 24 August 2022.

20. The expert reports assisted the Tribunal in its understanding of whether Dr Oakley's admitted actions in pre-populating the patient records and/or inputting non-contemporaneous notes into the clinical records of patients prior to seeing them, could have fallen below or seriously below the standard expected of a reasonably competent GP.

Documentary Evidence

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

- UNHS Investigation Report, dated 30 January 2019;
- UNHS Screenshot document;
- Handwritten notes of Mr C, dated 17 and 23 January 2019 respectively;
- Notification of UNHS Disciplinary Hearing Letter, dated 15 February 2019;
- UNHS Dismissal Letter, dated 14 March 2019;
- Documentation from Ms D in relation to Dr Oakley's disciplinary hearing;
- Correspondence between Ms D and Dr Oakley, various dates;
- Documentation relating to the first BUPA investigation and outcome, various dates;
- Documentation relating to the second BUPA investigation and outcome, including capability documents, various dates;
- Documentation relating to Dr Oakley's appeal, various dates;
- Excerpt from Dr Oakley's NHS Appraisal Report, dated 12 March 2019;
- NEMS Performance Meeting Notes, dated 14 January 2020.

The Tribunal's Approach

22. The GMC bring the Allegation and the burden of proving the allegations is on the GMC; there is no burden on the doctor to disprove the allegations. The fact that Dr Oakley has chosen to give and call evidence on her own behalf does not mean that she has taken any burden upon herself.

23. The Standard of Proof is the 'Balance of Probabilities' – in plain language – whether it is more likely than not that the facts occurred as alleged.

Credibility of witnesses

24. The High Court decisions of *Dutta v GMC* [2020] EWHC 1974 (Admin) and *Khan v GMC* [2021] EWHC 374 (Admin) make it clear that assessing the credibility of a witness based exclusively on a witnesses' demeanour was a discredited method of decision-making. The Tribunal is obliged to make an overall assessment of the evidence, including consideration of contemporaneous documents and not to make any assumptions or preconceptions about how a witness should behave.

Dishonesty

25. Given that Dr Oakley faces an allegation of dishonesty, the Tribunal had regard to the test for dishonesty set out in *Ivey v Genting Casinos (UK) Limited (t/a Crockfords Club)* [2017] UKSC 67:

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

26. The Tribunal considered that it must ask itself three questions. Firstly, did Dr Oakley act in the way that is alleged by the GMC on the balance of probabilities? Secondly, what was the genuine belief or knowledge Dr Oakley held regarding the facts or belief in question? Lastly, would the actions of Dr Oakley be considered dishonest by the ordinary standards of reasonable and honest people?

Good Character

27. The Tribunal considered Dr Oakley's positive good character evidence as important and relevant to its considerations in two respects. Although it is not a defence to the allegations, Dr Oakley's good character counts in her favour when assessing the credibility of her evidence and whether it should be accepted. Secondly, her good character and the testimonies provided is relevant in her favour, as it may mean it is less likely that she has acted in the way alleged. The Tribunal had regard to the case of *Donkin v The Law Society* [2007] EWHC 414 (Admin) when considering what weight it could place on such evidence.

Assessment of the Evidence

28. This is an allegation of dishonesty. Where there are serious allegations or where serious consequences would flow from a factual finding, the Tribunal is required to undertake a heightened examination of the evidence before reaching its conclusion; *D v GMC* [2011] NIQB 95.

29. The Tribunal further accepted the relevance of the authority of *Lawrence v GMC* [2015] EWHC 586 (Admin) to this case, which stated that in serious offences, there is a need for cogent evidence. Whilst this does not alter the standard of proof required, a close and detailed analysis, as well as an examination of the inherent improbability of events, is required in assessing the evidence.

30. Although the Tribunal will assess each paragraph (and sub-paragraph) of the Allegation separately, it was mindful that it could also assess the Allegation as a whole if the language of the Allegation required it to do so.

The Tribunal's Analysis of the Evidence and Findings

31. 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.

NHS

Paragraphs 1f (i) and (ii) and 2

32. In determining paragraphs 1f (i) and (ii), the Tribunal took into consideration the document prepared by Mr C for the initial investigation at the Practice, which summarised each free text appointment. The Tribunal noted that these appointments were not linked to any patient records, but, as their name suggests, placed directly into the Practice's diary by Dr Oakley. It was unfortunate that the Allegation stated that Dr Oakley had '*used patient medical records'*, when the evidence was clear – and the parties agreed – that the reason the investigation had started was because the *'free text'* diary entries were not linked to any patient records and no clinical entries had been made.

33. The Practice initially relied on 35 diary entries in their investigation, which were reduced to 26 before the Tribunal. Dr Oakley was able to provide multiple, detailed reasons why additional diary slots would be needed; for example a complex patient requiring a double slot, or an administrative task relating to a patient. Whilst EMIS numbers were available, patient names were not provided to the Tribunal and had never been disclosed to Dr Oakley. This left Dr Oakley – and the Tribunal – in an impossible position with regards the appointments. On the basis of the evidence available, it was not possible to form any opinion as to whether there had been a legitimate need for a free text or double slot appointment. The Tribunal considered that because Dr Oakley had not known what was being alleged and the Practice refused to provide her with further details, then it was very difficult for her to have been able to properly defend herself in the Practice investigation.

34. The Tribunal considered that the evidence provided by the GMC lacked clarity and was unsatisfactory. The GMC relied on the Practice's investigation, which was poor and incomplete. The Practice focused on, and subsequently criticized, the number of free text appointments made by Dr Oakley, but no comparison was undertaken with other clinicians at the Practice. There were also inconsistencies between the document initially provided to Dr Oakley at the investigation stage and the ultimate conclusions reached in Mr C's report. The Tribunal noted that the Practice's investigation into Dr Oakley morphed from concerns about record keeping to an allegation of manipulation and fabrication of practice records on the basis of inferences that Dr Oakley was not permitted to rebut.

35. The Tribunal did not accept the Practice's factual conclusions on several issues. For example, the Practice's investigation criticised entries in Patient B's medical records, with Mr C stating that there was no evidence that a subsequent telephone encounter had actually occurred after a failed call. Dr Oakley explained the failed phone telephone call to Patient B, followed by a subsequent successful telephone call and the prescription that was provided. The two entries supported her case; a failed call, then a successful call around two hours later. However, the Practice's investigation failed to check with Patient B or interrogate the telephone records to accurately determine the events. The Tribunal also considered and dismissed the Practice's insinuations that Dr Oakley was booking the additional slots to avoid work; she had taken the time to put an entry in a patient's record about an unsuccessful telephone call.

36. The Tribunal noted that, on average, Dr Oakley had had 36 appointments with patients a day. The Tribunal was satisfied that there had been considerable pressure on Dr Oakley to avoid or reduce the use of 'official' double appointments. Mr C told the Tribunal that appointment time had since been increased as the system in place at the time was unworkable; a clear acknowledgement by him of the unworkability and insufficiency of system at that time.

37. The Tribunal noted that the Practice's investigation gave the impression that Dr Oakley was underworking. However, her number of free text appointments averaged at less than two slots a week, and there was no evidence of a comparative exercise taking place between her and other doctors, in terms of the number of such appointments or the complexity of patients.

38. The Tribunal was particularly concerned about the conclusions drawn by Mr C with regards to Dr Oakley's use of the clinical computer system. Mr C used raw time data provided by the computer system, before making assumptions about lunch breaks and other breaks, without any evidential foundation. Whilst Mr C accepted he was not a clinician, he assumed that Dr Oakley always took an hour for lunch, without making any enquiries with her – or her colleagues. He also acknowledged that his assumptions did not take into account the regular Practice meetings or weekly reviews, or any work Dr Oakley was doing off the system, which could have been considerable. Mr C used this data to find that Dr Oakley was working less than her allotted session time, a conclusion the Tribunal considered to be irrational and unreasonable. Furthermore, he had not undertaken any similar analysis comparing Dr Oakley to other doctors, which left the information floating without any context.

39. The Tribunal was unable to identify any evidence that Dr Oakley knew she would be likely to have any empty appointment slots or that she was unoccupied during any part of the working day. The Tribunal considered the suggestion that she was unoccupied at any time during her work at the Practice to be without proper and reasonable foundation.

40. The Tribunal was not satisfied that the appointments created by Dr Oakley, set out in Schedules 1-4, were false. While someone looking at them without context and explanation may not work out what they were, Dr Oakley's explanation was entirely credible and

reasonable. Moreover, the free text appointments were not connected to any patient medical records, with no possibility of harm or detriment being caused to a patient.

41. Accordingly, the Tribunal found paragraph 1f (ii) and (iii) not proved.

42. In light of its findings as above, the Tribunal could find no reason or basis on which to find any dishonesty. The appointments had not been designed to create an advantage, and there was no evidence that Dr Oakley knew she was being deceitful. Even on basis of her admissions to the remainder of paragraph 1, the Tribunal was of the view there was no rational basis on which an ordinary reasonable person would consider Dr Oakley's actions dishonest.

43. Accordingly, the Tribunal found paragraph 2 of the Allegation not proved

Paragraphs 5c and 6

44. The Tribunal was mindful of Dr Oakley's admissions in relation to the stem of the Allegation, but she denied that she knew she had to disclose the information and that she had acted dishonestly.

45. The Tribunal was therefore required to determine the state of Dr Oakley's subjective knowledge regarding disclosing the information to Dr A. The Tribunal had careful regard to the chronology of events: Dr Oakley had been suspended on 25 January 2019, notified of the disciplinary hearing on 15 February 2019, submitted her appraisal on 19 February 2019, and attended the appraisal meeting on 27 February 2019.

46. The Tribunal was mindful that Dr Oakley would have started preparing her appraisal form well in advance of the appraisal date and when she was actively completing it, she had not yet been suspended. The Tribunal was satisfied that Dr Oakley had probably completed the majority of the appraisal form in advance of her suspension from the Practice, including the section relating to probity.

47. The Tribunal took into consideration the differing accounts between Dr Oakley and Mr C as to whether she needed to tell Dr A about the investigation and suspension from the Practice. Dr Oakley's evidence was that she asked Mr C if she should include details regarding the investigation in her appraisal and was informed that that should be placed in the following year's appraisal. Mr C told the Tribunal he could not recall being asked this, and stated that Dr Oakley had only asked him for information to put in her appraisal. Mr C added that he was not qualified to give advice on clinical matters, only on administrative matters.

48. The Tribunal found Dr Oakley's evidence unpersuasive. It accepted that Mr C was a source of general information about what to put in the form but was not able to advise specifically what to put in or leave out. Furthermore, Dr Oakley had 10 years' experience of undertaking appraisals, both as someone being appraised and an appraiser for other doctors. She would therefore have known what required disclosure.

49. The Tribunal took into consideration the contents of the notification of the disciplinary hearing sent to Dr Oakley, dated 15 February 2019, outlining the allegations, disciplinary process and potential consequences. Significantly, the letter alleged that Dr Oakley had manipulated and fabricated practice records – a serious accusation against any professional. The Tribunal was satisfied that she had received this notification in advance of her meeting with Dr A.

50. Significantly, the Tribunal accepted Dr A's evidence that he asked Dr Oakley, in generic terms, '*how things were going at the Practice*'. Dr Oakley did not have any recollection of this but the Tribunal considered this to be an obvious question to be asked in an appraisal. This was the first time in her career that Dr Oakley had been suspended and had been through a disciplinary process – it was therefore not an insignificant event. The Tribunal was mindful that Dr Oakley did not have an open and transparent relationship with Dr A and she had been his senior at BUPA, making her feel uncomfortable as she had been his appraiser there. However, the fact that Dr Oakley did not disclose the investigation or her suspension from the Practice – even when prompted – was a serious concern for the Tribunal. The Tribunal was satisfied that Dr Oakley knew that she was obliged to disclose the investigation and her suspension at the Practice, but that she failed to do so.

51. The Tribunal accepted that for an experienced doctor suspended for the first time and facing disciplinary proceedings that could lead to dismissal, alongside personal things going on in her life, it must have felt awkward and embarrassing to disclose the investigation to Dr A. However, at the time of the appraisal, Dr Oakley had been suspended for a month and she had received the notice of the disciplinary hearing, as well as the serious allegations. Dr Oakley accepted that she should have disclosed the information set out at 5b (i)-(iv) and the Tribunal found that she must have known it was relevant to her appraisal. Dr Oakley's failure to disclose the events – even when prompted – was intentional and deliberate. The Tribunal therefore considered Dr Oakley's actions to be dishonest, to the limited extent that in her appraisal meeting with Dr A, she had failed to disclose the suspension, investigation, and accompanying details in the disciplinary letter.

52. The Tribunal was conscious that the appraisal form was over 50 pages in length and Dr A made it clear that the form was not user friendly – to the extent that it is no longer used in the same format. The Tribunal accepted Dr A's evidence that Dr Oakley only had a short period of time to review the appraisal form and during that period was likely to have concentrated on the sections that had been completed by Dr A. Taking into account that the disciplinary meeting took place before Dr Oakley had sight of the completed Appraisal form and was awaiting the outcome of that meeting at the time it was submitted, the Tribunal found it likely that her attention was elsewhere. The Tribunal was therefore not satisfied that Dr Oakley knowingly submitted the appraisal containing inaccurate information, during the review period cited in paragraph 5a (iii) of the Allegation.

53. Accordingly, the Tribunal found paragraph 5c of the Allegation to be proved.

54. In light of its findings as outlined above, the Tribunal found paragraph 6 of the Allegation proved in relation to 5a (ii) and 5b only.

BUPA

Paragraph 7

55. Dr Oakley admitted paragraph 7 of the Allegation in its entirety. Consequently, the Tribunal was tasked to determine whether Dr Oakley's actions fell below, or seriously below, the standards expected of a reasonably competent GP.

56. In reaching a decision, the Tribunal had regard to the joint expert report as well as Dr G's evidence concerning the pre-population of patient notes.

57. The experts agreed that if Dr Oakley knew that the patient information would remain in the system and be accessible to other clinicians, then this would be seriously below the standards expected. However, if Dr Oakley's belief was that the information was no longer accessible if a patient cancelled or did not attend their appointment, then this would fall below the standard expected.

58. Dr Oakley, in evidence, said that she believed all the information would be *'erased'* if a patient did not attend their appointment and would not be visible to other clinicians in future.

59. The GMC was unable to provide any examples of occasions where Dr Oakley had pre-populated notes that were subsequently recovered. Notably, the six examples before the Tribunal related to other doctors – none of whom faced any disciplinary sanction.

60. Dr G told the Tribunal that it was his understanding that if a patient cancelled, any information added to a questionnaire prior to the patient's visit could not then be seen by any other clinician. Dr G also gave evidence that the use of *'macros'* and pre-population of questionnaires was not uncommon practice at BUPA at that time. Dr G told the Tribunal that he recognised templates occur elsewhere including the NHS, as they were timesaving.

61. Although this was contrary to good practice, Dr G was not aware of any other BUPA doctors being investigated or having sanctions imposed. When asked if this practice was still in place at BUPA, his response was *'maybe'*.

62. The Tribunal was of the view that Dr Oakley's belief that the pre-populated questionnaires were not retained in the system was entirely reasonable. As it was accepted by Dr G that this practice is ongoing and unopposed, the Tribunal determined that this practice did not fall below, let alone seriously below, the standard expected.

Paragraphs 9 and 10

63. In determining these paragraphs, the Tribunal took into account that Dr Oakley had a professional duty to inform BUPA of her suspension, and subsequent dismissal from the Practice, in a timely manner as set out in paragraph 76 of Good Medical Practice (2013) ('GMP'):

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

64. The Tribunal was mindful that Dr Oakley was in a difficult situation with the allegations that had been made against her; not being provided with the details of the appointments booked and not able to properly defend herself. It also accepted Dr Oakley's evidence that she was not expecting the eventual outcome, as the investigation had evolved from its original basis of concerns about record keeping. Dr Oakley repeatedly stated throughout her evidence that she had been unaware of the obligation to tell BUPA of her suspension and dismissal. Although she had read GMP, Dr Oakley had concentrated on the paragraphs relating to note-keeping and record-keeping. The Tribunal noted that when Dr Oakley received the email from the GMC dated 16 April 2019, she informed BUPA immediately.

65. The Tribunal concluded that when Dr Oakley knew of her obligation, through the email from the GMC, she acted proactively and appropriately in informing BUPA. Until that point, the Tribunal was satisfied that Dr Oakley was not aware that she had to tell BUPA; if she had already known of her duty to inform her employer, the email would not have changed her mind-set and it was likely that she would have continued to withhold the information.

66. The Tribunal considered Dr Oakley's previous good character and that she had no previous regulatory proceedings against her. It accepted that Dr Oakley would have been embarrassed to disclose the situation to BUPA, and also run the risk of potential consequences at a time when no decision had yet been made with regard to future employment at the Practice.

67. The Tribunal was therefore not satisfied on the evidence provided that the GMC had discharged the burden of proving that Dr Oakley knew she should have informed BUPA.

68. Accordingly, the Tribunal found paragraph 9 of the Allegation not proved.

69. In light of its above findings as to the state of Dr Oakley's knowledge, it followed accordingly that the Tribunal also found paragraph 10 of the Allegation not proved.

<u>Paragraphs 11c and 12</u>

70. The Tribunal accepted that Dr Oakley stated that she had been dismissed and gave the reason for her dismissal as '*blocking out appointments*'. Dr G acknowledged that he had been told about the dismissal but he did not have a clear memory of what had been said. The Tribunal considered that upon receiving this information from Dr Oakley, who was distressed at the time, Dr G's role would have been to prompt Dr Oakley and find out more. Dr Oakley's view was that she was explaining exactly what she had done and she has never digressed from that. She also explained the same to Ms F in terms that Ms F would understand, yet neither Dr G nor Ms F could give detailed accounts of the conversations.

71. The Tribunal considered the accounts from both witnesses to be somewhat muddled, although both agreed that the word *'dismissed'* had been mentioned. Clearly, Dr Oakley was not denying what had happened at the Practice and gave details of the GMC referral appropriately. In Ms F's oral evidence she stated that '*alarm bells had not gone off*' as she had not heard the words *'gross misconduct'* in relation to Dr Oakley's dismissal. However Ms F was unable to explain why, when informed of the referral to the GMC, this information did not cause her similar concern.

72. The Tribunal was satisfied that Dr Oakley was describing what she believed to be the real reasons for her dismissal. On looking at the notification of disciplinary hearing, the Tribunal noted the references to *'fabrication'* and *'registered consultations'*. Paragraph 4 of the letter went into further details of the booked consultations and stated that there seemed to be no valid reason for booking these. The Tribunal also had regard to the dismissal letter itself, which referred to the double-booking of appointments.

73. The Tribunal took into account that Dr Oakley had accepted the bare allegations and not denied anything, although she did not accept the conclusions the Practice had reached. Dr Oakley told BUPA the reason for her dismissal from the Practice was because she had been booking extra appointments and the Tribunal concluded that it was not inaccurate to describe the reasons in the terms that she had. Having had regard to the state of the Practice's investigation, it was reasonable for Dr Oakley to have described the events as she did. The Tribunal was not satisfied that Dr Oakley knowingly misled, as alleged in paragraph 11c.

74. The Tribunal, therefore, found paragraph 11c of the Allegation not proved.

75. In light of its above findings, it followed accordingly that the Tribunal also found paragraph 12 of the Allegation not proved.

<u>Paragraph 15</u>

76. Dr Oakley accepted the stem of the allegation and the Tribunal therefore had to consider Dr Oakley's subjective state of knowledge at the time. The Tribunal took into

account Dr Oakley's evidence that the Statement of Appeal had been written by an HR specialist and the word *'exonerated'* did not '*jump out'* at her when she first read it.

77. The Tribunal considered that by this time, in April 2020, BUPA was aware of the issues at the Practice and anything Dr Oakley said was against that background. This was her Statement of Appeal. In submitting the statement Dr Oakley was stating her case and why she should not have been dismissed from BUPA. The Tribunal therefore considered it entirely appropriate for Dr Oakley to describe what her case was. Dr Oakley was under no obligation to go into extensive detail, as everyone knew what had occurred and separately, she had reached a confidential settlement with the Practice. The Tribunal was satisfied, that save for the use of the word '*exonerated*', the contents of the Statement of Appeal in paragraph 13 were accurate.

78. In her evidence, Dr Oakley readily conceded that the use of the word '*exonerated'* was erroneous, accepting that it should have been corrected and altered before the Statement of Appeal was submitted. However, as BUPA had been made aware of the reasons for Dr Oakley's dismissal from multiple sources, there could be no suggestion that she was trying to deceive anyone.

79. Dr Oakley had made an admission to paragraph 14b of the Allegation in the context of what the position <u>had</u> been and she had since then reached terms with the Practice to settle the proceedings in the Employment Tribunal, which included a confidentiality clause and a clause that Dr Oakley would not make any derogatory comments about the Practice. Therefore it follows that Dr Oakley was limited in what she could say about events at the Practice.

80. Taking into account all the circumstances and the document in its entirety, the Tribunal was satisfied that the inclusion of the word '*exonerated'* with the statement of appeal was simply an unfortunate mistake and could therefore not be described as dishonest.

81. Accordingly, the Tribunal found paragraph 15 of the Allegation not proved.

<u>NEMS</u>

<u>Paragraphs 17a and 18</u>

82. In determining these paragraphs, the Tribunal took into consideration that, by this stage, Dr Oakley had been through a lengthy disciplinary process at BUPA, been suspended and had her career threatened by not disclosing information to her employer within a reasonable time frame.

83. Dr Oakley accepted by at least the end of April 2019 that she had read paragraph 76 of GMP and therefore knew of the obligation to inform other employers of the events at the Practice, with particular regards to her suspension. At the point the BUPA disciplinary

investigation started in May 2019 , when she was suspended, she therefore must have appreciated the need to tell other employers of the suspension.

84. In her oral evidence, Dr Oakley accepted that she knew of the obligation to inform other employers; namely NEMS, of her suspension from BUPA. She therefore admitted the contents of paragraph 17a.

85. The Tribunal took into account that Dr Oakley had emailed Dr W on 22 April 2019 to arrange to speak with him. They had a telephone conversation on 24 April 2019, when Dr Oakley told Dr W of her dismissal from the Practice, and the subsequent GMC investigation. There is no evidence of further contact before Dr W emailed Dr Oakley on 18 July 2019 to inform her that the GMC had made him aware of the separate investigation at BUPA. By the time of the email from Dr W dated 18 July 2019, Dr Oakley had been suspended for over two months from BUPA.

86. The Tribunal was mindful of Dr Oakley's XXX. However, at the end of May 2019, Dr Oakley was only actually working at NEMS – having been dismissed from the Practice and suspended by BUPA. The Tribunal was satisfied that Dr Oakley knew of the obligation to inform NEMS of her suspension from BUPA, but made a decision not to inform them – for a considerable period of time. The Tribunal concluded that this omission would be considered dishonest by the standards of ordinary, decent people, as NEMS should have been informed of the events and Dr Oakley chose not to update them.

87. Dr Oakley had previously admitted paragraph 17b, and made an admission to paragraph 17a in her oral evidence on 14 November 2022. In light of this later admission and the circumstances, the Tribunal found paragraph 18 to be proved.

<u>Paragraph 20b and 21</u>

88. The Tribunal took into account the contents of paragraph 19, which Dr Oakley admitted in full and that by this stage, 14 January 2020, a compromise agreement had been reached with the Practice regarding the Employment Tribunal proceedings arising out of her dismissal, including a mutual confidentiality agreement.

89. The Tribunal considered that the details given to NEMS in Dr Oakley's statement as to why she had been disciplined at the Practice were neither incorrect nor inaccurate, reflecting honestly what, in Dr Oakley's opinion, had occurred.

90. The Tribunal was not satisfied on the evidence that the GMC had discharged the burden of proving that Dr Oakley knew the wording set out at paragraph 19 did not represent the true reason(s) for her dismissal from the Practice. In the Tribunal's view, taking into account all the circumstances, Dr Oakley was entitled to explain the reason for her dismissal in the manner she did.

91. Accordingly, the Tribunal found paragraph 20b of the Allegation not proved.

92. In light of its findings in relation to paragraph 20b, the Tribunal found paragraph 21 of the Allegation to be not proved.

Paragraphs 23a (iii), 23b, and 24

93. The Tribunal was mindful that it was for the GMC to prove that *' a couple of weeks'* was an intended untruth. It accepted that at this point, setting aside the amount of time taken up by difficulties going on in Dr Oakley's personal life from the end of 2018, she had been suspended from two jobs for various periods of time. The Tribunal viewed Dr Oakley's comments in the context that both XXX and the BUPA notetaker recognised the discussion was not exclusively about NEMS. Dr Oakley acknowledged that she had informed NHS England and other interested parties earlier than she had informed NEMS.

94. The Tribunal considered whether Dr Oakley stating *'a couple of weeks'* in her appeal hearing was meant in a literal sense and was intended to mislead. Whilst the phrase was not accurate, the issue for the Tribunal to determine was whether it was so inaccurate as to make it untrue. The Tribunal had regard to Dr Oakley's manner of speech in her oral evidence, noting that she was not cautious when using certain words and phrases. The Tribunal was of the view that *'a couple',* in this context, was flexible, and could be compared with '*a few*'. It was not designed to mean exactly two weeks. The Tribunal therefore did not consider that Dr Oakley was talking in the literal sense when she had said *'a couple of weeks'.*

95. In its analysis, the Tribunal noted the date when Dr Oakley had first contacted Dr E, thereby demonstrating her intent to inform her earlier than the eight-week period as set out in the Allegation. This delay was not necessarily caused by Dr Oakley but due to Dr E's unavailability. Asking for a *'catch up'* in this way was unusual between them and should probably have alerted Dr E to the fact that there was something significant to be discussed, even though Dr Oakley had not been explicit in stating this.

96. Taking the above into account, the Tribunal did not have sufficient evidence before it to find that Dr Oakley knew – in the sense that she had calculated the precise period of time that had lapsed and was therefore intentionally misleading - when she used the phrase *'a couple of weeks'* in the appeal meeting.

97. The Tribunal, therefore, found paragraph 23a (iii) not proved.

98. The Tribunal was of the view that in the statement as set out in paragraph 22 of the Allegation, Dr Oakley had not purposely expressed any known untruths. It was also of the view that Dr Oakley did not believe the contents of that statement were untrue.

99. The Tribunal concluded that the GMC had been unable to satisfy it on the balance of probabilities that Dr Oakley was intending to mislead, even though there had been loose and ambiguous language used by her at the appeal meeting.

100. The Tribunal, therefore, found paragraph 23b of the Allegation not proved.

101. In light of its findings as outlined above, the Tribunal accordingly found paragraph 24 of the Allegation not proved.

The Tribunal's Overall Determination on the Facts

102. The Tribunal has determined the facts as follows:

1. Between 2 October 2018 and 9 January 2019, whilst working at Cripps Health Centre ('the Practice') you used patients' medical records to book the appointments as set out in Schedules 1-4 and you:

    a. recorded the patients in Schedules 1 and 2 as having:

        i. arrived for the appointment;
        Admitted and found proved

        ii. been sent in to see you;
        Admitted and found proved

        iii. left the appointment;
        Admitted and found proved

    b. recorded the patients in Schedule 3 as having not attended the appointment;
    Admitted and found proved

    c. did not make any consultation notes in the patients' medical records in relation to the appointments set out in Schedules 1 and 2;
    Admitted and found proved

    d. did not access the patients' records in relation to the appointments set out in Schedules 2 and 3;
    Admitted and found proved

    e. created the appointments as set out in Schedule 4 for a patient who had left the Practice by 21 September 2018;
    Admitted and found proved

    f. knew that:

        i. you had not conducted the appointments as set out in Schedules 1-4;
        Admitted and found proved

        ii. you would be likely to have empty appointment slots for the dates and times set out in Schedules 1-4;
        Not proved

iii. the appointments you created as set out in Schedules 1-4 were false.
Not proved

2. Your actions as described at paragraph 1. a. – 1. e. were dishonest by reason of paragraph 1. f.
Not proved

3. ~~On 23 January 2019 you signed and returned a witness statement dated 17 January 2019 to the Practice:~~

~~a. in which you stated:~~

i. ~~*'On occasions where the appointment records show that a patient has arrived, been seen and left but there is no consultation recorded this may be because I have sometimes omitted to record all consultations within the clinical record. This is because when I have seen patients I sometimes make handwritten notes that might not have been transferred onto the system due to memory slip when having to multi-task.';*~~
Withdrawn following an application made under Rule 17(6)

ii. ~~*'On occasions where the appointment records show that a patient has arrived, been seen and left but there is no consultation record and the system audit shows that the records have not been accessed. This is because I may have been undertaking an admin task relating to that patient and have not had reason to access the medical record, for instance I may simply have relayed admin information.';*~~
Withdrawn following an application made under Rule 17(6)

~~b. and you knew that:~~

i. ~~you had not conducted the patient consultations to which you were referring in the statement set out at paragraph 3. a. i.;~~
Withdrawn following an application made under Rule 17(6)

ii. ~~you had not undertaken any administration tasks for the patients involved in the consultations to which you were referring in the statement set out at paragraph 3. a. ii.;~~
Withdrawn following an application made under Rule 17(6)

iii. ~~the information set out at paragraph 3. a. was untrue.~~
Withdrawn following an application made under Rule 17(6)

4. ~~Your actions as described at paragraph 3. a. were dishonest by reason of paragraph 3. b.~~
Withdrawn following an application made under Rule 17(6)

5. Between 19 February 2019 and 12 March 2019 you underwent an NHS England appraisal with Dr A:

   a. which involved you:

      i. submitting appraisal evidence on 19 February 2019;
      Admitted and found proved

      ii. attending an appraisal meeting on 27 February 2019;
      Admitted and found proved

      iii. reviewing the final appraisal report between 6 March 2019 and 12 March 2019, which included the wording: '*Trust… A signed GMP probity declaration was evidenced. No issues or concerns were raised in relation to probity and no outside interests were declared…*';
      Admitted and found proved

   b. and you failed to disclose that you:

      i. were being investigated by the Practice for gross misconduct which included probity concerns;
      Admitted and found proved

      ii. had been suspended from working at the Practice on 25 January 2019;
      Admitted and found proved

      iii. had been sent a notification of disciplinary hearing by the Practice dated 15 February 2019 which set out the allegations against you including probity concerns;
      Admitted and found proved

      iv. were due to attend and/or had attended a disciplinary hearing at the Practice on 5 March 2019 to discuss the allegations against you including probity concerns;
      Admitted and found proved

   c. and you knew that you should have disclosed the information set out at paragraph 5. b.
   Determined and found proved

6. Your actions as described at paragraphs 5. a. and 5. b. were dishonest by reason of paragraph 5. c.
Determined and found proved

<u>BUPA</u>

7. Between 31 August 2018 and 6 December 2019 whilst working at BUPA you inappropriately inputted non-contemporaneous notes into the clinical records of patients prior to seeing, evaluating and/or examining them, including recording:

   a. examination findings;
   Admitted and found proved

   b. whether or not a patient consented to having their NHS GP informed of the findings of their health assessment;
   Admitted and found proved

   c. a 'review of systems' and/or historic symptoms, including the absence of:

      i. abdominal pain;
      Admitted and found proved

      ii. cough;
      Admitted and found proved

      iii. shortness of breath;
      Admitted and found proved

      iv. difficulty swallowing.
      Admitted and found proved

8. You failed to notify BUPA without delay and not until 18 April 2019 that the Practice had:

   a. suspended you on 25 January 2019;
   Admitted and found proved

   b. dismissed you on 14 March 2019.
   Admitted and found proved

9. you knew that you should have informed BUPA, as your employer, without delay of your:

   a. suspension from the Practice;
   Not proved

   b. dismissal from the Practice.
   Not proved

10. Your actions as described at paragraph 8 were dishonest by reason of paragraph 9.
    Not proved

11. On 18 April 2019:

    a. you stated to BUPA that the reason for your dismissal from the Practice was due to '...*blocking out appointments...*' or words to that effect;
    Admitted and found proved

    b. you knew that you had been dismissed from the Practice for gross misconduct which included probity concerns;
    Admitted and found proved

    c. you knew that your submission to BUPA as described at paragraph 11. a. did not reflect the true reason(s) for your dismissal from the Practice.
    Not proved

12. Your actions as described at paragraph 11. a. were dishonest by reason of paragraphs 11. b. and 11. c.
    Not proved

13. You submitted a Statement of Appeal dated 9 April 2020 to BUPA which stated '*During my period at BUPA Health, whilst also working in the NHS at [the Practice] I blocked a few 10-minute GP appointment slots in order to create additional time for patients with more complex medical problems. Other GP's at [the Practice] also did this, including one of the Senior Partners. An investigation took place at [the Practice] and I was exonerated.*'
    Admitted and found proved

14. You knew that:

    a. you had not been exonerated by an investigation at the Practice;
    Admitted and found proved

    b. you had been dismissed from the Practice for gross misconduct which included probity concerns;
    Admitted and found proved

    c. your submission to BUPA as described at paragraph ~~12~~ 13 was not true.
    Amended under Rule 17(6)
    Admitted and found proved

15. Your actions as described at paragraph 13 were dishonest by reason of paragraphs 14. a., 14. b., and 14. c.
    Not proved

<u>NEMS</u>

16. You failed to inform an organisation you carried out medical work for, NEMS Community Benefit Services ('NEMS'), without delay:

    a. that you had been suspended from BUPA between 9 May 2019 and 18 July 2019;
    Admitted and found proved

    b. and not until 21 May 2020, that you had been dismissed from BUPA on 20 March 2020.
    Admitted and found proved

17. You knew that you should have informed NEMS, as an organisation you carried out medical work for, without delay of your:

    a. suspension from BUPA;
    Determined and found proved

    b. dismissal from BUPA.
    Admitted and found proved

18. Your actions as described at paragraph 16 were dishonest by reason of paragraph 17.
    Determined and found proved

19. At a performance meeting with NEMS on 14 January 2020 you stated that your reasons for '…*leaving*…' the Practice had been because you '…*had been booking double appointments for diabetic and mental health patients but if they cancelled only one slot was cancelled and they were left with a ghost slot*…' or words to that effect.
    Admitted and found proved

20. You knew that:

    a. you had been dismissed from the Practice for gross misconduct which included probity concerns;
    Admitted and found proved

    b. the wording set out at paragraph 19 did not reflect the true reason(s) or your dismissal from the Practice.
    Not proved

21. Your actions as described at paragraph 19 were dishonest by reason of paragraphs 20. a. and 20. b.
    Not proved

22. At a grievance appeal hearing with BUPA on 2 June 2020 you stated that '*…[NEMS] are aware of dismissal from [BUPA] – took place a couple of weeks after dismissal…*' or words to that effect.
Admitted and found proved

23. You knew that:

a. you had:

i. been dismissed from BUPA on 20 March 2020;
Admitted and found proved

ii. informed NEMS on 21 May 2020 of your dismissal from BUPA;
Admitted and found proved

iii. taken over eight weeks to inform NEMS of your dismissal from BUPA;
Not proved

b. the statement described at paragraph 22 was not true.
Not proved

24. Your actions at paragraph 22 were dishonest by reason of paragraphs 23. a. and 23. b.
Not proved

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

Determination on Impairment - 23/11/2022

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

The Evidence

104. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received evidence of two CPD courses undertaken by Dr Oakley: *'Assertiveness and Saying No'*, on 19 July 2021; and *'Professionalism',* on 10 May 2019.

Submissions

105. On behalf of the GMC, Ms Tighe submitted that Dr Oakley's fitness to practise is impaired by reason of her misconduct. Ms Tighe referred the Tribunal to the relevant case

law to be applied to cases involving dishonesty at this stage, and reminded the Tribunal of the purpose of the overarching objective.

106. Ms Tighe submitted that Dr Oakley's actions marked a significant departure from the principles set out in GMP, specifically paragraphs 1, 65, and 71, and 76 which state:

> ***1*** *Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.*
>
> ***65*** *You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*
>
> ***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.*
>
> ***76*** *If you are suspended by an organisation from a medical post, or have restrictions placed on your practice, you must, without delay, inform any other organisations you carry out medical work for and any patients you see independently.*

107. Ms Tighe submitted that Dr Oakley's actions amounted to misconduct which was serious. She had deliberately and intentionally failed to disclose relevant information to her appraiser and her employer, and the Tribunal had found this to be dishonest.

108. Ms Tighe stated that Dr Oakley's misconduct amounted to multiple acts of dishonesty over a sustained period of time in terms of her appraisal, and informing NEMS about her suspension and dismissal from BUPA.

109. Ms Tighe submitted that Dr Oakley lacked insight into her conduct. Dr Oakley had not expressed any insight into the importance of transparency and honesty in relation to the appraisal process or her employers. Dr Oakley had not addressed how her dishonest failures to disclose information could impact on the public's confidence in the medical profession and/or the appraisal process. There had been no reflective piece submitted by Dr Oakley for the Tribunal's consideration and no demonstration of remorse for her misconduct. Ms Tighe therefore submitted that in the absence of insight, remorse and remediation there remained the risk of repetition of the misconduct.

110. Ms Tighe submitted that the overarching objective would be seriously undermined if the Tribunal made a finding that Dr Oakley's fitness to practise was not impaired by reason of her misconduct.

111. On behalf of Dr Oakley, Mr Rich submitted that even though Dr Oakley had denied the charges of dishonesty, she did not seek to go behind the Tribunal's decision in any way and she accepted the Tribunal's findings. Mr Rich conceded that the two dishonesty charges amounted to misconduct. However, he submitted that Dr Oakley's fitness to practise was not currently impaired.

112. Mr Rich submitted that this was not a public safety case. The Tribunal had made a finding that there had been no fake appointments booked and therefore there was no risk to patients. Mr Rich submitted that when considering whether a finding of impairment had to be made in relation to maintaining public confidence in the profession, this case needed to be looked at in the round. There was a very low risk of repetition and Dr Oakley was now acutely conscious of the need to disclose on all occasions and had demonstrated she now did so. Some of the mitigating XXX she was under at the time had been reduced by changes in her working patterns.

113. With regard to insight and the risk of repetition of the misconduct, Mr Rich submitted that a denial of charges was not to be equated to a lack of insight.

114. Mr Rich submitted that a member of the public would know this case had begun with an unfair allegation being dealt with in an unfair way that became a *'gathering avalanche'* of accusations. Because of that, as well as the above factors, a finding of no current impairment would not damage the reputation of the profession or the confidence the public has in it.

The Relevant Legal Principles

115. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof. The decision on impairment is a matter for the Tribunal exercising its own independent judgement.

116. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct and that the misconduct was serious, and then whether the finding of that misconduct which was serious could lead to a finding of impairment.

117. The Tribunal must determine whether Dr Oakley's fitness to practise is impaired today, taking into account Dr Oakley's 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.

118. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High

Court in the *Grant case.* In particular, the Tribunal considered whether its findings of fact showed that Dr Oakley'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 or is liable in the future to bring the medical profession into disrepute; and/or*
>
> *c. Has in the past breached or is liable to breach in the future one of the fundamental tenets of the medical profession; and/or*
>
> *d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future'*

119. Throughout its deliberations, the Tribunal took account of the statutory overarching objective of protecting the public, which includes protecting the health, safety, and wellbeing of the public, maintaining public confidence in the profession, and promoting and maintaining proper professional standards and conduct for the members of the profession.

The Tribunal's Determination on Impairment

Misconduct

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

121. The Tribunal took into consideration that the two acts of dishonesty were discrete, taking place over a period of time. However, the Tribunal was conscious of the context in which the dishonesty took place: following a flawed investigation and disciplinary process at Dr Oakley's primary workplace. Nevertheless, Dr Oakley's actions amounted to serious departures from fundamental tenets of the medical profession, in particular paragraph 65 of GMP. The Tribunal was satisfied that members of the profession would find Dr Oakley's actions deplorable.

122. The Tribunal accepted Dr Oakley's account and the reasons she provided for not disclosing the investigation and her suspension within her appraisal form. However, the Tribunal determined that the failure to disclose the information in the face-to-face meeting - after being asked - amounted to dishonesty. The Tribunal considered this to amount to serious misconduct, as it undermined the appraisals and revalidation process. The dishonesty impacted on the regulatory regime, which had been specifically put in place to maintain proper professional standards and thereby reassure the public.

123. Moreover, Dr Oakley's dishonest failure to inform her employers of her suspended status restricted their ability to make an informed decision as to whether it was appropriate for her to continue working without restrictions.

124. In light of these factors, the Tribunal concluded that Dr Oakley's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor, as to amount to misconduct which was serious.

Impairment

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

126. The Tribunal accepted that a finding of dishonesty does not invariably lead to a finding of impairment. However, the Tribunal was mindful of the decision of *GMC v Armstrong* [2021] EWHC 1658 (Admin) where it was held that exceptional circumstances should be present for a finding of dishonesty not to lead to a finding of impairment.

127. The Tribunal was satisfied that both aspects of Dr Oakley's dishonest behaviour were relatively brief and had minimal consequences. Significantly, throughout this process, Dr Oakley has always accepted the primary factual basis of the GMC allegations and she rectified both dishonesties herself, albeit only after she was given advice on the position.

128. In relation to the appraisal, Dr Oakley informed Dr A of the Practice's investigation within days of it being brought to her attention by the GP adviser service. In relation to NEMS, Dr Oakley informed them two days after she received the email from the GMC advising she would need to inform her employer. It was clear to the Tribunal that Dr Oakley resolved the issues reasonably swiftly, informing the respective parties when prompted or advised to do so.

129. The Tribunal acknowledged that Dr Oakley had made no gain through her dishonesty, financially or otherwise, and that some of her actions were motivated by embarrassment and self-protection. However, the Tribunal did not consider this to significantly mitigate the misconduct. Furthermore, this was not one of those rare cases of dishonesty that does not lead to a finding of impairment.

130. The Tribunal took into account that Dr Oakley has had no previous regulatory proceedings recorded against her, with no prior concerns regarding her probity. Similarly, since the events, there has been no suggestion of further concerns and Dr Oakley fully disclosed matters in three subsequent appraisals, as well as to five potential employers. These actions lead the Tribunal to conclude there is a negligible risk of the misconduct being repeated.

131. The Tribunal carefully considered Dr Oakley's level of insight into her misconduct. The Tribunal was conscious that she had denied any dishonesty at the fact-finding stage, as she was entitled to. However, Dr Oakley has not produced a reflective statement for the Tribunal's consideration and there is little evidence of any remorse, or of her understanding of the impact that dishonest actions could have on the profession and the public interest. Nonetheless, the Tribunal was satisfied that Dr Oakley had informed the relevant parties about her circumstances; not challenging or ignoring the advice she was given, which did demonstrate some insight. In balancing the relevant factors, the Tribunal was not satisfied that it had sufficient evidence before it that Dr Oakley had gained an adequate level of understanding into her actions. Whilst there was therefore some evidence of insight into the misconduct, it was presently incomplete.

132. The Tribunal was mindful that dishonesty is notoriously difficult to remediate. Whilst Dr Oakley did provide evidence of professional development courses she had attended, these were not specifically targeted towards the misconduct identified. There was, therefore, simply insufficient evidence before the Tribunal to demonstrate that Dr Oakley had adequately remediated her behaviour, although some remediative steps had been undertaken.

133. The Tribunal considered that the appraisal process had been undermined by Dr Oakley's dishonest actions. It was aware of the importance and significance of this process and the expectation that a doctor must be honest and disclose all necessary information to their appraiser. The Tribunal was satisfied that whilst there are no patient safety concerns, the misconduct jeopardised the maintenance of professional standards and public confidence in the profession.

134. The Tribunal further found that that by dishonestly not disclosing relevant matters to her employer, Dr Oakley damaged the trust and confidence that employers should have in professional employees. Taking all the circumstances into account, the Tribunal was satisfied that public confidence in the profession would be undermined if a finding of impairment were not made.

135. The Tribunal therefore considered that the overarching objective required a finding of impairment in order to promote and maintain public confidence in the profession and to promote and maintain proper professional standards and conduct for the members of the profession.

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

Determination on Sanction - 25/11/2022

137. Having determined that Dr Oakley'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

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

139. The Tribunal received further witness evidence on behalf of Dr Oakley from Dr P, by video link. Dr P is a XXX where Dr Oakley currently works. He has been supervising her – as required by the interim order of conditions – since she commenced employment there on 14 January 2022. Dr P told the Tribunal that his supervision has covered clinical issues, as well as operational issues within the NHS. He also explained that over the last few months he has provided mentoring and support to Dr Oakley in preparation for this hearing.

140. Dr P's evidence assisted the Tribunal in understanding the mentoring relationship with Dr Oakley and how it might assist in relation to developing her insight, depending on the sanction the Tribunal considered appropriate.

Submissions

141. On behalf of the GMC, Ms Tighe submitted that the appropriate sanction is one of erasure. She referred the Tribunal to the relevant paragraphs of the Sanctions Guidance (November 2020 edition) ('the SG'), which set out the reasons for imposing sanctions.

142. Ms Tighe acknowledged the mitigating features that applied in this case. Firstly, there had been no previous finding of impairment by a fitness to practise tribunal and secondly, the lapse of time since the events occurred. Ms Tighe added that the Tribunal could also take into account Dr Oakley's personal matters XXX.

143. Ms Tighe submitted there were no exceptional circumstances in this case that would justify taking no action and the public interest would not be met by taking this course. She then referred the Tribunal to the paragraphs of the SG that set out when a sanction of conditions might be appropriate and workable. Ms Tighe accepted that while these paragraphs were not an exhaustive list of when conditions might be appropriate, she submitted they did not typically apply to misconduct where a finding of dishonesty had been made.

144. Ms Tighe referred the Tribunal to paragraphs 91, 92, and 97(a), (e), (f) and (g) of the SG:

> *91 Suspension has a deterrent effect and can be used to send out a signal*

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

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

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

a A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.
…
e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.

f No evidence of repetition of similar behaviour since incident.

g The tribunal is satisfied that the doctor …. does not pose a significant risk of repeating behaviour.

Ms Tighe submitted that Dr Oakley's conduct is fundamentally incompatible with continued registration and highlighted paragraph 19 in the Tribunal's determination on impairment, which explained that Dr Oakley's actions amounted to a serious departure from fundamental tenets of the medical profession, and that members of the profession would find her actions deplorable.

145. Ms Tighe submitted that it was accepted that Dr Oakley had engaged in the GMC investigation and the fitness to practise process, and there was no evidence to demonstrate remediation was likely to be unsuccessful or there would be any repetition of the behaviour. However, in its determination on impairment, the Tribunal had set out that it was not satisfied that Dr Oakley had gained an adequate level understanding into her actions.

Additionally the Tribunal had found little evidence of remorse or that Dr Oakley understood the impact her dishonest actions could have on the profession.

146. Ms Tighe submitted that while not all cases of dishonesty must result in the sanction of erasure, this was the appropriate sanction in this case. Although Dr Oakley did not present a risk to patient safety, a sanction of erasure was necessary to maintain public confidence in the profession. She referred the Tribunal to the relevant factors to consider in paragraphs 108 and 109(a), (b) and (h) of the SG:

> *108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.*
>
> *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.*
>
> *b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.*
>
> *…*
>
> *h Dishonesty, especially where persistent and/or covered up.*
>
> *…*

147. Dealing with the matter of context, Ms Tighe submitted that within its determination, the Tribunal had set out that the dishonesty took place following a flawed investigation and disciplinary process at the Practice. Ms Tighe placed the appraisal meeting in terms of this timeline – after the investigation had been carried out and prior to Dr Oakley's dismissal – and therefore the dishonesty in relation to the appraisal took place at the stage when Dr Oakley was aware of the serious allegations against her.

148. In relation to NEMS, Ms Tighe submitted that Dr Oakley had not informed NEMS of her suspension from BUPA at all, and they had been informed of this by way of email from the GMC. The Tribunal, at the facts stage, determined that Dr Oakley had been through a lengthy disciplinary process at BUPA, had been suspended, and had her career threatened by not disclosing information to her employer within a reasonable timeframe.

149. Furthermore, Ms Tighe submitted, the Tribunal concluded that by April of 2019 Dr Oakley had read paragraph 76 of GMP and would have known the need to tell other employers of her suspension, but she chose not to update NEMS. The Tribunal highlighted

that this failure occurred at a time when Dr Oakley was only working for NEMS. That failure to inform NEMS about her suspension was a deliberate breach of GMP principles.

150. In relation to the appraisal process, Ms Tighe referred the Tribunal to its impairment determination, which concluded that Dr Oakley's dishonesty during the meeting undermined the appraisal and revalidation processes; processes which had been designed to consider and evaluate a doctor's fitness to practise and to address any issues present in their practise, as well as being in place to maintain proper professional standards. Dr Oakley was prompted to disclose any relevant information during the meeting and her failure to do so was intentional and deliberate.

151. Ms Tighe submitted that the fact that Dr Oakley was subsequently told to inform Dr A of her dismissal from the Practice did not negate her dishonesty.

152. Ms Tighe submitted that Dr Oakley's misconduct was not a one-off act of dishonesty. It was persistent and involved discrete acts of dishonesty to different people and therefore the proportionate and appropriate sanction in this case was one of erasure.

153. On behalf of Dr Oakley, Mr Rich submitted that a sanction of erasure was disproportionate. Both acts of dishonesty had been brief, with minimal consequences. Dr Oakley had always accepted the primary facts and where she had not accepted them, they were found not proved.

154. Mr Rich submitted that the Tribunal could look at non-disclosure as a one-off event. The Tribunal had determined there was no financial gain and the motives for the dishonesty were based on embarrassment and self-protection.

155. Mr Rich reminded the Tribunal of its findings relating to Dr Oakley's level of insight and the negligible risk of repetition. He submitted that Dr Oakley had had no opportunity to show her level of insight.

156. Mr Rich drew the Tribunal's attention to the large number of testimonials provided by colleagues of Dr Oakley, all testifying to her competence as a GP, and submitted that it was in the public interest to allow Dr Oakley to carry on working and that erasure or suspension would be disproportionate and not necessary to uphold standards.

157. Mr Rich submitted that this was not a common type of dishonesty but one in which the dishonesty related to a process and that had led to bad decisions. The key circumstances were XXX, as well as the unfairness of the accusations at the Practice. He said that confidence in the medical profession, among members of the public who had full knowledge of the events, was a factor that should weigh significantly in whether Dr Oakley should be erased or allowed to continue practising. The Tribunal should take into account the public interest in keeping a good doctor; it would be a sad waste of scarce resource if Dr Oakley were not allowed to carry on practising.

158. Mr Rich submitted that the Tribunal should not consider suspension or erasure to be the only adequately punitive sanctions; Dr Oakley had already been through the regulatory process for three years, which was a sufficient deterrent signal to the profession. Furthermore, the dishonesty had been at the lower end of the spectrum and a sanction of conditions was not unknown in similar cases: *George v NMC* [2016] EWHC 2845 (Admin).

159. Mr Rich submitted that while not disclosing pertinent information in an appraisal and to employers was serious, Dr Oakley had addressed these matters proactively. She had significantly changed her working patterns and engaged with the supervisory process. The lapse of time since the events was also a factor to take into consideration.

160. Mr Rich submitted that conditions would be sufficient in the circumstances of this case. Put simply, a member of the public would not think Dr Oakley had had a *'soft ride',* or that they could not have faith in the regulatory process if conditions were imposed. Dr Oakley's developing insight would be guided by Dr P and she could continue to serve the public by treating patients.

161. Mr Rich requested that should the Tribunal conclude that suspension was the appropriate sanction in this case, to make it as short as possible.

The Relevant Legal Principles

162. The decision as to the appropriate sanction to impose, if any, is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken into account the SG and paid careful regard to the overarching objective.

163. The Tribunal bore in mind that the main reason for imposing sanctions is to protect the public and that sanctions are not imposed to punish or discipline doctors, though they may have a punitive effect. The Tribunal has taken a proportionate approach, by balancing Dr Oakley's interests with the public interest, but bore in mind that the reputation of the profession as a whole is more important than the interests of any individual doctor, as explained in *Bolton v Law Society* [1994] 1 WLR 512.

164. The Tribunal has also borne in mind that in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive and then consider each sanction in ascending order. Should it consider that a sanction is appropriate and proportionate, it will not go on to consider a more restrictive sanction.

The Tribunal's Determination on Sanction

165. The Tribunal has already set out its decisions on the facts and impairment. It took those determinations into account during its deliberations on sanction. It balanced the aggravating and mitigating factors in this case before moving on to consider the appropriate sanction, starting with whether to take no further action.

166. The Tribunal paid careful regard to paragraphs 120-128 of the SG, which relate specifically to dishonesty. It also took into account that the whole purpose of this regulatory process is to uphold the overarching objective, in particular the maintenance of proper professional standards and upholding trust in the profession.

Aggravating factors

167. The Tribunal started its deliberations by looking at the significance of dishonesty and how it amounts to a serious breach of the fundamental tenets of the medical profession. The Tribunal considered that dishonest acts undermined the integrity of the whole profession and therefore needed to be adequately marked and sanctioned by the regulator.

168. Dr Oakley had committed two dishonest acts, both relating to a failure to disclose information; one within an appraisal process and the other involved not informing one employer of events occurring elsewhere with another employer. The dishonesty was therefore repeated and directed at different organisations.

169. The Tribunal considered the dishonest acts to have been of an evasive nature, but were connected to Dr Oakley's practice as they related to her work and the appraisal process. The Tribunal acknowledged that Dr Oakley's behaviour was capable of undermining the appraisal regime, albeit there was no evidence that it would have made a material difference. This was clear from the evidence within the email from the Revalidation support team to Dr A on the 3 June 2019, which stated that *'[it] would not cause a probity concern*'. Similarly, NEMS did consider Dr Oakley's non-disclosure at a high level, but nevertheless continued to employ her.

170. Importantly, the Tribunal was mindful of the clear risk that a clinician found to have conducted two discrete acts of dishonesty could undermine the public's trust and confidence in the profession, as well as undermining proper professional standards.

Mitigating factors

171. The Tribunal was conscious of its factual findings and the background to Dr Oakley's behaviour; with both acts of dishonesty relating to and occurring after an unfair investigation at the Practice. Furthermore, on each occasion, Dr Oakley proactively rectified the dishonesty. This indicates a level of insight into the impact of her actions.

172. The Tribunal was satisfied that Dr Oakley's dishonesty, through omission, could not be properly considered as continuing on a daily basis. Furthermore, the actions were brief – with minimal consequences that were ultimately remedied. It could therefore not be regarded as blatant and there were no attempts made to disguise it.

173. Dr Oakley's behaviour took place at a time when there were XXX.

174. The Tribunal also took account into the lapse of time since the events took place. The Practice's investigation begun four years ago, with it now being almost three years since the most recent act of dishonesty.

175. Significantly, there had been no repetition of the serious misconduct. Since the acts of dishonesty took place, Dr Oakley has fully disclosed the events in three subsequent appraisals and to five employers

176. The Tribunal took account of the impact the events had had on Dr Oakley; she lost three jobs she had held for a long time, including a senior role at BUPA. The Tribunal considered this to have a marked impact on how Dr Oakley would view her misconduct, as well as how fellow practitioners would regard it. Moreover, having had her fitness to practise identified by her regulator as being currently impaired, the Tribunal considers this to be a castigating event for any doctor, particularly for a doctor with experience and standing, with no previous findings by the regulator.

177. The Tribunal also noted that whilst Dr Oakley's practice has been subject to conditions – around 30 months, she has been obliged to follow strict GMC and NHS England restrictions. This would undoubtedly have been a humbling experience for someone who has previously worked independently at a high level. Nonetheless, Dr Oakley has accepted and willingly engaged with the terms of her conditional practice.

178. The Tribunal has been provided with a large volume of testimonials that demonstrate Dr Oakley is a diligent, highly competent and safe GP. The Tribunal was satisfied that even though she had acted dishonestly, there was no impact on patient safety; there was no suggestion that Dr Oakley had created false medical records or gained in any way financially.

179. The Tribunal considered what a reasonably informed member of the public, who was aware of the full background and circumstances, would think; namely, that Dr Oakley was a successful and highly competent GP who had behaved dishonestly regarding administrative matters, consequently losing three jobs, over events occurring over four years ago and who had then been required to rebuild her career.

No action

180. In reaching its decision as to the appropriate sanction, if any, to impose in Dr Oakley's case, the Tribunal first considered whether to conclude the case by taking no action. Taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

181. The Tribunal was satisfied that the dishonesty in this case was towards the lower end of the spectrum. It related to administrative matters, with no financial benefit or impact on patient safety. However, whilst a finding of impairment is a significant event for a registrant, particularly in Dr Oakley's position, the Tribunal did not consider taking no action to be adequate to mark the seriousness of the findings in this case.

182. Dr Oakley's case contained unusual features but could not be considered to be so rare as to amount to exceptional circumstances that would justify taking no action. Furthermore, Dr Oakley had yet to demonstrate full insight into her misconduct and had not completed sufficient remediation. The Tribunal therefore considered that, given the misconduct and its findings of impaired fitness to practise, taking no action would not be sufficient, proportionate or in the public interest.

Conditions

183. The Tribunal next considered whether to impose conditions on Dr Oakley's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

The Tribunal had regard to paragraph 82 of the SG which states:

> ***82*** *Conditions are likely to be workable where:*
>
> ***a*** *the doctor has insight*
>
> ***b*** *a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings*
>
> ***c*** *the tribunal is satisfied the doctor will comply with them*
>
> ***d*** *the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.*

184. The Tribunal was impressed by the evidence of Dr P, particularly the ways he has devised to assist doctors look at challenging matters in different ways. He has been Dr Oakley's supervising doctor for almost a year and indicated he was keen to continue if a sanction of conditions were to be imposed. The Tribunal noted the various tools he had in place: including the Situational Judgement tests, and the wide range of the areas of Dr Oakley's practise he discussed with her.

185. The Tribunal was mindful of the unusual circumstances of this case and the background to the dishonest behaviour. The Tribunal was satisfied that Dr Oakley is currently working successfully under conditions, having engaged well with these restrictions for a significant period of time. In the Tribunal's view, conditions on Dr Oakley's practise would offer her the opportunity to address the issues that have come to light at the impairment stage and allow her, a good doctor, to continue to gain insight and further remediate the misconduct identified.

186. The Tribunal considered a lengthy period of restrictions on Dr Oakley's practise would be sufficient to mark the seriousness of the misconduct. This would ensure a clear message is

sent out to the profession, and the public, of the considerable consequences of dishonesty within the profession. The Tribunal was satisfied that conditions would uphold the overarching objective, ensuring the public interest was served by marking the misconduct while still allowing a competent and well-regarded physician to assist the public.

187. The Tribunal was mindful that it should impose the least restrictive sanction that appropriately and proportionately addresses the misconduct identified. It carefully considered imposing the more serious sanction of suspension, which would have a clear deterrent effect and may be necessary - in order to send a signal to Dr Oakley, the profession, and the public about what is regarded as behaviour unbefitting a registered doctor. However, the Tribunal took the view that a period of suspension would be a disproportionate sanction in this case – particularly given the lapse of time since the events which occurred in the Allegation. Moreover, Dr Oakley's dishonest actions were not of such a degree as to be fundamentally incompatible with continued registration and erasure was wholly disproportionate in the circumstances of the case.

188. The Tribunal therefore determined to impose the following public conditions upon Dr Oakley's registration:

1. She must personally ensure that the GMC is notified of the following information within seven calendar days of the date these conditions become effective:

a. the details of her current post, including:

i. her job title

ii. her job location

iii. her responsible officer (or their nominated deputy)

b. the contact details of her employer and any contracting body including her direct line manager

c. any organisation where she has practising privileges and/or admitting rights

d. any training programmes she is in

e. the organisation on whose medical performers list she is included

f. the contact details of any locum agency or out-of-hours service she is registered with.

2. She must personally ensure the GMC is notified:

a. of any post she accepts, before starting it

b. that all relevant people have been notified of her conditions, in accordance with condition 5

c. if any formal disciplinary proceedings against her are started by her employer and/or contracting body, within seven calendar days of being formally notified of such proceedings

d. if any of her posts, practising privileges or admitting rights have been suspended or terminated by her employer before the agreed date within seven calendar days of being notified of the termination

e. if she applies for a post outside the UK.

3. She must allow the GMC to exchange information with her employer and/or any contracting body for which she provides medical services.

4. a. She must be supervised in all of her posts by a clinical supervisor, as defined in the Glossary for undertakings and conditions. her clinical supervisor must be appointed by her responsible officer (or their nominated deputy).

b. She must not work until:

i. her responsible officer (or their nominated deputy) has appointed her clinical supervisor and approved her supervision arrangements

ii. she has personally ensured that the GMC has been notified of these arrangements.

c. She must provide a report from her clinical supervisor in advance of or at her next review hearing.

d. She must have contact with her supervisor on a fortnightly basis either face-to-face or by telephone or videoconference.

5. She must personally ensure that the following persons are notified of the conditions listed at 1 to 4:

a. her responsible officer (or their nominated deputy)

b. the responsible officer of the following organisations

i. her place(s) of work and any prospective place of work (at the time of application)

ii. all her contracting bodies and any prospective contracting body (prior to entering a contract)

iii. any organisation where she has, or has applied for, practising privileges and/or admitting rights (at the time of application)

iv. any locum agency or out-of-hours service she is registered with

v. if any organisation listed at (i to iv) does not have a responsible officer, she must notify the person with responsibility for overall clinical governance within the organisation. If she is unable to identify this person, she must contact the GMC for advice before working for that organisation.

c. the responsible officer for the medical performers list on which she is included or seeking inclusion (at the time of application)

d. her immediate line manager and senior clinician (where there is one) at her place of work, at least 24 hours before starting work (for current and new posts, including locum posts).

189. Having determined it appropriate to impose conditions, the Tribunal considered the length of the order of conditional registration. The Tribunal was of the view that a short period of conditional registration would give Dr Oakley insufficient time to demonstrate sufficient insight and ensure adequate remediation. The Tribunal determined that a period of conditional registration for 18 months was the appropriate and proportionate length. This would provide Dr Oakley with sufficient time to address the issues identified, whilst also adequately addressing the seriousness of the misconduct.

190. The Tribunal determined to direct a review of Dr Oakley's case. A review hearing will convene shortly before the end of the period of conditional registration. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Oakley to demonstrate her compliance with the conditions imposed, and how she has developed her insight and remediated the misconduct. It therefore may assist the reviewing Tribunal if Dr Oakley provides:

- A reflective statement;
- An up-to-date report from her mentor or supervisor;
- Evidence of targeted CPD courses that she has undertaken.

191. Dr Oakley will also be able to provide any other information that she considers will assist.

Determination on Immediate Order - 25/11/2022

192. Having determined to impose conditions on Dr Oakley's registration for a period of 18 months the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Oakley's registration should be subject to an immediate order.

Submissions

193. On behalf of the GMC, Ms Tighe submitted that an immediate order would not be necessary. She referred to the relevant paragraphs of the SG and submitted that it was a discretionary decision for the Tribunal to make. It should consider the seriousness of the matter and whether it was appropriate for Dr Oakley to continue in unrestricted practice before the substantive order takes effect. The Tribunal may impose an immediate order only if it was considered necessary to protect members of the public or it was in the public interest.

194. On behalf of Dr Oakley, Mr Rich submitted that Dr Oakley understood the Tribunal may see it in the public interest to impose an immediate order of conditions. She was and willing to co-operate and engage with any conditions. Dr Oakley took into account an immediate order may be imposed for reasons of continuity over the appeal period.

The Tribunal's Determination

195. The Tribunal has taken account paragraphs 172 - 178 of the SG. It was satisfied that Dr Oakley did not pose any safety risk to members of the public. In terms of whether it was in the public interest, the Tribunal was conscious that Dr Oakley has been working under an interim order of conditions for two-and-a-half years and that the period of conditions will begin when the Tribunal's decision takes effect.

196. The Tribunal was mindful of its finding of impairment but did not consider it was otherwise in the public interest for an immediate order to be imposed. Further, there was no evidence that it would be in Dr Oakley's interest for an immediate order to be in place.

197. Having considered all of the factors, the Tribunal did not conclude that it was appropriate to impose an immediate order.

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

199. The interim order is hereby revoked.

200. That concludes this case.

ANNEX A – 08/11/2022

Application to amend the Allegation

201. On day 1 of the hearing, applications were made to amend the Allegation, pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise) Rules 2004 ('the Rules'). This states:

> *'Where, at any time, it appears to the Medical Practitioners Tribunal that—*
>
> > *(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and*
> > *(b) the amendment can be made without injustice,*
>
> *it may, after hearing the parties, amend the allegation in appropriate terms.'*

<u>Application 1</u>

202. Ms Tighe, on behalf of the GMC, made an application to amend a typographical error within the Allegation. She invited the Tribunal to amend paragraph 14c of the Allegation from:

> 14. You knew that:
>
> > c. your submission to BUPA as described at paragraph 12 was not true.
>
> To:
>
> 14. You knew that:
>
> > c. your submission to BUPA as described at paragraph 13 was not true.

203. Mr Rich, on Dr Oakley's behalf, stated that he had alerted the GMC to the issue. He did not oppose the application.

204. The Tribunal was satisfied that the amendment could be made without injustice to either party. It therefore granted the application and paragraph 14c of the Allegation was amended as above.

<u>Application 2</u>

205. Mr Rich applied for paragraphs 3, 4, 11, 12, 13-15, and 19-21 of the Allegation to be deleted, as they were oppressive and unlawful under the principle set out in *GMC v Misra*

[2003] UKPC 7. It was further submitted that the paragraphs were of insufficient seriousness to justify being included within the Allegation.

206. Mr Rich submitted that the paragraphs amounted simply to Dr Oakley expressing her defence to the accusations. Furthermore, he stated that they did not significantly add to the substance of the allegations. As such, Mr Rich submitted, they were also inconsistent with the GMC's *Guidance: Drafting Charges.*

207. Mr Rich stated that the principles from *Misra* are reflected in the GMC's document *Guidance: Drafting Charges*. Under the heading *"Appropriate Charging"* it states:

> *'It is important to ensure that the charges only include those matters which are serious enough to justify the allegation.*
>
> *You should not include charges that add little to the overall complaint. You should be mindful that the Courts have criticised the inclusion of 'unnecessary and oppressive' charges. Misra v General Medical Council [2003] UKPC 7'*

He submitted that the main focus of *Misra* was to ensure that the doctor did not then face a series of allegations of dishonesty relating from them merely setting out their version of events.

208. In respect of paragraphs 3 and 4, Mr Rich submitted that it was highly unusual, and contrary to the principles in *Misra*, for the GMC to charge a doctor with dishonesty for providing an explanation in a disciplinary interview. He further submitted that if these paragraphs were repeated elsewhere, then any doctor accused of substantive misconduct could be charged with dishonesty for denying that misconduct in a disciplinary interview, a disciplinary hearing, a statement of appeal and an appeal hearing. Mr Rich averred that this would have a *'chilling effect'* on investigations, particularly where doctors are expected to be open and honest in response to complaints and with the GMC.

209. Mr Rich submitted that the Allegation had been overloaded with charges relating to occasions when Dr Oakley had described events as she saw them. These accounts remained the substance of her defence. The GMC's decision to charge some of the paragraphs was arbitrary; they were unnecessary and the Tribunal was requested to delete these paragraphs of the Allegation.

210. In response, Ms Tighe submitted that no amendments should be made to the Allegation against Dr Oakley. Ms Tighe stated that the GMC did not accept that the *Misra* principles were applicable to the present case.

211. In respect of paragraphs 3 and 4, Ms Tighe submitted that these were not oppressive or unnecessary. She stated that the present circumstances could be distinguished from the case of *Misra*, where the doctor had made a blanket denial of allegation and maintained that

blanket denial. She submitted that Dr Oakley had provided detailed and dishonest accounts within a signed witness statement which Dr Oakley had now changed.

212. Ms Tighe referred to the case of *Professional Standards Authority v HCPC and Wood* [2019] EWHC 2819 (Admin), in which Mr Justice Saini determined that the regulator should have separately alleged that Mr Wood had failed to give a truthful and accurate account to his employers when he was first informed of the allegation.

213. Furthermore, in *PSA v NMC and Dalton* [2016] EWHC 1983, Mr Justice Wyn Williams concluded that fairness required that the registrant know the full extent of the allegations against him and the inclusion of a specific particular of dishonesty would ensure that the panel appropriately addressed the issue.

214. In respect of the remaining paragraphs, Ms Tighe stated the GMC contended that Dr Oakley was not simply repeating a defence to a factual allegation. These amounted to separate acts where Dr Oakley had failed to tell the truth about the reasons behind her dismissal. Ms Tighe submitted that it was for the Tribunal to assess the matter, to ensure fairness to both the GMC and Dr Oakley.

215. Ms Tighe submitted it was disputed that the conduct added *'little or nothing to the substantive wrongdoing'* and that the paragraphs of the Allegation were *'unnecessary and oppressive'.*

The Tribunal's Decision

216. The Tribunal had regard to paragraph 17(6) of the Rules, and submissions provided by both parties.

217. With regard to paragraphs 3 and 4, the Tribunal noted that there was a large overlap with paragraphs 1 and 2, to the extent that they would likely result in the same factual finding. The Tribunal considered that the acts of dishonesty effectively amounted to the same event. It was of the view that paragraphs 3 and 4 consisted of Dr Oakley providing her explanation to the events, amounting to her defence of the matters in question.

218. The Tribunal considered the case of *Misra* which made it clear that it was inappropriate to duplicate and/or punish someone simply for defending themselves. The Tribunal was also conscious of the authority of *Wood* where there was significant undercharging and the High Court stated that it was important for a Regulator to separately consider misleading accounts from Registrants. The Tribunal considered there to be some conflict within the authorities, but was minded to follow the guidance in *Misra* where any dispute arose as this was from a superior Court and had not been overruled.

219. The Tribunal carefully reviewed the paragraphs under consideration and determined that paragraphs 3 and 4 simply represented Dr Oakley's initial account of the events to her employer. The Tribunal considered Dr Oakley to be explaining how she had acted when

confronted with concerns about her behaviour. Dr Oakley could not be said to be minimising her actions, or placing responsibility elsewhere – as had occurred in *Wood*. Moreover, the issue of whether Dr Oakley had behaved dishonestly can be fully assessed with paragraphs 1 and 2 of the Allegation and these paragraphs did not, in themselves, amount to a further attempt to deceive. The Tribunal was satisfied that paragraphs 3 and 4 were unnecessary. The fair course of action to all would be for them to be removed.

220. The Tribunal therefore decided to grant Mr Rich's application for the removal of paragraphs 3 and 4 of the Allegation.

221. In relation to paragraphs 11 and 12, 13-15, and 19-21, the Tribunal was not satisfied that any of the further allegations amounted to duplication or overcharging. The paragraphs all represent alleged new acts of dishonest misconduct undertaken by Dr Oakley and it was appropriate that these were charged separately, following the principle in *Wood*. Paragraphs 11 and 12 relate to Dr Oakley's conduct in explaining her dismissal from one employer to another, which went beyond restating her defence and was a separate course of events. Paragraphs 13 – 15 represented further conduct that could properly be described as new or fresh, in relation to the account Dr Oakley provided in an appeal. Lastly, paragraphs 19 – 21 relate to a further account of the original events provided by Dr Oakley to a third employer.

222. The Tribunal determined that it was appropriate and fair to both the GMC and Dr Oakley that these new allegations of misconduct were set out as separate paragraphs within the Allegation. This would allow the Tribunal to assess the evidence for each alleged act of misconduct and whether it was dishonest, ensuring that the interests of both sides were protected.

223. The Tribunal therefore determined to refuse Mr Rich's application for the removal of paragraphs 11 and 12, 13-15, and 19-21 of the Allegation

ANNEX B – 25/11/2022

Application for the exclusion of evidence

224. Mr Rich, on behalf of Dr Oakley, made an application for the exclusion of the evidence of Mr V. The application was made pursuant to Rule 34(1) of the Rules, which reads as follows

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

Submissions on behalf of Dr Oakley

225. Mr Rich submitted that the evidence should be excluded on the grounds that it was purported expert evidence from a witness who did not appear to have the relevant expertise. Further, he stated that the evidence did not conform to the requirements of expert evidence.

226. Mr Rich referred to the case of *National Justice CIA Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep, and key principles including that expert evidence should be, and should be seen to be, the independent product of the expert uninfluenced as to the form or content, and that an expert witness should provide independent assistance by way of objective, unbiased opinion in relation to matters within their expertise.

227. Mr Rich submitted that Mr V's evidence was opinion evidence in that he made no claim to having ever used the system or the clinician screens regularly, or having retrieved, or attempting to retrieve, notes from a cancelled appointment. Mr Rich submitted that Mr V was not reporting on something from his direct experience.

228. Mr Rich stated that Mr V had been a XXX at BUPA, since July 2020 and had previously spent a period as a health advisor at the XXX Branch of BUPA. Mr Rich submitted that Mr V did not give details of what his current role entailed or any expertise with the system, he did not say he had a background in computing or clinical systems; his background was instead in XXX rather than computer science.

229. Mr Rich submitted that Mr V's evidence failed the requirements for expert evidence in a number of ways, including that: he was not independent, he did not give any indication of how the opinion he provided was 'within his expertise', and he did not say anything that would allow the Tribunal to conclude that he had a basis to express this opinion which was superior to that of Dr G or Dr Oakley. Mr Rich stated that Mr V did not purport to be particularly certain of his opinion as he had used phrases such as *'As far as I am aware'* and *'I think'*. Mr Rich further submitted that the evidence of Mr V was for a period of time sometime after the events included within the Allegation.

230. Mr Rich referred to the case of *Multiplex Constructions (UK) Ltd v Cleveland Bridge UK Ltd* [2008] EWHC 2220, which he understood the GMC would rely upon. Mr Rich submitted that this decision was of little relevance in respect of Mr V's evidence. He stated that Mr V did not design the BUPA system or engage with its designers, did not appear to have any considerable background expertise, or had a managerial role in relation to any part of the BUPA computer system. Further, that the *Multiplex* case was in the context of the Technology and Construction Court, which is a highly specialised jurisdiction where many of the factual witnesses were also highly expert. Mr Rich submitted that *Multiplex* had no application to Mr V's evidence.

Submissions on behalf of the GMC

231. Ms Tighe, on behalf of the GMC, submitted that the evidence of Mr V was relevant in determining paragraph 7 of the Allegation and that it would be fair to admit his statement.

232. Ms Tighe stated that Dr Oakley's witness statement was served on the GMC on 29 July 2022 and, in relation to paragraph 7 of the Allegation, Dr Oakley commented that she believed that any pre-populated BUPA patient records would be inaccessible for clinical or insurance purposes for a patient that cancelled their appointment or failed to attend. As such, the GMC obtained a supplemental witness statement from a witness who said it would be best to ask Mr V to comment on this - and the statement was sought.

233. Ms Tighe submitted that Mr V's evidence was fair and relevant to the case. She stated that the GMC did not contend that Mr V was an expert witness and relied on him as a factual witness, who did not need to comply with the requirements of an expert witness.

234. Ms Tighe submitted that Mr V was in a position to comment on how the BUPA system operated and, specifically, the accessibility of pre-populated entries on the Electronic Medical Records System [EMR]. Ms Tighe submitted that Mr V was entitled to make statements of opinion reasonably related to facts within his knowledge, and relevant comments based on his own experience, and such statements and comments were admissible in these proceedings. She submitted that the principles derived from the *Multiplex* case could properly be applied to this case.

Tribunal's Decision

235. The Tribunal noted that the GMC conceded that Mr V was not an expert witness. The focus is therefore on whether his evidence was relevant to the Tribunal's determination. The Tribunal had regard to the Rules, which state that evidence may be admitted where it is considered to be fair and relevant.

13. In terms of relevance, the Tribunal noted that Mr V's evidence related solely to paragraph 7 of the Allegation, a paragraph Mr Rich indicated Dr Oakley would be admitting in full. The Tribunal therefore had regard to the joint expert report prepared by Dr T and Dr U, and their joint conclusion that if Dr Oakley's belief as to whether pre-populated patient data

stored could not be accessed by a subsequent clinician was accepted, then this would fall below the standard of a reasonably competent GP. However, it would not fall seriously below the standard expected by a reasonably competent GP, as there would be no identifiable risk of harm affecting a patient. Conversely, if Dr Oakley was not entitled to that belief - and the records were accessible to other clinicians - then such a practice would fall seriously below the standard expected of a reasonably competent GP.

14. The Tribunal analysed Mr V's evidence carefully, observing that it was obtained following Dr G – a clinician who worked at BUPA at the relevant time – indicated that Mr V may be able to assist on the issue. Nevertheless, Dr G's statement stated that his understanding was that, if a patient cancelled, then the pre-populated information would not be visible on the system. His statement also stated that he was not certain what happened to pre-populated data when a patient changes their appointment.

15. Mr V's witness statement was dated 20 September 2022 and was disclosed to Dr Oakley at some stage thereafter. The Tribunal was conscious that this provided Dr Oakley with a limited opportunity to consider the evidence and its consequences in advance of the hearing. Moreover, Mr Rich indicated that, if the evidence were to be admitted, it would require rebuttal, in the form of an expert forensic IT specialist regarding the retention and visibility of data on BUPA's computer system at the time to various users. The Tribunal accepted Mr Rich's explanation that the evidence would take time to acquire and would invariably lead to a delay in the proceedings.

16. The Tribunal considered the main issues in the Allegation related to Dr Oakley's alleged dishonesty, to which Mr V's evidence had no relevance. Furthermore, Mr V's evidence was likely to be only of limited relevance to Dr Oakley's subjective understanding of the computer system and therefore the standard of care she provided. The Tribunal had been provided with Dr G's evidence - relating to his own use of the system as a clinician at the time, whilst Mr V's evidence followed his understanding of the system from an administrative context and in 2020 - some time after the relevant events. It follows that Dr G's evidence on the issue was likely to be more relevant to the Tribunal's considerations, which related to the ability of other clinicians access to the data.

17. In assessing fairness, the Tribunal considered the proportionality of admitting Mr V's evidence, taking into account the late stage in which the evidence was provided and its limited relevance to the Allegation. The likely consequence of the evidence being admitted would be a significant delay to the proceedings. The Tribunal was of the view that any delay to the proceedings, which are already of some age, would not be fair to the GMC, Dr Oakley or commensurate with the overriding objective.

18. The Tribunal was therefore not satisfied that that the evidence of Mr V should be admitted; it was of only limited relevance to a relatively minor aspect of the Allegation and it was unfair in the circumstances for it to be adduced.

Schedule 1 – Consultations where a patient has been, arrived, sent in and left an appointment. Patients' medical records have been accessed but no record has been made of a consultation taking place.

Occasion Number	Date and time the appointment was booked	Date and time of the appointment	Time patient marked as arrived	Time patient marked as sent in	Time patient marked as left	Patient Ref in Exhibit DH1
1.	25/09/18 at 13:14	09/10/18 at 14:00	14:02	14:02	14:05	6
2.	25/09/18 at 10:10	02/11/18 at 17:50	17:53	17:53	17:57	13
3.	Unknown	16/11/18 at 17:40	17:42	17:42	17:42	17
4.	23/11/18 at 18:13	10/12/18 at 19:50	20:16	20:16	20:17	24
5.	17/12/18 at 11:14	09/01/19 at 15:00	14:37	14:37	14:37	34

Schedule 2 - Consultations where a patient has been, arrived, sent in and left an appointment. Patients' medical records have not been accessed and no record has been made of a consultation taking place.

Occasion Number	Date and time the appointment was booked	Date and time of the appointment	Time patient marked as arrived	Time patient marked as sent in	Time patient marked as left	Patient Ref in Exhibit DH1
1.	28/09/18 at 15:59	09/10/18 at 12:00	12:04	12:04	12:04	5
2.	07/11/18 at 17:25	28/11/18 at 12:00	12:14	12:14	12:14	20
3.	27/10/18 at 10:43	07/12/18 at 18:00	18:12	18:12	18:12	23
4.	11/12/18 at 09:36	11/12/18 at 10:20	10:29	10:29	10:29	26
5.	12/12/18 at 08:38	12/12/18 at 09:40	09:49	09:49	09:53	28
6.	12/12/18 at 09:29	12/12/18 at 11:00	11:05	11:05	11:10	30

Schedule 3 - Consultations where a patient has been marked as failed to attend. Patients' medical records have not been accessed.

Occasion Number	Date and time the appointment was booked	Date and time of the appointment	Patient Ref in Exhibit DH1
1.	05/09/18 at 13:44	02/10/18 at 16:00	2
2.	21/09/18 at 18:41	02/10/18 at 16:30	3
3.	02/10/18 at 14:17	09/10/18 at 14:10	7
4.	02/10/18 at 09:11	10/10/18 at 14:40	9
5.	03/10/18 at 17:28	12/10/18 at 15:50	10
6.	09/10/18 at 15:55	26/10/18 at 17:10	11
7.	12/10/18 at 16:44	09/11/18 at 17:50	15
8.	30/10/18 at 16:35	13/11/18 at 12:00	16
9.	06/11/18 at 09:16	16/11/18 at 17:50	18
10.	09/10/18 at 16:14	28/11/18 at 16:10	21
11.	14/11/18 at 09:15	10/12/18 at 20:00	25
12.	04/12/18 at 15:14	11/12/18 at 16:00	27
13.	14/11/18 at 12:51	12/12/18 at 10:40	29
14.	11/12/18 at 12:29	04/01/19 at 18:00	32

Schedule 4 - Consultations created for a patient who had left the Practice by 21 September 2018.

Occasion Number	Date and time the appointment was booked	Date and time of the appointment	Other Schedule this appointment appears in (and Occasion Number)	Patient Ref in Exhibit DH1
1.	25/09/18 at 10:10	02/11/18 at 17:50	Schedule 1 (Occasion Number 2)	13
2.	12/12/18 at 09:29	12/12/18 at 11:00	Schedule 2 (Occasion Number 6)	30
3.	06/11/18 at 09:16	16/11/18 at 17:50	Schedule 3 (Occasion Number 9)	18
4.	14/11/18 at 09:15	10/12/18 at 20:00	Schedule 3 (Occasion Number 11)	25