

PUBLIC RECORD

Dr Senthil Kumar has lodged an appeal against decisions of this Tribunal. His registration remains suspended while the appeal is considered.

Dates: 15/04/2024 - 08/05/2024

Medical Practitioner's name:	Dr Thangavelu SENTHIL KUMAR	
GMC reference number:	5198183	
Primary medical qualification:	MB BS 1996 Annamalai University	
Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Impaired

Summary of outcome

Suspension, 8 months
Review hearing directed
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mrs Catherine Moxon
Lay Tribunal Member:	Mrs Amanda Webster
Medical Tribunal Member:	Dr Ann Wolton
Tribunal Clerk:	Mr Larry Millea

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Giles Powell, Counsel
GMC Representative:	Mr Andrew Molloy, Counsel (15/04/2024), Ms Chloe Fairley, Counsel (16/04/2024 to 08/05/2024)

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 - 25/04/2024

Background

1. Dr Senthil Kumar qualified in 1996 at Annamalai University, India, and has been on the GMC's GP register since 2008. Prior to the events which are the subject of the hearing Dr Senthil Kumar worked as an independent Healthcare Management and Administration Consultant, a portfolio GP in the private sector, an Occupational Health Practitioner and as an ad hoc locum consultant in Accident and Emergency departments. At the time of the events Dr Senthil Kumar was seeking to return to clinical practise following a period as a full-time student undertaking a double Executive MBA at London Business School and Columbia Business School.
2. The allegation that has led to Dr Senthil Kumar's hearing can be summarised as that around March to June 2020 Dr Senthil Kumar falsely presented himself online as Dr A and used a social media profile in the name of Dr A to join a private online group for doctors who had been out of clinical work and were trying to return to assist the NHS with Covid-19 - *Covid Returning Doctors Support* ('the Covid Group'). It is alleged that Dr Senthil Kumar gained access to the Covid Group by using Dr A's GMC number without Dr A's permission and confirmed that the account in the name of Dr A was his own profile. It is further alleged Dr Senthil Kumar's actions were dishonest.
3. Concerns were initially raised with National Health Service Professionals (NHSP) by an organiser of the Covid Group. NHSP conducted an investigation and produced an investigation report on 28 July 2020. In summary, it was found that Dr Senthil Kumar had used someone else's name, [Dr A], to access social media accounts and his name and GMC

number to use social media accounts and had made several posts under this name. Due to the investigation findings of gross misconduct, the matter was referred to the GMC.

The Outcome of Applications Made during the Facts Stage

4. The Tribunal refused an application made on behalf of Dr Senthil Kumar, pursuant to Rule 29(2) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to adjourn proceedings in order to allow Dr Senthil Kumar to undertake all his intended, planned remediation and provide evidence to support his insight and remediation. The Tribunal's full decision on the application is included at Annex A.

5. The Tribunal refused an application made on behalf of the GMC, pursuant to Rule 34(1) of the Rules, to submit further evidence. The Tribunal's full decision on the application is included at Annex B.

6. The Tribunal refused an application made on behalf of Dr Senthil Kumar, pursuant to Rule 17(2)(g) of the Rules, that there was no case to answer in respect of paragraph 1(c) of the Allegation. The Tribunal's full decision on the application is included at Annex C.

The Allegation and the Doctor's Response

7. The Allegation made against Dr Senthil Kumar is as follows:

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

1. You falsely presented yourself online as Dr A in that:
 - a. you used a Facebook profile in the name '[Dr A]', which stated that you:
 - i. were a GP at NHS England and NHS Improvement; **Admitted and found proved**
 - ii. studied at Cardiff University; **Admitted and found proved**
 - iii. lived in Cardiff; **Admitted and found proved**
 - b. you requested to join a private Facebook group 'Covid Returning Doctors Support' using the Facebook profile of '[Dr A]'; **Admitted and found proved**

- c. you gained access to the private Facebook group ‘Covid Returning Doctors Support’ by providing the GMC number of Dr A; **To be determined**
- d. on 1 May 2020 you asked, via the ‘[Dr A]’ Facebook profile, to be added to the WhatsApp group set up by Dr B (‘the Group’); **Admitted and found proved**
- e. on 16 May 2020 you:
 - i. asked to join the Group in the name of ‘[Dr A]’; **Admitted and found proved**
 - ii. posted in the Group stating that your name was ‘XXX’; **Admitted and found proved**
- f. on 20 May 2020 you posted an invite to a webinar in the Group as ‘XXX’; **Admitted and found proved**
- g. you created a YouTube account in the name of ‘[Dr A]’ (‘the YouTube Channel’), **Admitted and found proved**
- h. on 22 May 2020 you posted a link in the Group to a webinar recording on the YouTube channel; **Admitted and found proved**
- i. on 29 May 2020 you added the name ‘XXX’ to your WhatsApp profile; **Admitted and found proved**
- j. on 1 June 2020 you confirmed in the Group that your name is ‘XXX’ but people call you ‘XXX’; **Admitted and found proved**
- k. on 2 June 2020 you:
 - i. stated that your Facebook profile was in the name ‘[Dr A]’; **Admitted and found proved**
 - ii. confirmed that the ‘[Dr A]’ Facebook profile was you; **Admitted and found proved**
- l. on 5 June 2020 you shared a recording in the Group of a webinar from the YouTube Channel; **Admitted and found proved**

- m. on 8 June 2020 you posted in the Group that your name was '[Dr A]' and gave Dr A's GMC number; **Admitted and found proved**
 - n. you confirmed to Ms C, via a private message from the '[Dr A]' Facebook profile, that you were '[Dr A] (*sic*), GP' in relation to the private Facebook group 'Test and Trace Team Leaders'. **Admitted and found proved**
2. You knew that:
- a. the information you gave at paragraphs 1.a-e, 1.i-k and 1.m-n was untrue; **To be determined in respect of paragraph 1(c), Admitted and found proved for all remaining paragraphs**
 - b. you did not have permission to use Dr A's name and GMC number. **Admitted and found proved**
3. Your actions at paragraphs 1.a-n above intended to create a false impression that you were Dr A. **To be determined in respect of paragraph 1(c), Admitted and found proved for all remaining paragraphs**
4. Your actions at paragraphs:
- a. 1.a-e, 1.i-k and 1m-n were dishonest by reason of paragraph 2 and 3; **To be determined in respect of paragraph 1(c), Admitted and found proved for all remaining paragraphs**
 - b. 1.f-h and 1.l were dishonest by reason of paragraph 2b and 3. **Admitted and found proved**

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

The Admitted Facts

8. At the outset of these proceedings, Dr Senthil Kumar made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

9. In light of Dr Senthil Kumar’s response to the Allegation made against him the Tribunal is required to determine whether Dr Senthil Kumar gained access to the private Facebook group (*Covid Returning Doctors Support* - ‘the Covid Group’) by providing the GMC number of Dr A and, if so, whether he knew that this information was untrue, whether he intended to create a false impression that he was Dr A and whether his actions in doing so were dishonest.

Witness Evidence

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

- Dr D, administrator of the Facebook Covid Group, in person, who also provided a written witness statement dated 19 February 2024.

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

- Dr B, creator/administrator of the Covid Group, who provided written witness statements dated 23 February 2021 and 31 January 2024;
- Ms C, creator/administrator of the Covid Group, who provided a written witness statement dated 15 June 2021;
- Dr E, Director of Medical Education for NHSP, who provided a written witness statement dated 2 March 2021;
- Dr F, member of the Covid Group, who provided a written witness statement dated 9 February 2024, and;
- Dr A, who provided written witness statements dated 16 July 2021 and 18 May 2022.

12. Dr Senthil Kumar had previously provided statements to the NHSP investigation and another panel that formed part of the GMC hearing bundle, one dated 1 July 2020 and one undated. He also provided a supplemental statement, dated 22 April 2024. Dr Senthil Kumar also gave oral evidence at the hearing.

Documentary Evidence

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

- Various screenshots of messages between Dr Senthil Kumar and members/administrators of the Covid Group, including those relating to his original application, which was refused, various dates in 2020;
- Various screenshots of posts pertaining to Dr Senthil Kumar’s membership of and interactions with the Covid Group, various dates in 2020;
- Facebook guidance for Facebook group administrators, dated 13 March 2024;
- Documentation pertaining to the complaint to NHSP and its subsequent investigation, and;
- Video screenshots of Facebook Group application process/completion, undated.

The Tribunal’s Approach

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

15. When considering the alleged dishonesty in this case, the Tribunal had regard to the test 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.

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.’

The Tribunal’s Analysis of the Evidence and Findings

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

Paragraph 1(c)

17. In determining whether Dr Senthil Kumar gained access to the private Facebook group ‘Covid Returning Doctors Support’ by providing the GMC number of Dr A, the Tribunal was mindful of the context and chronology leading up to the events. Dr Senthil Kumar had originally applied to join the Covid Group using his Facebook pseudonym “XXX”. This application was ultimately refused as he did not provide further additional information in order to verify his identity and communication between himself and the Covid Group administrators/Dr D broke down. Following this, but prior to receiving confirmation that his original application had been refused, Dr Senthil Kumar reapplied to join the Covid Group using the pseudonym “XXX”. Dr A [Dr A] was another doctor who had been involved in Dr Senthil Kumar’s GP training in 2005.

18. In reaching its decision, the Tribunal considered the conflicting accounts in respect of this paragraph of the Allegation. Dr Senthil Kumar’s version of events was that he had used a Facebook profile in Dr A’s name to apply to join the Covid Group, but had not provided Dr A’s GMC registration number and was not attempting to create a false impression that he was Dr A. The version of events described by Dr D, administrator of the Covid Group, was that applications to join the Covid Group would not be accepted without the provision of a GMC registration number in all cases and that Dr Senthil Kumar would have needed to provide Dr A’s GMC registration number when he applied to join the Covid Group in Dr A’s name.

19. The Tribunal was provided with a copy of the generic and unpopulated application form and questionnaire for the Covid Group, which was uncontested by either party.

20. The application form states:

“Your membership is pending approval. Answer these questions from the group admins to help them review your request to join. Only the admins and moderators will see your answers.”

and goes on to state:

“Please answer these 3 questions. We can’t approve you without them.”

21. The application form shows that when applying to join the Covid Group, applicants were asked the three questions:

Have you been on a career break? Doing what?;

When did you last work in any branch of clinical medicine [sic], and;

Please provide your GMC number so we can keep this group for professionals. Also, please mention if the surname you are registered with is different to your FB [Facebook] name.

22. In her oral evidence, Dr D confirmed that all applicants were required to answer these three questions in order to be allowed to join the Covid Group.

23. Dr Senthil Kumar's evidence was that whilst these questions were asked on the application form, an application could, and in his case was, submitted without the completion of all three questions, including the requirement to provide a GMC registration number.

24. As the Tribunal was not provided with Facebook records or a copy of Dr Senthil Kumar's application in the name of Dr A, it considered the evidence that was before it in determining which version of events was more probable, if any.

25. The Tribunal first considered the evidence of the two witnesses in relation to this paragraph of the Allegation, namely Dr Senthil Kumar and Dr D.

26. Dr Senthil Kumar accepted that he used Dr A's name as his profile name when he re-applied to become a member of the Covid Group, and that at some point he had known Dr A's GMC registration number as he had worked with him previously. In his written witness statement, Dr Senthil Kumar stated of his applications to the Covid Group that:

"To join this Covid Returning Doctors Support group, I needed to have a Facebook profile. My Facebook profile is in the name of XXX, which is my Facebook pseudonym. XXX is abbreviation for Senthil and "XXX" is the name of the tribe my family comes from. My personal email address is XXX[...].com, XXX[...].com and so forth. I have a limited company registered as XXX Limited in India since 1999 and one registered in the UK since 2009.

The reason I use the profile with a pseudonym is to protect myself from being trolled, for example, by unhappy patients but easy for my relatives to find me. I have used this Facebook profile since the very beginning.

On 25 March 2010, I applied to join the Covid Returning Doctors Support group using my Facebook profile. I completed their joining form and as asked, provided my GMC number, which is 5198183. The administrator then got back to me and flagged up that there was a mismatch between the name on my Facebook profile, XXX, and the GMC number I had provided. I did explain that XXX was my pseudonym and my real name was Thangavelu Senthil Kumar, but she then asked me for evidence of my true identity. I felt that this was a bit much.

There have been occasions when I have been denied entry to certain groups because of my name and felt that the same was happening again. I felt being adversely profiled because of my name. The communication with the administrator of the group broke down over this and I could not join the group.

I found this particularly upsetting. I was not able to make sufficient progress in offering my services and now had been refused entry to the Facebook group. Meanwhile the pandemic was progressing. I tried to move on and to look around for other sources of information that could help me in contributing in the time of this pandemic. I was not getting anywhere, and it kept occurring to me that I needed to be in the Covid Returning Doctors Group, but I also knew that I would not be allowed.

Prior to all this, I had been appointed temporarily as the Chief Products Officer of a start-up company called XXX. The company had been set up by a doctor called Dr A but had been sold to XXX service Inc, Shanghai, China. The company had social media presence in the name of Dr A which it had acquired from Dr A. This profile was meant to promote the products and the company itself. Having taken over as the Chief Products Officer I had charge of this profile at the time. Around a week had passed since I was refused entry to the Covid Returning Doctors Group. Having had no luck otherwise, I decided to try joining the group using this profile.

I felt convinced at the time that it was ok to use “Dr A” too as a pseudonym; I felt that it was similar to using XXX, and so long as I did not specifically claim to be the person, Dr A I would not be doing anything wrong. On reflection I now believe that I was

wrong to do this for a number of reasons, but I did not see it at the time. I shall come to my reflections later in the statement.

This time I tried submitting the form on Facebook without any GMC number. To my surprise the form went through. And shortly thereafter, the profile Dr A was granted access to the Covid Returning Doctors Support. I have a video screenshot that demonstrates that the application is allowed to progress even without any GMC number.” [sic]

27. The Tribunal noted that there were some inconsistencies in Dr Senthil Kumar’s evidence. During his oral evidence, Dr Senthil Kumar stated that during the creation of his company he had suggested the name “XXX” as the company was doing business in Italy and this name sounded suitably Italian, but in his statement he had said that the company had been set up by a Dr A and then sold. Whilst Dr Senthil Kumar referenced being “devastated” at not being able to join the Covid Group in oral evidence, the evidence before the Tribunal was also that he was not aware that his original application had been declined at the point when he applied as Dr A. He confirmed in his oral evidence that the original application was still pending and that he had no idea as to its progress. Additionally, in his oral evidence Dr Senthil Kumar sought to dispute the validity of two screenshots of two ‘Senthil Kumar’ membership requests to join the Covid Group.

28. The Tribunal also noted that Dr Senthil Kumar had used his real/full name on other social media posts, and in his communications regarding his first application he provided his real name, phone number, LinkedIn profile name and GMC registration number.

29. The Tribunal considered that these clear inconsistencies undermined Dr Senthil Kumar’s evidence and the weight that could be attributed to his version of events.

30. Whilst noting that ‘non-Western’ names are extremely common in the NHS, the Tribunal did accept that Dr Senthil Kumar may have felt or had the perception that his original application had been prejudiced owing to his name, and sought to apply under a more ‘Western’ name. However, the Tribunal considered it unlikely that if Dr Senthil Kumar was seeking to test the vetting process with ‘Western names’ he would submit an application where the boxes had been left blank and would have included all the requested information as he did in his original application.

31. In terms of Dr D's evidence, the Tribunal was of the opinion that she was a straightforward and credible witness. Where she was unclear of events or did not know details she conceded this to the Tribunal and her version of events was consistent. Throughout her evidence she maintained that Dr Senthil Kumar's application in the name of Dr A would not have been accepted without the provision of the associated GMC registration number.

32. The Tribunal considered that it had a substantial amount of evidence demonstrating the application process and the mandatory requirement to answer the three application questions and provide further information as requested. In addition to the copies of the generic application forms and the evidence of Dr D, the Tribunal was also provided evidence that the third question on the application form for the Covid Group was amended to ensure applicants provided the name linked to their GMC registration number. It noted that the request applicants provide their GMC registration number was not changed from the inception of the group and was a consistent feature requested as a verification for cross-referencing against the GMC website.

33. Whilst the Tribunal did consider the video screenshot provided by Dr Senthil Kumar, it was unclear from this video as to what date it was taken and what the video actually depicts save for Dr Senthil Kumar navigating and interacting with the application form. Dr Senthil Kumar's evidence was that it was his actual application under the Facebook profile of Dr A around early April 2020. It is not clear from this video what Facebook profile was used or whether the blank forms demonstrated were formally submitted for application, or the result of any such application. The video includes advertisement links to "CNN Replay" video articles. One is titled "Chris Cuomo: People 'need protection from Trump when it comes to coronavirus' dated 24 July. As such, the video did not assist the Tribunal in reaching its decision on paragraph 1(c) of the Allegation.

34. The Tribunal also considered the screenshots of messages between Dr D and Dr Senthil Kumar in respect of his first application. These demonstrated that identifying doctors and ensuring the integrity of the Covid Group was a primary concern and that Dr Senthil Kumar had been requested to provide further information in order to verify his identity prior to being accepted by the group.

35. The evidence, including that of Dr Senthil Kumar, was that he had been keen to join the Covid Group and found the difficulties he initially faced "*upsetting*". In light of this, the Tribunal considered it unlikely that he would have gone on to submit a further application, in

another doctor's name, whilst leaving sections of the application form blank, as he would have known this would have undermined his application and the vetting process he already had experience and knowledge of.

36. In light of all the evidence before it, the Tribunal considered that, on the balance of probabilities, Dr Senthil Kumar had completed the application form for the Covid Group using Dr A's GMC registration number, and accordingly found this paragraph of the Allegation proved.

Paragraph 2(a)

37. The Tribunal considered this paragraph of the Allegation in respect of 1(c) only as Dr Senthil Kumar admitted this paragraph of the Allegation in respect of all other applicable sub-paragraphs.

38. In light of its findings in respect of paragraph 1(c) of the Allegation, set out above, the Tribunal was satisfied that Dr Senthil Kumar knew that the information he provided, specifically Dr A's GMC registration number when presenting himself online as Dr A was untrue.

39. Accordingly, the Tribunal found this paragraph of the Allegation proved.

Paragraph 3

40. The Tribunal considered this paragraph of the Allegation in respect of 1(c) only as Dr Senthil Kumar admitted this paragraph of the Allegation in respect of all other applicable sub-paragraphs.

41. Having found paragraph 1(c) of the Allegation proved, the Tribunal went on to consider whether Dr Senthil Kumar's actions, in providing the Covid Group with Dr A's GMC registration number, was intended to create the false impression that he was Dr A.

42. The Tribunal concluded that the only reasonable explanation for Dr Senthil Kumar to provide Dr A's name and GMC registration number was to create the false impression that he was Dr A in order that he could join the Covid Group following the rejection of the application in which he provided his own details.

43. Accordingly, the Tribunal found this paragraph of the Allegation proved.

Paragraph 4(a)

44. The Tribunal considered this paragraph of the Allegation in respect of 1(c) only as Dr Senthil Kumar admitted this paragraph of the Allegation in respect of all other applicable sub-paragraphs.

45. In reaching its determination, the tribunal considered the two-stage test for dishonesty as set out in *Ivey*, above.

46. The Tribunal concluded that, on the evidence before it and in light of its finding in respect of paragraphs 2 and 3 of the Allegation, Dr Senthil Kumar's state of mind at the time he provided Dr A's details was one where he intentionally set out to deceive the organisers and members of the Covid Group. Dr Senthil Kumar presented himself as someone he was not, providing details of another doctor he had previously worked with, and provided that doctor's GMC registration number in order to further that deception.

47. The Tribunal also concluded that Dr Senthil Kumar's actions in doing so would clearly be considered as dishonest in the view of any ordinary person.

48. Accordingly, the Tribunal found this paragraph of the Allegation proved.

The Tribunal's Overall Determination on the Facts

49. The Tribunal has determined the facts as follows:

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

1. You falsely presented yourself online as Dr A in that:
 - a. you used a Facebook profile in the name '[Dr A]', which stated that you:
 - i. were a GP at NHS England and NHS Improvement; **Admitted and found proved**
 - ii. studied at Cardiff University; **Admitted and found proved**
 - iii. lived in Cardiff; **Admitted and found proved**

- b. you requested to join a private Facebook group ‘Covid Returning Doctors Support’ using the Facebook profile of ‘[Dr A]’; **Admitted and found proved**
- c. you gained access to the private Facebook group ‘Covid Returning Doctors Support’ by providing the GMC number of Dr A; **Determined and found proved**
- d. on 1 May 2020 you asked, via the ‘[Dr A]’ Facebook profile, to be added to the WhatsApp group set up by Dr B (‘the Group’); **Admitted and found proved**
- e. on 16 May 2020 you:
 - i. asked to join the Group in the name of ‘[Dr A]’; **Admitted and found proved**
 - ii. posted in the Group stating that your name was ‘XXX’; **Admitted and found proved**
- f. on 20 May 2020 you posted an invite to a webinar in the Group as ‘XXX’; **Admitted and found proved**
- g. you created a YouTube account in the name of ‘[Dr A]’ (‘the YouTube Channel’), **Admitted and found proved**
- h. on 22 May 2020 you posted a link in the Group to a webinar recording on the YouTube channel; **Admitted and found proved**
- i. on 29 May 2020 you added the name ‘XXX’ to your WhatsApp profile; **Admitted and found proved**
- j. on 1 June 2020 you confirmed in the Group that your name is ‘XXX but people call you ‘XXX’; **Admitted and found proved**
- k. on 2 June 2020 you:
 - i. stated that your Facebook profile was in the name ‘[Dr A]’; **Admitted and found proved**
 - ii. confirmed that the ‘[Dr A]’ Facebook profile was you; **Admitted and found proved**

- l. on 5 June 2020 you shared a recording in the Group of a webinar from the YouTube Channel; **Admitted and found proved**
 - m. on 8 June 2020 you posted in the Group that your name was '[Dr A]' and gave Dr A's GMC number; **Admitted and found proved**
 - n. you confirmed to Ms C, via a private message from the '[Dr A]' Facebook profile, that you were '[Dr A] (*sic*), GP' in relation to the private Facebook group 'Test and Trace Team Leaders'. **Admitted and found proved**
2. You knew that:
 - a. the information you gave at paragraphs 1.a-e, 1.i-k and 1.m-n was untrue; **Determined and found proved in respect of paragraph 1(c), Admitted and found proved for all remaining paragraphs**
 - b. you did not have permission to use Dr A's name and GMC number. **Admitted and found proved**
 3. Your actions at paragraphs 1.a-n above intended to create a false impression that you were Dr A. **Determined and found proved in respect of paragraph 1(c), Admitted and found proved for all remaining paragraphs**
 4. Your actions at paragraphs:
 - a. 1.a-e, 1.i-k and 1m-n were dishonest by reason of paragraph 2 and 3; **Determined and found proved in respect of paragraph 1(c), Admitted and found proved for all remaining paragraphs**
 - b. 1.f-h and 1.l were dishonest by reason of paragraph 2b and 3. **Admitted and found proved**

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

Determination on Impairment - 03/05/2024

1. This determination will be handed down in private. However, as this case concerns Dr Senthil Kumar's misconduct a redacted version will be published at the close of the hearing.

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

The Outcome of Applications Made during the Impairment Stage

3. The Tribunal granted Dr Senthil Kumar's application, made pursuant to Rule 29(2) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to adjourn proceedings until 2 May 2024. The Tribunal's full decision on the application is included at Annex D.

4. The Tribunal granted Dr Senthil Kumar's application, made pursuant to Rule 34(1) of the Rules, to submit further evidence. The application related to a remediation and reflection bundle and was not opposed by the GMC.

The Evidence

5. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence as follows.

6. Dr Senthil Kumar provided his own witness statement dated 22 April 2024 and also gave oral evidence at the hearing.

7. In addition, the Tribunal received evidence from the following witnesses on Dr Senthil Kumar's behalf:

- Mrs G, Director of Multiply Group, in person, who also provided a written testimonial letter on behalf of Dr Senthil Kumar, dated 25 April 2024. Mrs G has conducted regular communication mentoring with Dr Senthil Kumar.

8. The Tribunal also received an impairment bundle which included but was not limited to:

- Various remediation materials, CPD (Continuous Professional Development) certification/documentation and a number of supporting testimonials/feedback, and;
- A letter from Dr H, XXX, dated 12 April 2024.

9. The Tribunal also received a further testimonial statement in support of Dr Senthil Kumar from Ms I, a friend of Dr Senthil Kumar, dated 1 May 2024.

Submissions

On behalf of the GMC

10. On behalf of the GMC, Ms Fairley submitted that Dr Senthil Kumar's conduct, which amounted to repeated acts of deliberate deceit and dishonesty carried out over a number of weeks and to different individuals, clearly represents serious misconduct. She submitted that this could not be characterised as a momentary lapse or an aberration and that Dr Senthil Kumar's actions breached multiple paragraphs of Good Medical Practice (2013) ('GMP').

11. Ms Fairley submitted that by the time Dr Senthil Kumar made the application as Dr A he was aware of the sensitivities of the Covid Group and that there was concern about who should enter, and it was against that backdrop that he deliberately created a false identity to circumvent the checks. She submitted that his actions represent an intention to deceive the organisers and members of the Covid Group, which fundamentally undermined the purpose of the group and represents an active dishonesty. She submitted that Dr Senthil Kumar did not simply confirm his name, but made up the detail that his name was 'XXX' but people called him 'XXX' to add credence to his claim to be Dr A and that his actions represent calculated acts of dishonesty.

12. Ms Fairley submitted that this conduct would undoubtedly be considered deplorable by fellow practitioners and the wider public as is readily apparent from the evidence of the GMC witnesses and some of the messages themselves. She submitted that it is clear from the witness statement of Dr J that Dr Senthil Kumar used the identity of Dr A to post derogatory comments and personal information, such as referring to a dentists and chiropodists Facebook group he had been rejected from entering as a 'foot and mouth club'. She submitted that an added aspect of the dishonesty is the potential impact upon the real Dr A, which Dr Senthil Kumar did not appear to acknowledge in his evidence.

13. Ms Fairley submitted that in respect of current impairment, when considering the questions posed by Dame Janet Smith (as set out below), Dr Senthil Kumar's misconduct falls foul of three limbs, namely:

- a. (...)
- b. *It does bring the profession into disrepute;*
- c. *It does breach fundamental tenets of the profession;*
- d. *Dr Senthil Kumar has acted dishonestly.*

14. Ms Fairley submitted that this is a case where the overarching objectives of upholding proper professional standards and maintaining public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances of this case.

15. Ms Fairley submitted that whilst Dr Senthil Kumar has apologised for his conduct, the extent to which he takes full responsibility for his actions is questionable. She submitted that he has not demonstrated fully developed insight and has not been entirely candid with the Tribunal in his evidence, such as his conflicting accounts of how he came up with the idea of using a profile in the name of Dr A.

16. Ms Fairley submitted that notwithstanding the remediation work that Dr Senthil Kumar has undertaken, his statements and evidence undermine any assertion that he has fully developed insight or remediated. She submitted that he appears to suggest he had no option, that he wasn't given an opportunity to leave the Covid Group and that his actions were akin to that of Chinese students he had met whilst studying who had assumed a Western name. She submitted that if he genuinely does not recognise that other options were available to him, the risk of repetition is significant and it does in fact represent a reluctance to acknowledge his deceit.

On behalf of Dr Senthil Kumar

17. On behalf of Dr Senthil Kumar, Mr Powell submitted that Dr Senthil Kumar is not currently impaired and that an appropriate approach in respect of the proven allegations is that they are marked by the public findings of the Tribunal and a warning, pursuant to Section 35D (3) of the Medical Act 1983. He submitted that this would be appropriate to reflect the admitted conduct of Dr Senthil Kumar and objectively preserve public confidence in the profession.

18. Mr Powell submitted that the matters arose between April and June 2020 and since June 2020 there has been no repetition of that conduct. He submitted that Dr Senthil Kumar has consistently admitted the substance of the matters since July 2020 and has undertaken

substantial work since to reflect on and remediate his conduct, which he accepts was wholly inappropriate. He submitted that Dr Senthil Kumar has recently undertaken courses or work specifically aimed at or tailored to him to address such conduct

19. Mr Powell submitted that in reaching its decision the Tribunal should take account of the circumstances in which the conduct arose, namely that it was after Dr Senthil Kumar's applications in his Facebook profile "XXX" were not progressed on 16 and 25 March 2020. He reminded the Tribunal of its finding at the facts stage that whilst 'non-Western' names are extremely common in the NHS, it did accept that Dr Senthil Kumar may have felt or had the perception that his original application had been prejudiced owing to his name, and sought to apply under a more 'Western' name. He submitted that the messages between Dr D and Dr Senthil Kumar show that by June 2020 there was an element of distrust, dislike or general animus towards Dr Senthil Kumar. He submitted that it is likely that was contributed to by the concerns Dr Senthil Kumar raised about the Tier 2 call handlers, staff and the Trace Track system from 3 June 2020 onwards, which started before the complaints were made about his conduct.

20. Mr Powell submitted that in respect of misconduct, when considering applicable case law, this case is one where we either have a non-professional issue or one which is a hybrid which is somewhat removed from the standard of professional practice because Dr Senthil Kumar was not acting in the context of the provision of services in medicine. He informed the Tribunal that he had no further submissions on the issue of misconduct, save to recognise that dishonesty is or is likely to be serious misconduct, except in limited circumstances.

21. In respect of current impairment, Mr Powell submitted that Dr Senthil Kumar's admissions show a clear acknowledgment of fault and insight in respect of his conduct, and that there must come a point in time when dishonesty of this kind is, or is capable of, being remediated.

22. Mr Powell submitted that the Tribunal should consider the following factors in reaching its decision: the passage of time since events without repetition; that it occurred in a social media context and not in a patient facing-environment, nor did it concern patients; Dr Senthil Kumar has conceded that he had a misplaced desire to get into the groups at the cost of using a false identity and then maintaining that; It arose in the context of Dr Senthil Kumar's belief he was being racially profiled; it is entirely clear that Dr Senthil Kumar believed that the Covid Group was being run badly and things were being communicated that should not have been: and, that Dr Senthil Kumar's understanding and approach is illustrated by

some of the lack of logic in his evidence, which may be in part explained by his grasp of language and culture.

23. In his submissions, Mr Powell also brought the Tribunal's attention to articles on medical ethics contained within the stage 2 bundle provided by Dr Senthil Kumar. He submitted that these demonstrate the nuance around certain acts of dishonesty and the contexts in which doctors may in fact elaborate on patients issues in order to get them seen more quickly and that they are not entirely honest in relation to it. He submitted that the articles demonstrate that honesty is important, but it is relative and not an absolute, but that the absolute, or higher duty is the patient's interest.

24. Mr Powell submitted that Dr Senthil Kumar has undertaken a significant amount of remediation and CPD activities, including communication mentoring, demonstrating his insight into these matters. He submitted that references concerning his character have been provided and that Dr Senthil Kumar has made it clear that he will continue to work on his behaviour.

25. Mr Powell submitted that for these reasons, and particularly in light of the admissions and remediation undertaken, the tribunal can safely find that Dr Senthil Kumar's fitness to practise is not currently impaired, and that these proceedings and the issuance of a warning would adequately serve to uphold the statutory overarching objective.

The Relevant Legal Principles

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

27. 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 whether the misconduct was serious and then whether the finding of that misconduct which was serious could lead to a finding of impairment.

28. The Tribunal must determine whether Dr Senthil Kumar's fitness to practise is impaired today, taking into account Dr Senthil Kumar'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.

29. In relation to the definition of impairment, the Tribunal was mindful of the guidance provided by Dame Janet Smith in the Fifth Shipman Report. The Tribunal noted that any of the following features are likely to be present when a doctor's fitness to practise is found to be impaired:

- 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 and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. *Has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

30. The Tribunal bore in mind the case of *Sawati v General Medical Council [2022]EWHC 283 (Admin)*, which provides guidance on how the issue of a rejected defence should be dealt with and what relevance it can have in relation to issues of insight and impairment.

The Tribunal's Determination on Impairment

Misconduct

31. In reaching its decision in respect of misconduct, the Tribunal first considered whether the misconduct alleged could reasonably be classified as "*professional*" misconduct. In doing so it bore in mind the submission of Mr Powell that as the events occurred within the context of a Facebook Group (the Covid Group), this amounts to a non-professional issue or one which is a hybrid, being somewhat removed from the standard of professional practice as Dr Senthil Kumar was not acting in the context of the provision of services in medicine.

32. The Tribunal was satisfied that the matters before it did go beyond a purely social context, noting that Dr Senthil Kumar, under the name of Dr A, commented on posts relating to the medical profession and medical/clinical issues.

33. Dr Senthil Kumar was acting as a doctor within a group of other doctors with whom he interacted in this capacity. As was the case for the test and trace group he was part of, Dr Senthil Kumar said that he was looking for information and things that he could do to support the medical profession during Covid, and this was integral to his role as a doctor. He also carried out functions as a leader within the Covid Group and the Tribunal concluded that whilst there may have been a social aspect to the group(s), the professional aspect was a key feature.

34. Having determined that the alleged misconduct in this case was of a professional nature, the Tribunal went on to consider whether the facts it had found proved amounted to misconduct.

35. The Tribunal considered that 10 separate instances of dishonesty had been admitted or found proved and that Dr Senthil Kumar knowingly presented himself as another doctor on repeated occasions in order to deceive administrators and members of the Covid Group.

36. The Tribunal determined that his actions in doing so breached paragraphs 1, 65, 66, 68 and 71 of GMP, as set out below:

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,1 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.

66 You must always be honest about your experience, qualifications and current role.

68 You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.

71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents.22 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

37. In light of the repeated instances of dishonesty and the breaches of GMP identified, the Tribunal determined that Dr Senthil Kumar's actions clearly constituted misconduct.

38. The Tribunal then went on to consider whether the misconduct found could be considered to constitute serious misconduct.

39. In doing so it considered that Dr Senthil Kumar's dishonesty included multiple incidents over an approximately two-month period. It also noted that Mr Powell did not submit that Dr Senthil Kumar's actions did not amount to serious misconduct.

40. Dr Senthil Kumar's dishonesty was carried out in order for him to join the Covid Group, and whilst the Tribunal accepted that he may have had well-meaning intentions for joining the group, the method he chose to do so, by deceiving colleagues and impersonating a different doctor was nonetheless entirely unacceptable.

41. Dr Senthil Kumar could have continued to try and join the Covid Group as himself, and whilst he may have felt that he was being challenged about his authenticity because of his name and/or race, rather than the discrepancy between his profile name and his actual name, the approach he ultimately chose to take was wholly inappropriate. Dr Senthil Kumar went to the lengths of setting up an alternative Facebook profile and avatar under the guise of Dr A and obtaining the matching GMC number, which was not a simple, impulsive act but rather involved some planning and a degree of sophistication. Throughout the course of events he had ample opportunities to seize or retreat from his dishonesty and deal with the situation in other ways but chose not to.

42. The Tribunal considered that the seriousness of Dr Senthil Kumar's misconduct was increased by the fact that he used a real doctor's name fraudulently and considered that any registered practitioner would be appalled to have their details used publicly and professionally in such a way. It concluded that a member of the public would also find such behaviour deplorable.

43. The Tribunal therefore concluded that Dr Senthil Kumar's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct that was serious.

Impairment

44. 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 Senthil Kumar's fitness to practise is currently impaired.

45. The Tribunal was of the opinion that whilst dishonesty can be difficult to remediate, Dr Senthil Kumar's misconduct was capable of remediation.

46. The Tribunal went on to consider the remediation and evidence of reflection and insight provided on behalf of Dr Senthil Kumar. In doing so it noted the significant volume of activities undertaken by him since the events, including relevant CPD relating to dishonesty, mentoring and written reflections. It also noted that save for one aspect, providing Dr A's GMC number on first applying to join the Covid Group, Dr Senthil Kumar made admissions to the Allegation and has expressed remorse, apologising multiple times.

47. Although it is apparent from the evidence that Dr Senthil Kumar has made great efforts to understand dishonesty, significant gaps in his insight remain, particularly in respect of applying his insight to his own dishonesty and the circumstances surrounding it. The Tribunal was of the opinion that Dr Senthil Kumar has demonstrated a theoretical understanding of the principles of honesty and integrity, but that this was undermined by his evidence, and in particular aspects of his oral evidence, in which he continued to appear to minimise and deflect blame for his deliberate, persistent dishonesty.

48. The Tribunal noted that the key component of remediation for dishonesty is to demonstrate that you have insight into your dishonesty and that you will act honestly in the future. Dr Senthil Kumar has identified some aspects and triggers of his dishonesty such as isolation, impulsiveness, overworking and stressful situations. He has obviously taken the proceedings against him seriously and made an effort to address his dishonesty.

49. However, when asked about his dishonesty and his reflections and insight into his actions and motivations during his oral evidence and under cross-examination, Dr Senthil Kumar appeared to avoid answering directly. He also appeared unwilling or unable to acknowledge the seriousness of his misconduct and its impact. When asked whether he was deliberately using the name of a doctor that he knew existed he stated that he could not answer that and that he was trying to leave the matter behind him and move on.

50. Dr Senthil Kumar also continued to liken his actions to those of foreign students using different, Western-sounding names, stating that this was “*similar*” and when questioned on this by Ms Fairley during cross-examination he further stated that he had “*moved on from that stage*” and “*I don't want to go back at all and I want to go forward...*” The Tribunal considered that Dr Senthil Kumar still does not grasp the clear distinction between adopting a different name for oneself and impersonating another real person.

51. The Tribunal was particularly concerned that despite the volume of remediation and reflection demonstrably undertaken by Dr Senthil Kumar, when he was challenged directly in this setting he could not acknowledge, or demonstrate that he understood, the extent and seriousness of his misconduct.

52. During his evidence, Dr Senthil Kumar could voice to some degree the potential impact to Dr A, whom he impersonated, but when asked to elaborate on what the impact would be or people would think if his actions and words were wrongly attributed to Dr A he replied “*I can't say what other people think*”. The Tribunal considered that this demonstrated an unwillingness on the part of Dr Senthil Kumar to genuinely try and put himself in Dr A's position and meaningfully reflect on the importance to public confidence in doctors being who they say they are.

53. The Tribunal also expressed concern at the inconsistencies in Dr Senthil Kumar's evidence. He variously stated that he did not know if Dr A was a real person, despite having worked with him previously, and was unclear and inconsistent regarding his relationship and knowledge of Dr A and how this related to the medical equipment company he set up in the name of Dr A. The Tribunal considered that this undermined the credibility of his assertions around insight and his understanding of his own dishonesty leading the Tribunal to question whether he was still fundamentally unable or unwilling to provide clear, honest answers and therefore demonstrate real insight.

54. During his oral evidence, when asked if his actions were justified, Dr Senthil Kumar responded that it was the “*necessity of the circumstance*.” In response to a question he confirmed that he felt he was “*forced*” to enter the details of Dr A by others, and that “*What I saw in the group wouldn't let me get out*” and that “*lots of people use different names*”.

55. The Tribunal did take into consideration the evidence of Mrs G, noting that Dr Senthil Kumar is continuing his sessions with her. It considered that this was positive and that Dr

Senthil Kumar is on his journey to insight and full remediation, but in light of the evidence, and in particular his oral evidence at this stage of proceedings, this journey remains incomplete.

56. The Tribunal determined that in light of Dr Senthil Kumar’s incomplete insight and remediation a risk of repetition remained. Whilst Dr Senthil Kumar states that he accepts the findings of the Tribunal, he appears to step back from this when he is required to apply his insight and remediation to the specifics of his own misconduct. The Tribunal was of the impression that he has learned a lot from the processes of these and local disciplinary proceedings over the last four years, that this has been a difficult period for him and that this experience is a relevant factor against repetition. He has also provided assurances that such conduct will never be repeated.

57. However, it appears from the evidence before the Tribunal that Dr Senthil Kumar lacks sufficient insight to fully understand the triggers to his dishonest behaviour and put in place mechanisms and thought processes to prevent recurrence. Dr Senthil Kumar has done a significant amount of remedial work but at the current time he does not seem to have adequately incorporated this into his understanding of his own dishonesty and the specific circumstances of his case.

58. Whilst there has been no repetition since the events, which occurred almost four years ago in an unusual context (i.e. the pandemic), and whilst Dr Senthil Kumar’s actions were not in pursuit of personal or financial gain, the risk of repetition remains. In reaching this decision, the Tribunal noted that even after all the remediation and reflection undertaken, Dr Senthil Kumar apparently still considers that his actions were a “*necessity of the circumstance*” as stated in his oral evidence. The Tribunal also did not accept the submission of Mr Powell that, in effect, dishonesty can be somewhat rationalised if the ends justified the means. It considered that this would be an inappropriate finding to make and message to send, and that the context of this case is very different to examples of such put forward by Mr Powell in his submissions. The Tribunal also had some concerns about material within Dr Senthil Kumar’s documentary evidence at this stage that seemed to seek to minimise and justify dishonesty among doctors when the desired outcome warrants or necessitates it.

59. When considering the test for impairment set out by Dame Janet Smith, above, the Tribunal determined limbs b, c and d were applicable, namely that Dr Senthil Kumar:

- b. Has in the past and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

60. Having determined that Dr Senthil Kumar's actions breached a fundamental tenet of the profession, that being to act with honesty and integrity, and that a risk of repetition remained, the Tribunal determined that a finding of current impairment was necessary in order to uphold the second and third limbs of the statutory overarching objective, namely: 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.

61. The Tribunal has therefore determined that Dr Senthil Kumar's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 08/05/2024

1. Having determined that Dr Senthil Kumar'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

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

3. The Tribunal was also provided with six MPT Record of Determinations ('RoDs') of previous hearings relating to other doctors in support of the submissions made by Mr Powell on behalf of Dr Senthil Kumar.

4. In addition, the Tribunal heard from the GMC that Dr Senthil Kumar had previously been subject to the following fitness to practise findings:

1. *On 04.03.10, Dr Senthil Kumar was issued with a warning XXX. The warning expired in June 2015.*
2. *On 20.03.13, a Fitness To Practice panel imposed conditions on Dr Senthil Kumar's registration for a period of 12 months XXX.*

Submissions

On behalf of the GMC

5. On behalf of the GMC, Ms Fairley submitted that the second and third limbs of the overarching objective were engaged in this case, namely to maintain public confidence in the profession, and promote and maintain proper professional standards and conduct for the members of the profession. She submitted that in light of this, and the relevant paragraphs of the Sanctions Guidance (2024) ('SG'), the appropriate and proportionate sanction to impose in the circumstances of this case was that of erasure.

6. Ms Fairley submitted that the previous RoDs provided in support of Dr Senthil Kumar's submissions at this stage are of limited assistance in this case, are distinct from Dr Senthil Kumar's case and that the decision on sanction is one for this Tribunal exercising its own independent judgement.

7. Ms Fairley submitted that the mitigating factors in this case are that Dr Senthil Kumar made admissions and has apologised, that he has undertaken remediation, that the events were a considerable period of time ago and that he has provided testimonials, albeit some are of some age. She submitted that the aggravating factors are Dr Senthil Kumar's lack of insight into the true seriousness of his misconduct and that he does have a previous finding of impairment, albeit the GMC acknowledges that this was not for matters of dishonesty.

8. Ms Fairley submitted that there are no exceptional circumstances which could justify the Tribunal taking no action. She submitted that conditional registration would not be a sufficient, appropriate or proportionate sanction to satisfy the public interest in light of the dishonesty in this case and that there are no suitable conditions which would be appropriate to address the instances of dishonesty in this case.

9. Ms Fairley submitted that notwithstanding the remediation work that Dr Senthil Kumar has undertaken, despite a lengthy period of time over which he has had the

opportunity to properly reflect on his conduct, significant gaps in his insight remain. She submitted that Dr Senthil Kumar appears unwilling or unable to acknowledge the seriousness of his misconduct, and has attempted to deflect blame for his deliberate and persistent dishonesty. She submitted that in light of those factors and the relevant paragraphs of the SG, suspension is not appropriate given the circumstances of this case, but that the sanction of erasure is appropriate and proportionate and the only way to uphold the overarching objective.

On behalf of Dr Senthil Kumar

10. On behalf of Dr Senthil Kumar, Mr Powell submitted that the RoDs provided illustrate the requirements of fairness and proportionality. He submitted that these are cases that, when considering the SG in a strict sense, would likely have resulted in erasure. He submitted that erasure had not been imposed, owing to the broader factors and considerations in these cases, and this should be addressed in this Tribunal's decision.

11. Mr Powell submitted that suspension may not be appropriate and that on one analysis, a lower sanction may be appropriate in the circumstances. He submitted that he accepted that the Tribunal was not likely to take no action in this case, but that owing to an interim order of conditions, Dr Senthil Kumar has been unable to obtain clinical employment since December 2021 and has therefore effectively been suspended for the last two and a half years. He submitted that the investigation and IOT process and sanction serve as a clear demarcation in relation to his misconduct and when considered in context, contribute to the upholding of the second and third limbs of the overarching objective.

12. Mr Powell submitted that the Tribunal should consider the following mitigating factors, which it found in its determination on impairment: Dr Senthil Kumar's well-meaning intentions for joining the Covid Group; that he believed he was being racially profiled; the events occurred during the exceptional circumstances of the Covid pandemic; his misconduct was found to be capable of remediation, and; he is already on the path towards full insight and remediation. He submitted that Dr Senthil Kumar's actions were not in pursuit of personal, financial or indeed reputational gain and that one might think that a sanction lower than suspension might be appropriate in the circumstances.

13. Mr Powell submitted that in reality, the Tribunal would likely be considering suspension versus erasure, but that erasure would be disproportionate in light of the circumstances of the case, the mitigating factors and the applicable paragraphs of the SG. He

submitted that Dr Senthil Kumar has demonstrated his ability to engage with remediation and has demonstrated developing insight, as well as apologising for his actions. He submitted that Dr Senthil Kumar does not pose any risk to patient safety and that whilst his actions were a serious departure from GMP, there are mitigating circumstances and that a reasonable member of the public would not consider his actions to be fundamentally incompatible with continued registration.

14. Mr Powell submitted that the previous fitness to practise findings do not aggravate the circumstances of this case, with the warning XXX occurring in 2008 and the misconduct finding XXX in 2010. He submitted that the findings of the 2013 Tribunal in relation to the latter were taken on board by Dr Senthil Kumar, who undertook significant and effective remediation in regard to the issues identified.

15. Mr Powell submitted that should the Tribunal determine to suspend Dr Senthil Kumar's registration, a short period would be sufficient, although he accepted that a review would be likely given the Tribunal's findings on insight.

The Tribunal's Determination on Sanction

16. The Tribunal's decision as to the appropriate sanction to impose on Dr Senthil Kumar's registration, if any, was a matter for the Tribunal exercising its independent judgment. In reaching its decision, the Tribunal has taken account of the SG and the overarching objective.

17. In making its decision, the Tribunal had regard to the principle of proportionality, and it weighed Dr Senthil Kumar's interests with those of the public. Throughout its deliberations the Tribunal bore in mind that the purpose of sanctions is not to punish doctors although they may have a punitive effect. It also took into account the overarching objective which is to protect the health, safety and wellbeing of the public, maintain public confidence in the profession, and promote and maintain proper professional standards and conduct for the members of the profession.

18. The Tribunal has also borne in mind that in deciding what sanction, if any, to impose, it should consider all the sanctions available, starting with the least restrictive and then consider each sanction in ascending order.

Aggravating & Mitigating Factors

19. In reaching its decision, the Tribunal first considered the aggravating and mitigating factors present in this case.

20. It considered the following features to be an aggravating factor: Dr Senthil Kumar's incomplete insight regarding his dishonesty, despite the passage of time and being subject to an Interim Orders Tribunal ('IOT') order of conditions in relation to these matters since December 2021.

21. The Tribunal noted the previous fitness to practise findings against Dr Senthil Kumar but attributed them little weight and did not consider them to be an aggravating factor due to the nature of the findings, which did not relate to dishonesty, and the time elapsed since the findings. In doing so, it bore in mind paragraph 54 of the SG, which states:

54 Where the GMC, or another regulator, has previously made findings of impaired fitness to practise and imposed a sanction on the doctor's registration, the tribunal may wish to consider this as an aggravating factor in relation to the case before it.

22. It considered the following features to be mitigating factors:

- Dr Senthil Kumar made admissions to all but one sub-paragraph of the Allegation from an early stage in the investigation and has sought to meaningfully engage with these proceedings;
- The lapse of time since the events occurred with no repetition;
- Dr Senthil Kumar has expressed remorse and apologised for his behaviour numerous times;
- Whilst Dr Senthil Kumar's dishonesty was persistent and repeated, it occurred within one discrete area, namely his involvement with the Covid Group on Facebook;
- Dr Senthil Kumar's dishonesty occurred within the context of the Covid pandemic and his desire to join the Covid Group, which the Tribunal found to be a well-intentioned motivation to join and provide support, as evidenced by his escalation of issues to appropriate persons at the time;
- Within this context, Dr Senthil Kumar was under stress and isolated from the usual support mechanisms and safeguards (albeit a registered practitioner should not require safeguards in place to act with honesty and integrity);
- Dr Senthil Kumar was entitled to access the Covid group under its own rules;

- The significant amount of remediation work undertaken thus far by Dr Senthil Kumar, and;
- Dr Senthil Kumar perceived that he was being racially profiled at the time of the events.

No action

23. In reaching its decision as to the appropriate sanction, if any, to impose in this case, the Tribunal first considered whether to take no action.

24. The Tribunal considered that there were no exceptional circumstances in this case which could justify it taking no action.

25. Given its earlier findings of dishonesty and that a risk of repetition remained owing to Dr Senthil Kumar's incomplete insight, the Tribunal determined that to take no action would be neither appropriate nor proportionate and would fail to uphold the second and third limbs of the statutory overarching objective.

Conditions

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

27. The Tribunal determined that it could not formulate any conditions which would address the type of misconduct in this case, namely dishonesty.

28. It also determined that a period of conditional registration would not be proportionate or address the seriousness of the misconduct found, and in particular would fail to uphold the second and third limbs of the overarching objective to promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for the members of the profession.

Suspension

29. In considering whether to impose a period of suspension the Tribunal bore in mind paragraphs 92 and 97(a), (e), (f) and (g) of the SG, as set out below:

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

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

a A serious departure from Good medical practice, but where the misconduct is not so difficult to remediate that complete removal from the register is in the public interest. However, the departure is serious enough that a sanction lower than a suspension would not be sufficient to protect the public.

...

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.

f No evidence of repetition of similar behaviour since incident.

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.

30. The Tribunal reminded itself of its earlier finding that Dr Senthil Kumar's misconduct was remediable. It also considered the significant amount of remediation already undertaken by Dr Senthil Kumar and that he has sought to meaningfully engage with these proceedings.

31. Whilst the Tribunal found that there remained a risk of repetition owing to Dr Senthil Kumar's incomplete insight, it considered that this was not a significant risk and that there had been no repetition since the time of events.

32. In reaching its decision, and in light of the GMC submission that erasure was the appropriate sanction, the Tribunal also bore in mind paragraph 109 of the SG, which states:

109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).

a A particularly serious departure from the principles set out in Good medical practice where the behaviour is difficult to remediate.

b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.

c Doing serious harm to others (patients or otherwise), either deliberately or through incompetence and particularly where there is a continuing risk to patients.

d Abuse of position/trust.

e Violation of a patient's rights/exploiting vulnerable people.

f Offences of a sexual nature, including involvement in child sex abuse materials.

33. The Tribunal concluded that whilst Dr Senthil Kumar's misconduct was serious, his actions were not fundamentally incompatible with continued registration. Whilst he did demonstrate a reckless disregard for the principles set out in GMP, extenuating circumstances have been identified and the Tribunal was satisfied that Dr Senthil Kumar did not abuse his position of trust or pose a risk to patient safety.

34. The Tribunal was therefore of the opinion that a period of suspension would be sufficient to mark the seriousness of the misconduct found and uphold the second and third limbs of the overarching objective, and concluded that erasure would be disproportionate in all the circumstances.

Duration

35. The Tribunal considered that a period of eight months would serve to mark the seriousness of the misconduct found and send a signal about the standards expected of registered practitioners, upholding the second and third limbs of the overarching objective. It considered that this period would also allow Dr Senthil Kumar sufficient time to assimilate the findings of this Tribunal, engage in further remediation and prepare for a review hearing.

36. In doing so, it bore in mind the submission of Mr Powell during his adjournment application (at Annex A) that a further six months would allow Dr Senthil Kumar sufficient time to remediate further and address any outstanding concerns regarding current impairment.

37. The Tribunal did not attribute any weight to the existing IOT order of conditions when determining the duration of suspension and was mindful of paragraph 22 of the SG, which states:

22 The doctor may have had an interim order to restrict or remove their registration while the GMC investigated the concerns. However, the tribunal should not give undue weight to whether a doctor has had an interim order and how long the order was in place. This is because an interim orders tribunal makes no findings of fact, and its test for considering whether to impose an interim order it is entirely different from the criteria that medical practitioners tribunals use when considering an appropriate sanction on a doctor's registration.

38. The Tribunal determined to direct a review of Dr Senthil Kumar's case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Senthil Kumar to demonstrate how he has developed full insight, accepted fault for his dishonesty and fully remediated.

It therefore may assist the reviewing Tribunal if Dr Senthil Kumar provide:

- Evidence of further insight and remediation in relation to the matters identified within the Tribunal's determination on impairment;
- Evidence which addresses Dr Senthil Kumar's understanding of the importance of honesty within the medical profession, with particular focus on the dishonesty found in this case, including the impact to others and the reputation of the profession.

Dr Senthil Kumar will also be able to provide any other information that he considers will assist.

Determination on Immediate Order - 08/05/2024

1. Having determined that Dr Senthil Kumar’s registration be suspended for a period of eight months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Senthil Kumar registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Ms Fairley submitted that in light of the Tribunal’s earlier findings and the applicable paragraphs of the Sanctions Guidance 2024 (‘SG’), an immediate order should be imposed in this case.

3. Ms Fairley submitted that an immediate order is necessary to protect public confidence in the medical profession, given the seriousness of the original matters. She submitted that there is currently an interim order of conditions in place, which she invited the Tribunal to revoke.

4. On behalf of Dr Senthil Kumar, Mr Powell submitted that he had no submissions in opposition to an immediate order.

5. Mr Powell submitted that he did not, however, agree that an immediate order was necessary to protect members of the public or otherwise in the public interest, because Dr Senthil Kumar has been subject to conditional registration for two and a half years.

The Tribunal’s Determination

6. The Tribunal has taken account of the relevant paragraphs of the SG, in particular paragraphs 172, 173 and 178 as set out below:

172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.

173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.

178 Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.

7. In reaching its determination, the Tribunal considered the submissions of both parties and the relevant paragraphs of the SG.
8. The Tribunal concluded that it would be inappropriate not to impose an immediate order in this case, given its finding of serious misconduct and dishonesty and that suspension was necessary to uphold the second and third limbs of the overarching objective.
9. The Tribunal therefore determined that public confidence in the profession would be undermined and that it would be failing to uphold the statutory overarching objective if an immediate order were not imposed in this case.
10. The Tribunal also considered that were an immediate order of suspension not imposed, Dr Senthil Kumar would be free to practise unrestricted throughout the appeal period and for the duration of any subsequent appeal.
11. This means that Dr Senthil Kumar's registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.
12. The interim order is revoked at the point when the immediate order is deemed served.

ANNEX A – 15/04/2024

Application to adjourn proceedings under Rule 29(2)

1. At the outset of proceedings, Mr Powell, counsel on behalf of Dr Senthil Kumar, made an application to adjourn proceedings for a period of six months, pursuant to Rule 29(2) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004 ('the Rules').

Submissions on behalf of Dr Senthil Kumar

2. Mr Powell submitted that Dr Senthil Kumar's insurance funding for this matter has been delayed and funding approval has come in stages.

3. Mr Powell submitted that as a result of the delays in funding approvals, Dr Senthil Kumar has not been able to undertake all his intended, planned remediation or provide evidence to support his insight and remediation. He submitted that the applicable funding has now been agreed and Dr Senthil Kumar's intention is to XXX to deal with further remediation.

4. Mr Powell submitted that the factual allegations in this case are largely admitted by Dr Senthil Kumar and XXX who is doing work with Dr Senthil Kumar around remediation. The evidence from these professionals could potentially go towards his current fitness to practise, remediation and insight, and may be aspects that the Tribunal will need to consider at stage two of proceedings.

5. Mr Powell submitted that the availability of GMC witnesses is not a consideration that should overrule considerations of fairness and that it appeared that the GMC witnesses were keen to give evidence, indicating that they may be more accommodating in relation to rescheduling this hearing.

6. Mr Powell sought to postpone on the basis that Dr Senthil Kumar had more evidence to submit to the Tribunal, namely a witness statement.

Submissions on behalf of the GMC

7. Mr Molloy, counsel on behalf of the GMC, submitted that the Tribunal should take into account that there are six factual witnesses currently warned to arrive to give evidence in person, and that these are professional witnesses with diary commitments who have had

this date in their diaries for some considerable time. He submitted that adjourning these proceedings at such short notice would cause significant disruption to those individuals personally and professionally, and that getting those witnesses arranged to come back again for a future hearing would require a significant amount of effort and may not be possible for the remainder of 2024.

8. Mr Molloy submitted that it is the GMC's understanding, based on the submissions of Mr Powell, that the matter of Dr Senthil Kumar's funding is one that relates directly to the issue of remediation and impairment and does not impact on stage one at all. Mr Molloy submitted that, therefore, these proceedings should not be adjourned and could proceed as planned, adding that a further adjournment application could be made on behalf of Dr Senthil Kumar at the conclusion of the first stage if appropriate.

9. Mr Molloy submitted that, in summary, there is no evidence that an adjournment is necessary and that it would not be proportionate in the circumstances.

The Tribunal's Determination

10. The Tribunal reminded itself of Rule 29(2) of the Rules, which states:

Where a hearing of which notice has been served on the practitioner in accordance with these Rules has commenced, the Committee or Tribunal considering the matter may, at any stage in their proceedings, whether of their own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as they think fit.

11. The Tribunal also reminded itself that when reaching any decisions, it should have regard to and consider the statutory overarching objective.

12. The Tribunal first considered the conflicting submissions of parties in respect of witness scheduling and availability. It noted that it had no evidence that the witnesses would be unable to be rescheduled, as suggested by Mr Molloy, or alternatively that they were "keen" to give evidence as submitted by Mr Powell. It concluded that witness availability itself was not a valid rationale on which to make a decision on adjournment and that it had no evidence to support this in any event.

13. The Tribunal then considered what would be achieved by adjourning proceedings at this stage. It was the Tribunal's view that these issues bore no direct relevance to stage one of these proceedings.

14. The Tribunal therefore determined that, at this stage of proceedings, an adjournment would serve no practical purpose or achieve anything material in relation to stage one.

15. Mr Powell sought an adjournment on the basis that Dr Senthil Kumar had not submitted a witness statement. He accepted that there was already a statement to the Tribunal from Dr Senthil Kumar and that the witness statement would not be materially different to that previous statement but would be an amplification and more detailed. He added that the further detail related to reflections and remediation and detail as to how these things arose.

16. The Tribunal then went on to consider fairness, both to Dr Senthil Kumar and the GMC, and its need to uphold the statutory overarching objective. In doing so, it bore in mind that the outstanding issues relate to stage two of the proceedings, and determined that there would therefore be no unfairness to Dr Senthil Kumar in proceeding with the case and hearing any further preliminary applications prior to opening the facts stage.

17. The Tribunal also considered that the preparation for this case has been going on for some time. A previous hearing had been postponed for issues relating to XXX and funding. In light of the overarching objective, the onus is for the Tribunal to proceed with the hearing if this could be done so without creating any unfairness or injustice for either party.

18. The Tribunal concluded that it would be appropriate and proportionate to proceed with the hearing and would not cause unfairness to Dr Senthil Kumar or the GMC to do so. It also concluded that it was in the public interest for the hearing to proceed.

19. The Tribunal therefore determined to refuse Mr Powell's application to adjourn these proceedings.

ANNEX B – 25/04/2024

Application to submit further evidence under Rule 34(1)

1. On day two of proceedings, Ms Fairley, counsel on behalf of the GMC, made an application to submit further evidence, pursuant to Rule 34(1) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004 ('the Rules').

Submissions on behalf of the GMC

2. Ms Fairley, counsel on behalf of the GMC, submitted that the additional evidence was provided following the oral evidence of GMC witness Dr D, who was questioned about the dates of two screenshots of further membership requests to the Covid Group submitted by Dr Senthil Kumar which she had provided. These requests were subsequent to his initial application and also the successful application he made using Dr A's name, and were made with Dr Senthil Kumar's own name and GMC registration number.

3. Ms Fairly submitted that the evidence simply clarifies the date on which Dr D shared these screenshots with fellow administrators of the Covid Group on Facebook. She submitted that the evidence was fair to admit on the basis that it only added details to existing evidence the Tribunal was already in possession of.

Submissions on behalf of Dr Senthil Kumar

4. Mr Powell, counsel on behalf of Dr Senthil Kumar, submitted that he opposed the inclusion of this evidence at this stage of proceedings. He submitted that this evidence had been received at a late stage and that there was no way of interrogating the accuracy of the screenshots or information provided in relation to them.

5. Mr Powell submitted that it would be unfair on Dr Senthil Kumar for him to have to try to deal with this evidential issue in the circumstances and that without the ability to assess the veracity of the original screenshots the evidence would be prejudicial and unfair to submit.

6. Mr Powell also submitted that the evidence in question is not directly relevant to the outstanding allegations which the Tribunal are required to determine but are instead a collateral factual issue about events after the time of the outstanding allegations.

The Tribunal's Determination

7. The Tribunal considered this application in accordance with Rule 34(1) of the Rules, which states:

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

8. The Tribunal considered that the additional evidence, in the form of timestamps for the messages of the screenshots would not assist it in reaching determinations on the outstanding paragraphs of the Allegation.

9. The Tribunal concluded that in light of the factual matters it was required to determine and the chronology set out in the evidence it had already received, the evidence in question was not relevant to its decision-making. It determined that these specific details of further applications to join the Covid Group made by Dr Senthil Kumar using his own personal information would provide no further value to the relevant evidence it already had before it.

10. In reaching its decision, the Tribunal considered that whilst the information itself would not be prejudicial to Dr Senthil Kumar, it would be unfair to admit on the basis that it was not relevant to the matters to be determined.

11. Accordingly, the Tribunal refused the application.

ANNEX C – 23/04/2024

Application for no case to answer under Rule 17(2)(g)

1. On Day 3 of the hearing, Mr Powell, counsel on behalf of Dr Senthil Kumar, made an application for no case to answer in relation to paragraph 1(c) of the Allegation, pursuant to Rule 17(2)(g) of the Rules.

Submissions on behalf of Dr Senthil Kumar

2. Mr Powell provided the Tribunal with written submissions in addition to oral submissions. He submitted that the evidence presented by the GMC is not sufficient to establish a case to answer in relation to paragraph 1(c) of the Allegation. He reminded the Tribunal of the test set out in *R v Galbraith* [1981] 2 All ER 1060, and stated that the evidence

presented by the GMC does not, nor is it properly capable of, supporting the factual allegation set out at paragraph 1(c).

3. Mr Powell submitted that the factual evidence in respect of this paragraph relies almost entirely on the oral evidence of Dr D, who set up the Facebook group, as to the practice and policy of the administrators of the group. However, he submitted that the questionnaire completed by Dr Senthil Kumar to join the Facebook group with Dr A's details have not been obtained by the GMC from Facebook, despite the request from Dr Senthil Kumar that it do so. He explained to the Tribunal that a request had been made to Facebook UK Limited prior to 1 February 2024, and a response from the company had indicated that it was the wrong entity to approach, and directed the GMC to contact Meta Platforms, Inc., who control and operate Facebook from Delaware, USA. He submitted that the GMC has not forwarded the request to Meta Platforms, Inc. Mr Powell submitted that promotion of the reputation of the profession must engage fairness, particularly in these proceedings, and it is entirely clear that the one piece of material that is potentially in existence, that would resolve this issue, has not been sought.

4. Mr Powell submitted that Dr D has no direct recall and gives no direct evidence that Dr Senthil Kumar completed the questionnaire on joining the group. Further, he stated that, on the evidence presented, Dr D had not been approached for a statement until around February 2024. He submitted that it was her evidence that she does not know who of the seven administrators approved the Facebook profile request in Dr A's name to join the group. He submitted that there is no direct and contemporaneous evidence to support the allegation and assertion of Dr D. It was his submission that the evidence is conjecture, speculation and makes assumptions without direct foundation or support, and that the evidence advanced in support of paragraph 1(c) is self-evidently indirect and circumstantial.

5. Mr Powell submitted that, on the evidence submitted and following cross examination of Dr D, there is no evidence which can support paragraph 1(c) and a factual finding in respect of it on the part of Dr Senthil Kumar.

Submissions on behalf of the GMC

6. Ms Fairley submitted that Mr Powell's criticism of the GMC not further pursuing the disclosure of the form from Facebook is '*something of a red herring*'. She submitted that Mr Powell's suggestion that the rest of the evidence is unreliable has no validity.

7. Ms Fairley submitted that Mr Powell has had the opportunity to cross examine Dr D's evidence. She submitted that Dr D set up the Facebook group, and that she was the best placed person to provide evidence for how applicants were approved to join the group. Dr D was clear in her evidence that approval to join the group was not granted without answering the questions, that one of those questions was to provide their GMC registration number, and that this had been a policy and requirement from the beginning. Ms Fairley submitted that the Tribunal is entitled to take into account the reasons Dr D had given to explain the importance of verifying the GMC registration number against the GMC website entry. Further, she submitted that Dr D had explained the process that would be adopted if the GMC registration number was incorrect and that she had refuted the suggestion that someone could have been admitted without answering the questionnaire.

8. Ms Fairley submitted that a *request* to join the group could be made without initially completing the questionnaire, but reminded the Tribunal that it was the policy of the group to directly communicate with people who did not complete the questionnaire to seek clarification of missing information. She submitted that this was an important distinction. There was no evidence that anyone in the Facebook group had gained access without supplying a GMC number and the name matching this.

9. Ms Fairley submitted that Dr D's evidence alone was clear and compelling, and clearly sufficient evidence upon which a tribunal could conclude that paragraph 1(c) was proven. Ms Fairley directed the Tribunal to consider the additional evidence from Dr F and Dr J, both of whom support the evidence of Dr D regarding the process to join the group. Further, she referred the Tribunal to the questionnaires completed by Dr Senthil Kumar, when he attempted to join the group under his own name, and his responses to those questions.

10. Ms Fairley submitted that the Tribunal have heard clear and compelling evidence of the process of being approved and the provision of the GMC registration number which was required for approval. She submitted that the Tribunal are also entitled to consider how likely it is that on this occasion, when Dr Senthil Kumar was using a fake account of another doctor, that the usual processes were not followed in respect of checking the GMC registration number. She stated that it would be extraordinary and fanciful conclusion, which is an affront to common sense and therefore from the evidence that this Tribunal has heard, there is clear evidence to support the paragraph 1(c) of the Allegation.

The Tribunal's Approach

11. The Tribunal carefully considered the written and oral submissions of both Counsel. In reaching its decision, it had full regard to all the evidence presented to date, both oral and documentary.

12. The Tribunal reminded itself that at this stage of the proceedings it was not considering whether it would or would not find each paragraph in question proved but whether sufficient evidence had been adduced for there to be a case for Dr Senthil Kumar to answer. In considering whether or not sufficient evidence has been adduced to find some or all of the facts proved, the test to be applied by the Tribunal is as set out in *R v Galbraith* [1981] 2 All ER 1060 which states:

‘How then should the judge approach a submission of ‘no case’?

(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.

(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence.

(a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.

(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness’ reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.’

13. The Tribunal also had regard to the case of *R (Tutin) v GMC* [2009] EWHC 553 (Admin) which confirms that the case of *Galbraith* applies to civil proceedings.

The Tribunal’s Determination

14. The Tribunal kept foremost in its mind that, at this stage, it was required to determine the sufficiency of the evidence taken at its highest and not to make any findings of fact. It then went on to consider each paragraph of the Allegation and the evidence it has been provided with so far.

15. In making its decision, the Tribunal considered whether the evidence presented, when taken at its highest, supported the GMC's case that Dr Senthil Kumar had gained access to the private Facebook group '*Covid Returning Doctors Support*' by using Dr A's GMC registration number.

16. The Tribunal first considered the facts that were not in dispute. The agreed position is that Dr Senthil Kumar did apply to join the group in the name of Dr A, and that he was admitted. It is also agreed that there was a questionnaire to be completed on requesting to join the group, and that one question requested the applicant's GMC registration number. The Tribunal was provided with a copy of a questionnaire but has not seen the one completed by Dr Senthil Kumar in the name of Dr A.

17. The Tribunal had regard to the differing positions and noted that Dr Senthil Kumar denies that he used Dr A's GMC registration number on that questionnaire. The only copy of the questionnaire filled in by Dr Senthil Kumar may or may not be held by Facebook, and a copy has not been obtained for these proceedings. In regard to the unfairness of this evidence not being obtained, the Tribunal did not consider this omission overshadowed the ability of the Tribunal to make a fair decision on whether there was a case to answer. The Tribunal needed to consider the GMC's case at its highest. An example of how the GMC's case could have been stronger and/or what was missing is part of the overall evaluation rather than a determinative feature.

18. The Tribunal noted Dr D's evidence that she had set up the group and that a GMC registration number had always been a requirement to join, as she wished to create a '*safe space*' for doctors to discuss any anxieties they might have about returning to practise. The requirement to input a GMC number was to ensure that doctors returning to work after a career break were to be admitted for the dual purpose of keeping the numbers in the group smaller and to exclude journalists.

19. Dr D told the Tribunal that she was keen to ensure appropriate people were admitted. The Tribunal was provided with evidence of Dr D sharing her own GMC certification with XXX (Dr Senthil Kumar) in a digital exchange on 25 March 2020, after Dr Senthil Kumar first

attempted to join the group. Dr D was attempting to encourage XXX to provide a *'photo of something with you Id eg name badge degree certificate etc...so we can match up'* following her being unable to locate XXX on the GMC register and communicating to Dr Senthil Kumar that *'the gmc number doesn't match your name'*.

20. Dr D told the Tribunal that it was policy for an applicant's name and GMC registration number to be checked on the GMC website before the applicant was approved. She told the Tribunal that this became a *'lot of work'* and that this was the primary reason for having seven administrators. Her evidence was that if someone did not have time to undertake the checks then *'they would just leave it for the next person to do it'*. Further, she stated that around 100 people were rejected from the group for not providing the correct information. The Tribunal was of the view that Dr D had given clear, consistent evidence on this matter, both in oral evidence and in her written statements. That is to say, the Tribunal did not agree that this evidence was weak or tenuous.

21. The Tribunal also had regard to the statement of Dr J, dated 23 February 2021, which provided:

'I started the WhatsApp group, but it came out of the Facebook group. To join the Facebook group you had to give your name and submit your GMC number.'

22. The Tribunal also noted the evidence of Dr F, in her statement dated 9 February 2024, which stated:

'To join the group, I recall that I had to click on a 'request to join' or similar link, which brought up a form to complete. From memory, the form required you to input your full name and GMC number. A message then came up to the effect of 'an administrator will approve your request', or words to that effect.

From memory, there wasn't a huge delay between the request to join and the approval. You couldn't access the group or see any of the information posted on the group until you had been approved.'

23. The Tribunal was of the view that both Dr F's and Dr J's accounts supported Dr D's evidence that it was policy for a GMC registration number to be requested on requesting access to the group and that this was checked by a group administrator.

24. The Tribunal considered, that taking the evidence at its highest, a reasonable Tribunal could, on one possible view of the evidence find this paragraph of the Allegation proved.

25. The Tribunal determined that in taking the evidence at its highest, there remains a case to answer in respect of paragraph 1(c) and rejected the application.

ANNEX D – 02/05/2024

Application to adjourn proceedings under Rule 29(2)

1. On day six of proceedings, following Dr Senthil Kumar’s stage two oral evidence, Mr Powell, counsel on behalf of Dr Senthil Kumar, made an application to adjourn proceedings until 2 May 2024, pursuant to Rule 29(2) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004 (‘the Rules’).

Submissions on behalf of Dr Senthil Kumar

2. Mr Powell submitted that he intended to call Ms G, who had provided written testimonial evidence on behalf of Dr Senthil Kumar, to give oral testimonial evidence. He submitted that Ms G was currently in Switzerland, which was not on the Foreign, Commonwealth and Development Office (FCDO) list of overseas states where specific permission to hear witness evidence is not required. He submitted that she would be back in the UK, and so able to give evidence, on Thursday 2 May 2024.

3. Mr Powell submitted that the oral evidence of Ms G, a communications coach who has worked with Dr Senthil Kumar, would not go beyond those matters set out in her testimonial statement and would relate to the way in which Dr Senthil Kumar communicates, including aspects of his logic and his cultural background. He submitted that Ms G has overseen 11 one-on-one sessions with Dr Senthil Kumar over a sustained period and that her evidence would be relevant to Dr Senthil Kumar’s state of mind and thought process during the events of the Allegation, as well as the way in which he gave oral evidence under cross-examination before this Tribunal.

4. Mr Powell submitted that this evidence is relevant and that it is very important that the Tribunal has an opportunity to make an assessment not just of Dr Senthil Kumar, but also of other evidence that might support him. He submitted that fairness requires that the Tribunal consider all the material evidence and that includes hearing orally from Ms G about

her experience with Dr Senthil Kumar. He submitted that the Tribunal will know from experience that hearing directly from a witness, in this case about her impression of Dr Senthil Kumar, has a significant degree of greater value than simply having a piece of paper which one reads.

5. Mr Powell submitted that he is instructed to make submissions at the impairment stage that Dr Senthil Kumar has remediated, and that Ms G's evidence is therefore relevant to his case.

6. Mr Powell submitted that he had only just been made aware that Ms G was in Switzerland hence that permission had not been sought for her to give evidence from out of the jurisdiction. As the hearing was not scheduled to be in session on Monday 29 and Tuesday 30 April 2024, in effect he was applying for a day and a half's adjournment.

Submissions on behalf of the GMC

7. Mr Fairley, counsel on behalf of the GMC, submitted that the GMC was opposed to the application. She submitted that whilst Mr Powell may have just found out that Ms G is in Switzerland, this hearing has been listed since January 2023 and it appears that this is a witness who the defence has intended to call since before the proceedings began. She submitted that one would have expected some inquiry to have been made prior to this, and that there are case management hearings in relation to these proceedings to try and ensure that those witnesses that are going to be called are identified and appropriate arrangements made.

8. Ms Fairley submitted that notwithstanding the scheduling issues in relation to Ms G, she was concerned that it appeared that the reason for which this testimonial witness was being called was potentially straying into the realm of expert witness evidence. She submitted that Ms G does not appear to be a medical expert or behavioural science expert, and that those aspects which have been identified by Mr Powell in terms of cultural difficulties and the like can be considered by this professional Tribunal in light of the evidence before it, including Ms G's letter setting out her own personal view of Dr Senthil Kumar.

9. Ms Fairley submitted that Ms G has not seen Dr Senthil Kumar give evidence and so she would not be able to give any evidence in relation to that.

10. Ms Fairley submitted that, therefore, the delay in proceedings would not be for anything more than for Ms G to confirm what is contained within her letter, which is not a reasonable delay.

The Tribunal's Determination

11. The Tribunal reminded itself of Rule 29(2) of the Rules, which states:

Where a hearing of which notice has been served on the practitioner in accordance with these Rules has commenced, the Committee or Tribunal considering the matter may, at any stage in their proceedings, whether of their own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as they think fit.

12. The Tribunal also reminded itself that when reaching any decisions, it should have regard to and consider the statutory overarching objective.

13. The Tribunal considered that whilst she was not an expert witness, and her evidence should not extend the scope of matters set out in her letter, Ms G does have experience of direct meetings with Dr Senthil Kumar in regard to his communication.

14. The Tribunal was mindful that there can be benefits to hearing in-person evidence as opposed to solely reading documentary evidence. The Tribunal reminded itself that if Ms G's evidence did not assist and/or strayed into irrelevance it would be straightforward for a professional Tribunal to disregard it. On the other hand, if it were not heard then the Tribunal would not be able to assess it.

15. The Tribunal concluded that, in light of Mr Powell's submissions, this evidence was potentially relevant to its decision on impairment and could amplify the evidence already reduced to writing. The Tribunal determined that whilst there would be no disadvantage or unfairness to the GMC in hearing her evidence, there was a potential risk of unfairness to Dr Senthil Kumar were her evidence not heard.

16. In reaching its decision, the Tribunal was mindful of the potential for these proceedings to go part-heard owing to a delay, but considered that the hearing could still conclude within the allotted schedule and that in any event the need for fairness outweighed the risk of adjourning part-heard. Further the Tribunal concluded that to refuse an

adjournment for potentially relevant evidence when there was a good chance to conclude the case within the original time allocation would be unfair and unjustified.

17. The Tribunal therefore determined to grant Mr Powell’s application to adjourn these proceedings.

ANNEX E – 08/05/2024

Determination on adjournment following Application for Costs Award

1. On the penultimate day of proceedings, following the Tribunal’s determination on impairment, Mr Powell, on behalf of Dr Senthil Kumar, indicated that he intended to make an application for costs under Rules 16A and 16B of the General Medical Council’s (‘GMC’) (Fitness to Practise) Rules 2004, as amended (‘the Rules’).

2. On the afternoon of the final day of proceedings, following the Tribunal’s determinations on sanction and immediate order, the Tribunal enquired with parties as to the position in regard to the costs application and whether the matter could feasibly be addressed in the remaining time available.

3. The parties provided the Tribunal with their respective positions as set out below.

On behalf of Dr Senthil Kumar

4. Mr Powell informed the Tribunal that he intends to make a costs application under Rules 16 of the Rules. He indicated that the matter relates to XXX.

5. Mr Powell informed the Tribunal that he was in a position to proceed with the application, and following Ms Fairley’s suggestion that this Tribunal does not have such authority in relation to XXX under the Rules, that this initial decision could be made in the time remaining and would be binding to any future Tribunal considering the substantive cost application.

On behalf of the GMC

6. Ms Fairley informed the Tribunal that the GMC was of the view that the Tribunal does not have relevant powers under Rule 16 of the rules in relation to XXX. She informed the

Tribunal that were it to identify such authority and reach a determination as such, the GMC would seek to oppose the application for a costs award.

7. Ms Fairley stated that whilst the issue regarding the XXX costs may have been brought to the attention of the GMC at an earlier date, no formal cost application or skeleton argument had yet been received. She advised the Tribunal that were a costs application to be considered if such authority deemed to be applicable, she would require time to review any relevant documentation and seek instruction from the GMC in relation to this matter. She informed the Tribunal that the GMC's position was that this matter could not reasonably be resolved today.

Tribunal's Decision

8. The Tribunal noted that there were only two hours remaining to it and that there were two issues before it: XXX.

9. The Tribunal considered that whilst the parties had informed it of their respective positions in terms of the application, it had received no formal submissions or received any evidence in respect of these matters.

10. The Tribunal concluded that there would be insufficient time to determine both aspects in the time remaining and so considered whether it should attempt to determine the matter of applicable authority in the remaining time.

11. In reaching its decision, the Tribunal took into account fairness to both parties. It concluded that as it had not received any formal submissions, skeleton arguments or evidence on the matter it was not currently in a position to reach a thorough determination in the remaining time. It noted the objection raised by Mr Powell to the GMC having the opportunity to further consider its position on the applicable authority under the Rules, but concluded that this was not inappropriate and parties had only been asked to provide a summary of their positions, not final submissions. In any event, where the parties held polar positions on the interpretation of the Rules any Tribunal reaching a determination would likely be assisted by skeleton arguments on the issue once each party had had the opportunity to consider the argument of the other.

12. The Tribunal determined that it was in the interests of justice and fairness to all parties for this matter to be given the proper consideration it deserved and that this could

not be satisfactorily dealt with within the space of two hours. It also considered that since any costs application, were one to be accepted under the Rules in relation to XXX, should ideally be heard by the same Tribunal at the same time in order that the matters be dealt with properly.

13. The Tribunal emphasised that it was not seized of this matter, having concluded the substantive case before it, and so the matter could be relisted to be heard in due course by this or a differently constituted Tribunal.

14. Accordingly, the Tribunal determined to adjourn in respect of this matter for it to be relisted in due course following case management with parties.