Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 20 November to 15 December 2017
19 July to 27 July 2018

Medical Practitioner's name: Dr Erkan MUTLUKAN

GMC reference number: 5071956

Primary medical qualification: Tip Doktoru 1986 Hacettepe Universitesi

Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome
Erasure
Immediate order imposed

Tribunal:

Legally Qualified Chair:	Mr Neil Dalton
Lay Tribunal Member:	Ms Safia Iman
Medical Tribunal Member:	Professor Alastair McGowan

Tribunal Clerks:	Ms Esther Morton (20 November 2017, 24 November to 14 December 2017) Ms Rachel Barrett (21 November 2017) Ms Emma Saunders (22-23 November 2017) Ms Jennifer Hatch (15 December 2017) Ms Chloe Ainsworth (19–27 July 2018)

Attendance and Representation:

Medical Practitioner:	Present and not represented
Medical Practitioner:	Not present and not represented (19-27 July 2018)
GMC Representative:	Mr Alan Taylor, Counsel, instructed by GMC Legal

Attendance of Press / Public
The hearing was all heard in public.

DETERMINATION ON THE FACTS - 15/12/2017

Background

1. At the time of the events which are the subject of this hearing, Dr Mutlukan was a locum consultant ophthalmologist and was working at NHS Lothian, Betsi Cadwaladar University Health Board, Calderdale and Huddersfield NHS Foundation Trust, and Royal Devon and Exeter NHS Foundation Trust.

2. It is alleged by the GMC that, between April 2013 and March 2015, Dr Mutlukan was variously rude, abrupt, dismissive, confrontational, threatening, unpleasant, aggressive, disrespectful and angry towards a number of patients, colleagues, and other people. It is also alleged that this conduct caused people to feel upset and/or fearful and/or threatened.

The Outcome of Applications Made during the Facts Stage

3. At the outset of the hearing the Tribunal granted the GMC's application, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to amend a typographical error in Paragraph Fifteen of the allegation. Mr Taylor informed the Tribunal that the word 'you' had been omitted from the head of charge in Paragraph Fifteen, and the Tribunal was content that the word 'you' could be added without injustice to either party.

4. On day 10 of the hearing (1 December 2017) the Tribunal refused the GMC's application, made pursuant to Rule 34 (1), to admit Secretary F's witness statement into evidence. The Tribunal granted the GMC's Rule 34(1) unopposed application in relation to the CHFT Incident/Near Miss Sign Off Form. The Tribunal's full decision on these applications is included at Annex A.

5. On day 14 of the hearing (7 December 2017) the Tribunal granted aspects of Dr Mutlukan's application, made pursuant to Rule 17(2)(g), in relation to the following paragraphs of the Allegation:

- Paragraph 8 in its entirety
- Paragraph 17(e)
- Paragraph 18(c)
- Paragraph 19(b)

However, the Tribunal rejected Dr Mutlukan's 17(2)(g) application in relation to the remainder of the Allegation.

6. The Tribunal's full decision on this application is included at Annex B.

7. On day 15 of the hearing (8 December 2017) the Tribunal granted Dr Mutlukan's application, made pursuant to Rule 34 (13), to call Mrs L XXX via telephone. Dr Mutlukan explained that Mrs L XXX was unable to travel to the hearing centre, and submitted that arranging a video link would be too costly. Mr Taylor opposed this application on behalf of the GMC. The Tribunal determined that it was in the interests of justice to hear Mrs L's XXX evidence via telephone, and was satisfied that doing so would not disadvantage either party.

The Allegation and the Doctor's Response

8. The Allegation made against Dr Mutlukan is as follows:

Paragraph One
On 15 April 2013, you consulted with Patient A, you behaved in a manner that was:

a. rude; **To be determined**

b. abrupt. **To be determined**

Paragraph Two
On 25 April 2013, you consulted with Patient B, you behaved in a manner that was:

a. rude; **To be determined**

b. unpleasant; **To be determined**

c. dismissive. **To be determined**

Paragraph Three
During your consultation with Patient B you:

a. banged into the table forcefully on two occasions causing it to bang into Patient B; **To be determined**

b. failed to:

i. acknowledge your actions as set out at 3(a); **To be determined**

ii. apologise for your actions as set out at 3(a). **To be determined**

Paragraph Four
In or around September 2013, you had cause to speak with Chemist C in the pharmacy regarding a non-formulary request form, during which your manner was aggressive. **To be determined**

Paragraph Five
In or around September 2013, you had cause to speak with Chemist C in the basket room, during which your manner was:

a. aggressive; **To be determined**

b. threatening. **To be determined**

Paragraph Six
On 20 September 2013, you worked with Dr D. You were:

a. rude; **To be determined**

b. disrespectful; **To be determined**

c. dismissive. **To be determined**

Paragraph Seven
On 7 October 2013, you consulted with Patient E, you behaved in a manner that was:

a. aggressive; **To be determined**

b. rude. **To be determined**

~~**Paragraph Eight**~~
~~On 24 June 2014, you were involved in an incident involving Secretary F, during which you were:~~

~~a. aggressive;~~

~~b. threatening.~~ ***Removed in accordance with Rule 17(2)(g)***

Paragraph Nine
In June 2014, you were involved in an incident involving Dr G, during which you were:

a. aggressive; **To be determined**

b. physically threatening; **To be determined**

c. verbally abusive; **To be determined**

Paragraph Ten
During the incident with Dr G, as set out in paragraph 9 above, you:

a. hit a Dictaphone from Dr G's hand; **To be determined**

b. attempted to stamp on the Dictaphone. **To be determined**

Paragraph Eleven
On 13 July 2014, Dr H informed you that cataract cases had been taken off your operating list and you responded to Dr H's opinion in an inappropriate manner, in that you were:

a. angry; **To be determined**

b. aggressive. **To be determined**

Paragraph Twelve
On 14 July 2014, you spoke with hospital switchboard staff, your manner was:

a. abusive; **To be determined**

b. aggressive; **To be determined**

c. rude. **To be determined**

Paragraph Thirteen
On 14 July 2014, you spoke to a Police Officer, your manner was:

a. rude; **To be determined**

b. abusive. **To be determined**

Paragraph Fourteen
On 19 September 2014, you consulted with Patient I, your manner was:

a. rude; **To be determined**

b. abrupt; **To be determined**

c. aggressive. **To be determined**

Paragraph Fifteen
Between November 2014 and January 2015, you corresponded via telephone and email with employees of DRC locums, including Mr J. The manner in which you corresponded was:

a. rude; **To be determined**

b. confrontational; **To be determined**

c. threatening; **To be determined**

d. racially derogatory. **To be determined**

Paragraph Sixteen
On 10 March 2015, Dr K explained to you that you required a phased reintroduction to cataract surgery supervised and you responded to Dr K in an inappropriate manner, in that you were:

a. unpleasant; **To be determined**

b. confrontational; **To be determined**

c. aggressive. **To be determined**

Paragraph Seventeen
Your behaviour at paragraphs 1, 2, 3, 7, 8, 12, 14, 15 and 16 caused upset to:

a. Patient A; **To be determined**

b. Patient B; **To be determined**

c. Patient E; **To be determined**

d. Patient E's wife; **To be determined**

e. ~~Secretary F;~~ ***Removed in accordance with Rule 17(2)(g)***

f. hospital switchboard staff; **To be determined**

g. Patient I's daughter; **To be determined**

h. Mr J; **To be determined**

i. Dr K. **To be determined**

Paragraph Eighteen
Your behaviour at paragraphs 2, 3, 4, 5, 8, 9, 10 and 11 caused the following people to be fearful:

a. Patient B; **To be determined**

b. Chemist C; **To be determined**

c. ~~Secretary F;~~ ***Removed in accordance with Rule 17(2)(g)***

d. Dr G; **To be determined**

e. Dr H. **To be determined**

Paragraph Nineteen
Your behaviour at paragraphs 5, 8, 9, 10, 12 and 15 caused the following people to feel threatened:

a. Chemist C; **To be determined**

b. ~~Secretary F;~~ ***Removed in accordance with Rule 17(2)(g)***

c. Dr G; **To be determined**

d. hospital switchboard staff; **To be determined**

e. Mr J. **To be determined**

Factual Witness Evidence

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

- Patient B's daughter, by video link;
- Patient E, by video link;
- Patient E's wife, by video link;
- Patient A, by telephone link;
- Charge Nurse, NHS Lothian, in person;
- Dr D, Consultant Anaesthetist at NHS Lothian, in person;
- Chemist C, Pharmacist in Ophthalmology at NHS Lothian, in person;
- Dr H, Consultant Ophthalmic Surgeon at Betsi Cadwaladar University Health Board ('the Board'), in person;
- Operator 1, Switchboard Telephonist at the Board, in person;
- Operator 2, Switchboard Telephonist at the Board, in person;

- Police Officer, North Wales Police, in person;
- Operator 3, Switchboard Telephonist at the Board, in person;
- Dr G, Locum Consultant in Ophthalmology at the Board, in person;
- Patient I's daughter, in person;
- Dr K, Consultant Ophthalmic Surgeon at the Royal Devon and Exeter Hospital, in person;
- Mr J, Manager in the Ophthalmic Department at DRC Locums Ltd, in person.

10. The Tribunal also received a witness statement from Patient B; Patient B was unable to give oral evidence at this hearing as a result of ill health.

11. Dr Mutlukan provided his own witness statements signed and dated 23 November 2017, and also gave oral evidence at the hearing. In addition, the Tribunal received oral evidence from XXX Mrs L via telephone link.

Documentary Evidence

12. The Tribunal had regard to the documentary evidence provided by both parties. This evidence included, but was not limited to, patient and colleague correspondence with the relevant Trusts (including letters of complaint), correspondence between Dr Mutlukan, the GMC, and DRC Locums, as well as patient consultation notes.

The Tribunal's Approach

13. 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 Mutlukan 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.

14. 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.

The Tribunal's Overall Determination on the Facts

15. The Tribunal has determined the facts as follows:

Paragraph One
On 15 April 2013, you consulted with Patient A, you behaved in a manner that was:

a. rude;

b. abrupt. **Found not proved in its entirety**

16. In relation to Paragraph One, the Tribunal received a witness statement from Patient A dated 21 May 2017; Patient A's letter of complaint to the Princess Alexandra Eye Pavilion ('the Pavilion') dated 18 April 2013, as well as a subsequent email from Patient A to the Pavilion dated 27 May 2013. In addition, the Tribunal heard oral evidence from Patient A.

17. In her witness statement, Patient A records:

> 'During the appointment, Dr Mutlukan was quite abrupt with me which I found rude'.

Patient A added that the way Dr Mutlukan spoke to her during the consultation left her feeling 'angry and upset'.

18. Patient A's oral evidence was consistent with her written accounts, and the Tribunal found her to be an honest and credible witness. Patient A had a clear perception of how the appointment made her feel, and the Tribunal accepts that Patient A felt upset and angry after the consultation. However, the Tribunal also bore in mind that, according to her own evidence, Patient A was not 'in the right frame of mind' on the day of the consultation. In oral evidence she informed the Tribunal that she didn't want to be at the consultation in the first place, and in her witness statement she records:

> 'I was not feeling myself [that day]. I had my period and I just wanted to go home'

19. While the Tribunal found her a credible and consistent witness, it considered that there was an absence of firmly articulated basis for asserting Dr Mutlukan's conduct was rude and abrupt, and thus the Tribunal was not persuaded that her perception of Dr Mutlukan's conduct was an accurate one, albeit the perception was sincerely held.

> **Paragraph Two**
> On 25 April 2013, you consulted with Patient B, you behaved in a manner that was:
>
> a. rude; **Found not proved**
>
> b. unpleasant; **Found proved**
>
> c. dismissive. **Found proved**

20. The Tribunal had regard to Patient B's witness statement dated 22 June 2017 (which was admitted into evidence), as well as Patient B's daughter's witness statement dated 12 June 2017. Patient B was unable to give oral evidence at this hearing, but the Tribunal heard oral evidence from Patient B's daughter.

21. Patient B and her daughter recount an encounter with Dr Mutlukan during which they found him unpleasant and dismissive ('his obvious ill-temper displayed itself in his unpleasant manner, very sharp questions and comments').

22. In Patient B's daughter's witness statement, she records that:

> 'My mother said that I had the photos on my phone and that she had been trying to explain to Dr Mutlukan about these concerns. I told Dr Mutlukan that I would like to show him the photos. I said 'I have them right here'. I showed them to him but he was very dismissive of seeing any photos, which I thought was a bit off considering he was treating the eye in question… Dr Mutlukan just dismissed me'.

23. In oral evidence Patient B's daughter described how she felt 'summarily dismissed' by Dr Mutlukan, adding that Dr Mutlukan appeared to be irritated throughout the consultation, making her feel as if she and her mother were an 'inconvenience' to him. In her witness statement, Patient B's daughter also described Dr Mutlukan as irritated during the consultation, adding that:

> 'He seemed to think that it was a great annoyance that these opticians had referred [Patient B] to the Eye Pavilion as he was saying that they do this all the time and it was wasting time'.

24. Patient B's daughter's oral evidence was consistent with that given in her earlier witness statement, as well as that given in her near-contemporaneous letter of complaint to the Pavilion.

25. In response, Dr Mutlukan asserted that Patient B's daughter's account was motivated by xenophobia and that she was fraudulent. However, the Tribunal was not provided with any evidence to suggest that Patient B or her daughter were motivated by xenophobia, nor that they were fraudulent. Rather, the Tribunal found Patient B's daughter to be an honest and credible witness, and - on the balance of probabilities - it preferred her version of events to that given by Dr Mutlukan.

26. The Tribunal was also satisfied that Patient B's account was truthful and accurate, and – taking their accounts together - it was satisfied that Dr Mutlukan was both dismissive and unpleasant during the consultation. It therefore found subparagraphs (b) and (c) of Paragraph Two proved.

27. In relation to subparagraph (a), Patient B's daughter was asked in evidence whether Dr Mutlukan was rude during the consultation; she replied that rude was 'pushing it', describing him instead as irritated and dismissive. The Tribunal found subparagraph (a) of Paragraph Two not proved.

Paragraph Three
During your consultation with Patient B you:

a. banged into the table forcefully on two occasions causing it to bang into Patient B; **Found proved**

b. failed to:

i. acknowledge your actions as set out at 3(a); **Found proved**

ii. apologise for your actions as set out at 3(a). **Found proved**

28. As set out above, the Tribunal preferred Patient B's daughter's version of events to that given by Dr Mutlukan. Dr Mutlukan informed the Tribunal that he did not bang into the table during the consultation, but both Patient B and her daughter allege that Dr Mutlukan did bang into the table on two occasions.

29. Patient B was unable to undergo cross-examination at this hearing. In her statement, she confirmed that Dr Mutlukan banged the table twice, causing her pain, and her daughter had said to Dr Mutlukan 'You have just hurt my Mum'.

30. Patient B's daughter's account corroborated her mother's, and was tested in oral evidence. The Tribunal found her to be an honest and credible witness. In Patient B's daughter's witness statement, she sets out that:

> '…the whole table just lurched forward and banged right into my mother… He really clobbered the whole thing in the sense that when he moved in closer to the equipment and banged the table, he did so with such force that it impacted on my mother. She exclaimed with pain and shock, and went 'ow!'. My mother clearly did it as a sign of distress. Dr Mutlukan did not say anything… He then bashed into the table again and the whole thing happened again… Most people would say sorry but there was none of that and incredibly he did it a second time and, again, did not say sorry'.

31. Patient B's daughter wrote that the movement of the table caused the equipment to shake visibly, and the Tribunal determined that Dr Mutlukan would have noticed this. Further, Patient B's daughter wrote that her mother made a noise, saying 'ow', and the Tribunal determined that Dr Mutlukan would have heard this too, as well as hearing her daughter say 'You have just hurt my Mum'.

32. In short, it was satisfied that, on the balance of probabilities, Dr Mutlukan banged the table into Patient B twice, and that his actions were brought to his attention. It is further satisfied that, when his actions were brought to his attention, he failed to acknowledge or apologise to them. The Tribunal found this paragraph proved in its entirety.

Paragraph Four
In or around September 2013, you had cause to speak with Chemist C in the pharmacy regarding a non-formulary request form, during which your manner was aggressive. **Found proved**

33. The Tribunal heard oral evidence from Chemist C, and also had regard to her witness statement dated 14 June 2017, as well as an undated email from Chemist C to a Consultant at NHS Lothian.

34. Chemist C asserts, in terms, that when she asked Dr Mutlukan to produce (in accordance with policy) the evidential basis to justify her prescribing the medication sought, his reaction was 'aggressive'; with Dr Mutlukan instead telling her to undertake the necessary work, and saying to her 'slowly and deliberately' that she must call Moorfields hospital to obtain the references:

> 'He was starting to sound a bit aggressive and there were patients around so I wanted to end the conversation… Dr Mutlukan said to me that I had to put into writing that I did not have time to speak to a doctor… Obviously I had come across Dr Mutlukan at PAEP before, but that was the first time where he had been aggressive towards me'.

35. In response to the allegation, Dr Mutlukan described Chemist C as a known 'trouble maker' who had made up her complaint 'in retaliation'. However, Dr Mutlukan was unable to produce any evidence to support this. More, the Tribunal had regard to her undated email to the NHS Lothian Consultant, in which she explained that the non-formulary request form ('NFR') required references and supporting evidence, and that none had been supplied by Dr Mutlukan. The email makes clear that Chemist C was unsure where to find these references herself, and that it was the duty of the requesting physician (Dr Mutlukan) to provide them. Given this, the Tribunal was not persuaded that Chemist C was a 'trouble maker', nor that she was being deliberately obstructive, and it therefore rejected Dr Mutlukan's submissions in this regard.

36. In his written evidence, Dr Mutlukan also characterised Chemist C's statements as xenophobic. This allegation was put to Chemist C in evidence. Chemist C explained that she had been subject to racism herself throughout her life and that she would never act in a xenophobic or racist way towards anyone. The Tribunal found her evidence in this respect to be compelling.

37. The Tribunal found Chemist C to be an honest, credible, and fair witness; she made clear that her complaint was not about Dr Mutlukan's medical ability, and at times she accepted points put to her by Dr Mutlukan in cross-examination. Chemist C's oral evidence was consistent with her earlier written evidence, and – on the balance of probabilities – the Tribunal preferred her version of events to that of Dr Mutlukan's.

38. Based on this evidence, the Tribunal was satisfied that Dr Mutlukan acted towards Chemist C in a manner that was aggressive. It therefore found this paragraph of the Allegation proved.

Paragraph Five
In or around September 2013, you had cause to speak with Chemist C in the basket room, during which your manner was:

a. aggressive; **Found proved**

b. threatening. **Found proved**

39. In Chemist C's witness statement, she records:

'I made a move to get out of the room because I felt slightly threatened as there was no-one else in the room. I have had a lot of encounters with doctors and we have not always agreed but I have never felt physically threatened… [Dr Mutlukan] said that he was going to report me and get my licence removed… He would not let me speak and he kept telling me not to interrupt him. I felt very nervous and kind of shaky after the incident'.

40. The account given in Chemist C's witness statement corresponds with that given in her near-contemporaneous email, where she describes Dr Mutlukan talking to her in an aggressive manner, leaving her feeling threatened.

41. In Chemist C's oral evidence she described being left 'shaken' and 'frightened' by her interaction with Dr Mutlukan in the Basket Room.

42. As set out above, the Tribunal was satisfied that Chemist C was an honest and credible witness. In Dr Mutlukan's written submissions he wrote that Chemist C had stated that she never felt physically threatened. However, what Chemist C actually stated was that she had never felt physically threatened by a member of staff before.

43. Given Chemist C's evidence, the Tribunal was satisfied that, on the balance of probabilities, Dr Mutlukan behaved towards Chemist C in a manner which was both aggressive and threatening. It therefore found this paragraph of the Allegation proved.

Paragraph Six
On 20 September 2013, you worked with Dr D. You were:

a. rude;

b. disrespectful;

c. dismissive. **Found proved in its entirety**

44. The Tribunal heard oral evidence from Dr D, and also received a witness statement from him dated 2 June 2017, as well as an email from Dr D to a colleague at the Trust dated 1 October 2013.

45. In essence, Dr D alleges that, when witnessing a heated exchange between Dr Mutlukan and the Charge Nurse (where Dr Mutlukan was said to be pointing his finger at the Charge Nurse), he approached Dr Mutlukan, who was rude, aggressive and disrespectful in his response.

> 'I witnessed Dr Mutlukan having a fairly heated and animated conversation with the charge nurse… Dr Mutlukan was gesticulating and he was fairly agitated… I approached them and I asked what was wrong. I do not recall clearly what Dr Mutlukan said but it was something like '*go away I cannot talk to you'*. Dr Mutlukan's tone was very dismissive when he said this to me'.

46. In Dr D's near-contemporaneous email of October 2013 he described Dr Mutlukan's refusal to speak to him as 'rude and disrespectful'.

47. In response to the allegation, Dr Mutlukan claimed that he initiated contact with the Charge Nurse, and that he was simply and calmly trying to resolve a technical issue.

48. This claim was refuted by Dr D however, and also by the Charge Nurse herself.

49. She gave a witness statement and oral evidence, describing Dr Mutlukan as animated, upset, and angry, and this is consistent with Dr D's account of events. The Charge Nurse made it clear that she was asked by staff members to attend in order to calm down the situation as a result of Dr Mutlukan's behaviour.

50. The Charge Nurse's account substantially matches that given by Dr D, and the Tribunal was satisfied that both Dr D and the Charge Nurse were measured and credible witnesses. Given this, the Tribunal determined that Dr D's version of events was the more plausible, and it preferred his version to that of Dr Mutlukan's. The Tribunal noted a minor inconsistency between Dr D and the Charge Nurse's evidence in relation to whether the patient was already in the room when the conversation occurred, but it determined that this inconsistency was understandable given the passage of time.

51. The Tribunal determined that Dr Mutlukan's behaviour –taken as a whole – would be considered rude, and had regard to its impact on Dr D as described in his evidence. In addition, it was satisfied from the evidence of Dr D and the Charge Nurse that Dr Mutlukan was disrespectful to staff members, and was dismissive to Dr D. It noted that this behaviour occurred in the vicinity of a patient, and the Tribunal heard that Dr Mutlukan's behaviour had an impact on other members of the team.

52. Bearing all of the above in mind, the Tribunal determined that – on the balance of probabilities – Dr Mutlukan was rude, disrespectful, and dismissive on 20 September 2013 when working with Dr D. It therefore found this paragraph of the Allegation proved in its entirety.

> **Paragraph Seven**
> On 7 October 2013, you consulted with Patient E, you behaved in a manner that was:
>
> a. aggressive; **Found not proved**
>
> b. rude. **Found proved**

53. In relation to Paragraph Seven, the Tribunal had regard to the witness statement of Patient E (dated 16 May 2017), as well as that of Patient E's wife (dated 17 May 2017). In addition, the Tribunal heard oral evidence from Patient E and his wife, and it had regard to Patient E's letter of complaint dated 7 October 2013. The Tribunal was satisfied that both Patient E and his wife were credible and honest witnesses, who did their best to assist the Tribunal.

54. In Patient E's witness statement, he records that;

> 'As we were leaving the consultation room, Dr Mutlukan shouted something about us not being nice to doctors so that the people outside in the corridor could hear us'.

55. In oral evidence, Patient E's wife described the overall consultation as more like an 'interrogation', adding that the atmosphere in the consultation room 'seemed to vibrate'. Patient E's wife recalled that, when they asked to see another doctor, Dr Mutlukan responded rudely, leaving them 'trembling'. In her witness statement, Patient E's wife states:

> '… as we were leaving, [Dr Mutlukan] went towards the opening of the door and shouted out 'you have no respect for doctors'. He made sure that the patients that were waiting outside in the corridor heard him. We were so upset. I remember being so glad and grateful to be out of his room'

56. Dr Mutlukan accepts that he made a comment to Patient E and his wife in relation to showing mutual respect for doctors. However, he maintained it was not said in a manner described by the witnesses, and alleged that he was first called a 'pain in the rear' by Patient E. This was denied by Patient E and by his wife, and the Tribunal was not satisfied that it had been said. Moreover, the Tribunal determined that even if Dr Mutlukan believed Patient E had called him a 'pain in the rear', Dr Mutlukan's comment would still be rude and unjustified. It bore in mind that Dr Mutlukan said this comment in a public place, and that it was overheard by other patients, leaving both Patient E and his wife 'upset'.

57. Bearing all of the above in mind, the Tribunal was satisfied that – on the balance of probabilities – Dr Mutlukan behaved in a manner that was rude towards Patient E. It determined that Dr Mutlukan's comment in itself was rude, and that the comment had a greater impact on Patient E given that it was said in the presence of others.

58. Whilst the Tribunal was satisfied that Dr Mutlukan acted rudely, it was not provided with any specific evidence that established Dr Mutlukan being aggressive. It therefore found subparagraph (a) of Paragraph Seven not proved.

~~**Paragraph Eight**~~
~~On 24 June 2014, you were involved in an incident involving Secretary F, during which you were:~~

~~c. aggressive;~~

~~d. threatening.~~ ***Removed in accordance with Rule 17(2)(g)***

Paragraph Nine
In June 2014, you were involved in an incident involving Dr G, during which you were:

a. aggressive;

b. physically threatening;

c. verbally abusive; **Found proved in its entirety**

Paragraph Ten
During the incident with Dr G, as set out in paragraph 9 above, you:

a. hit a Dictaphone from Dr G's hand;

b. attempted to stamp on the Dictaphone. **Found proved in its entirety**

59. In relation to Paragraphs Nine and Ten, the Tribunal had regard to Dr G's witness statement dated 11 July 2017, as well as his oral evidence given at this hearing. The Tribunal found Dr G to be a consistent and credible witness who provided a cogent account of events.

60. In Dr G's witness statement, he records that he and Dr Mutlukan had an exchange regarding his (Dr G's) use of a Dictaphone while Dr Mutlukan was making a telephone call. He claims Dr Mutlukan said 'shut up, I am talking …'. Dr G continued, 'Dr Mutlukan did not say more than a few sentences, but his tone of

voice was loud and threatening'. In response, he told Dr Mutlukan quietly that he was 'very rude' and that he 'shouldn't talk like that'. Then, Dr G goes on to say:

> '…Dr Mutlukan came out with a torrent of abuse, swearing, and aggression towards me... I was at my desk at the time. Dr Mutlukan jumped up from his desk and came to the side of me and behind my desk. He caught me by my shirt near my neck and hit the Dictaphone off my hands. The Dictaphone fell on the floor and he then tried to stamp on it…. After the tape flew off, he continued with his aggression. I tried to leave but he was holding his fists up in the corridor near the door, pretty much blocking my way out of the office. At the same time he was swearing and threatening me. I cannot remember the exact words he used but they were threats of physical violence. It was quite a frightening situation'.

61. In oral evidence, when pressed by Mr Taylor about the type of language Dr Mutlukan had used, Dr G informed the Tribunal that Dr Mutlukan had told him: 'I'll fuck you front and back'. The Tribunal considered that Dr G's reluctance to use words of a vulgar nature enhanced his credibility, and it accepted that he felt genuinely threatened by Dr Mutlukan.

62. Dr H corroborates that the account provided by Dr G of Dr Mutlukan's behaviour was reported to him in like terms shortly after the incident. While Dr H's account was inconsistent in some respects (for example, with regard to whether or not he heard the Dictaphone tape recording), the Tribunal did not find this to be a material inconsistency. In Dr H's witness statement of 13 June 2017, he confirms that Dr G expressed genuine fear to him, and that he sought advice on how to deal with Dr Mutlukan's aggression; Dr G was advised to call security.

63. The Tribunal contrasted Dr G's version of events with that given by Dr Mutlukan. Dr Mutlukan accepts that he pushed Dr G's Dictaphone away, but stated that Dr G had been the aggressor, and that Dr G had dropped the Dictaphone on the floor himself. Dr Mutlukan claimed Dr G had told him:

> '…*do not ever, never ever, talk to me like that giving me orders again'*

64. Dr G accepts commenting, but only to the extent set out at paragraph 60 above. However, looking at the account of this incident as a whole, the Tribunal found Dr G's account more persuasive and therefore found paragraphs Nine and Ten proved in their entirety.

> **Paragraph Eleven**
> On 13 July 2014, Dr H informed you that cataract cases had been taken off your operating list and you responded to Dr H's opinion in an inappropriate manner, in that you were:

a. angry;

b. aggressive. **Found proved in its entirety**

65. In reaching its decision, the Tribunal had regard to Dr H's near contemporaneous email detailing the phone conversation dated 14 July 2014. The Tribunal was of the view that his oral evidence was entirely consistent with the details contained in his witness statement dated 13 June 2017, and the initial email.

66. Dr Mutlukan maintained that the phone conversation did not occur in the manner as falsely stated by Dr H and that any references to anger and aggressions were 'patently false and fictitious'.

67. Dr Mutlukan requested that the Tribunal prefer the evidence of Mrs L XXX, which he maintained corroborated his evidence that there was no rudeness or aggression demonstrated by him during the phone conversation.

68. The Tribunal had regard to the email sent the following day by Dr H, which was sent to the Chief of Staff which set out that he 'was obviously concerned for patient safety… I informed him that until we investigate issue which may or may not be his fault, for the time being we will not put any more cataracts on his list'. Dr H went on to describe in the email that Dr Mutlukan 'got very angry and irrational and there was a loss of communication with him'. Dr H maintained that Dr Mutlukan's manner and tone of voice during the conversation became extremely aggressive and loud, and Dr Mutlukan was concerned that his livelihood was being taken away. Dr H, in his oral evidence, confirmed that he explained that no one was taking his livelihood away, and that the cataracts were only being deferred until the matter could be looked into.

69. In respect of Dr H's evidence regarding the diary brought to assist the Tribunal, the Tribunal noted that Dr H offered the diary for inspection and a copy of the relevant page was contained within the documentation. Dr H explained that the diary itself was a method to record complications. Dr Mutlukan asserted that the procedure recorded in the nurse's handbook as 'an intra-operative complication' was a 'false statement'. The Tribunal found that Dr H, though not reading the diary verbatim in his evidence, was seeking to assist the Tribunal in its understanding regarding medical annotations contained within the document and his understanding of the notes contained therein. Therefore the Tribunal found his evidence to be credible in this regard.

70. Dr Mutlukan, in his submissions, raised the possibility of fraudulent alterations in the timing recorded in documentation. There is no evidence before the Tribunal that any such deliberate alterations occurred to mislead the Tribunal, nor that the alterations rendered matters inaccurately, nor finally that Dr H was the author of those alterations.

71. The Tribunal, having considered the evidence, rejected Dr Mutlukan's assertion that Dr H may have been motivated to fabricate his account due to Dr Mutlukan not wishing to remain in long-term employment with the Trust. Dr H made it clear in his evidence that he had no personal conversations of that nature with Dr Mutlukan. The Tribunal could find no motive for Dr H to fabricate his account of the conversation and therefore preferred his evidence which the Tribunal found to be consistent.

72. The Tribunal also preferred the evidence of Dr H to that of Mrs L. The Tribunal was only able to attach very limited weight to her evidence given that she had only heard one side of the conversation. Mrs L confirmed in oral evidence that much of her written statement was what had been told to her by Dr Mutlukan. The Tribunal noted that there was a level of detail within her written account which was not necessarily borne out by the circumstances on the day, namely that she only overheard one side of the phone call. Therefore the Tribunal found Dr H's evidence to be more plausible and persuasive. The Tribunal found him to be both a reliable and credible witness, and preferred his evidence to that of Dr Mutlukan.

Paragraph Twelve
On 14 July 2014, you spoke with hospital switchboard staff, your manner was:

a. abusive;

b. aggressive;

c. rude. **Found proved in its entirety**

73. In relation to paragraph 12, the Tribunal had regard to the witness statements of switchboard staff members 1, 2 and 3 (hereafter SSM1 – 2 – 3): the oral evidence of SSM 1, 2 and 3; and near contemporaneous notes made by them after the incident in question.

74. The Tribunal noted some minor inconsistencies between their accounts, but considered that the core of their accounts, as it addressed these charges, was materially consistent. The Tribunal found that, in their oral evidence, the switchboard staff members did their best to assist the Tribunal and gave sufficiently consistent accounts of events for their version to be credible.

75. In her contemporaneous note, SSM1 noted 'he [Dr Mutlukan, when refused an outside line] then started shouting and saying we were very primitive and we were worse than a third world country. I asked him to stop being abusive'. In her contemporaneous note, SSM2 records 'The caller [Dr Mutlukan] came through to me and started shouting, wanting (SSM1's) name… he then said we were worse than

third world and very primitive'. In his contemporaneous note, SSM3 records that later Dr Mutlukan 'apologised fully to me and asked me to pass on his sincere apologise [sic] to the lady's [sic] and the police officer'.

76. SSM1 said that she considered Dr Mutlukan to be abusive because of his attitude. He was shouting and sounded aggressive.

77. SSM2 said 'You were shouting and you wouldn't listen', 'I found you being rude. I don't think any man or woman should speak like that to someone just doing their job', 'I found you abusive. I am not used to going to work and being shouted at'. SSM2 also said she was worried and nervous because of the aggression and nature of the calls. She had contacted the fast bleep holder 'to let them know we had a problem'. She also said that she had agreed with a supervisor that she should dial 999 if Dr Mutlukan came to the switchboard.

78. SSM3 confirmed that both his colleagues were distraught and upset; but that Dr Mutlukan, while irate, had not shouted at him.

79. It is not in dispute that the words 'primitive' and 'third world country' were used, albeit Dr Mutlukan says he was describing the telephony system not its staff. Dr Mutlukan, in his closing submissions describes this as a 'wrongful rude comment' for which he later apologised. All three switchboard operators say the words, or words to that effect, were used to each of them.

80. In his oral evidence, Dr Mutlukan said that he had only used the phrase to the first operator he spoke to. He also said he was not irate or abusive and did not shout. In Dr Mutlukan's account, he asserted that after his comment on primitive third world 'they were all annoyed with me. They added all these other things that are non-existent'.

81. Bearing all of the above in mind, the Tribunal determined that there was sufficient consistency between the three switchboard staff members that it could accept their account in preference to Dr Mutlukan's, and find these allegations proved in their entirety.

Paragraph Thirteen
On 14 July 2014, you spoke to a Police Officer, your manner was:

a. rude; **Found proved**

b. abusive. **Found not proved**

82. In relation to paragraph 13, the Tribunal had regard to the witness statement of the police officer, an entry made in her Personal Note Book, and her oral evidence.

83. The Tribunal found that her live evidence lacked precision in that she could not recall conversations or other details. Some of the accounts given in her witness statement (such as who asked her to attend switchboard) was at odds with other accounts of this matter.

84. The Tribunal accepted however, that her Personal Note Book entry was more likely than not to be contemporaneous or near contemporaneous. The Personal Note Book entry includes 'spoke with consultant ophthalmologist Dr Mutlukan – extremely rude screaming and shouting despite trying to reason'. (The Tribunal noted that the entry refers to Dr Mutlukan being rude, but not abusive.)

85. More particularly, the Tribunal also noted the evidence of the switchboard staff, and in particular SSM2, who gave clear, persuasive and credible evidence that she could hear Dr Mutlukan shouting down the phone to the police officer, who occasionally held the phone away from her ear.

86. In his oral evidence, Dr Mutlukan denied that he had been rude and abusive to the police officer, saying only in their conversation 'this is not a police matter. I don't want to talk'.

87. Overall, therefore, while the Tribunal gave limited weight to the officer's live evidence, it considered that the Personal Note Book entry and, significantly, the evidence from SSM2 was sufficient that on the balance of probabilities subparagraph 1 of Paragraph Thirteen can be found proved, but subparagraph b of Paragraph Thirteen not proved.

Paragraph Fourteen
On 19 September 2014, you consulted with Patient I, your manner was:

a. rude;

b. abrupt;

c. aggressive. **Found proved in its entirety**

88. The Tribunal heard directly from Patient I's daughter, who was present at the consultation with her mother on 19 September 2014. Patient I described her mother as an 86 year old frail lady who was 'very hard of hearing'. She gave evidence to explain that her purpose in attending the consultation was to be supportive for both the health professional and providing reassurance to her mother. This was a role she regularly undertook.

89. Dr Mutlukan, in his submissions, maintained that 'he was not rude, nor were any unprofessional comments directed to the patient or the family or the staff

members'. He accepts that the daughter was asked to wait outside, but that was because she was interrupting the consultation. Dr Mutlukan also accepts that he was 'preoccupied and saddened by calls from the locum agency' and that he could have been more 'empathic and mindful' during the consultation. In his submissions to the Tribunal, he has explained 'I could have and should have done better'. Dr Mutlukan accepts saying the words 'I will not serve your arrogant nation', however, he maintains that there was no abruptness, threatening, angry or aggressive behaviour displayed.

90. The Tribunal found Patient I's daughter to be an impressive, fair and credible witness. Her evidence remained consistent throughout. The Tribunal had regard to the initial letter of complaint dated 23 September 2014 sent to the Trust which included the following comments: 'he appeared rushed and impatient and became very rude as the consultation went on. His body language spoke volumes often holding his brow looking to the floor whilst waiting for my Mum to try and open her eyes… His attitude was one of disdain'. Patient I's daughter gave evidence that she was asked to leave in an abrupt manner and that her 'heart was pounding' when she stood up. She however did not leave. She was also very clear that she was not disruptive at any stage during the consultation. In her oral evidence, Patient I's daughter confirmed that Dr Mutlukan's manner was aggressive during the consultation.

91. The Tribunal also had regard to the Datix incident which offered a degree of corroboration as it demonstrated the matter had been reported. However, in the circumstances, the Tribunal gave it limited weight due to the fact it was not entirely clear how the entry came to be made. In any event, the Tribunal was entirely satisfied with the evidence of Patient I's daughter, that it concluded that her evidence alone was sufficient to prove the entirety of the allegation.

Paragraph Fifteen
Between November 2014 and January 2015, you corresponded via telephone and email with employees of DRC locums, including Mr J. The manner in which you corresponded was:

a. rude; **Found proved**

b. confrontational; **Found proved**

c. threatening; **Found not proved**

d. racially derogatory. **Found proved**

92. The Tribunal heard evidence from Mr J which detailed a number of phone calls made between himself and his colleagues, and Dr Mutlukan. The Tribunal was also referred to documentation within the bundle which encapsulated email

correspondence between Dr Mutlukan, a number of employees and DRC Locums and the GMC.

93. Mr J, in his evidence, maintained that there were a number of calls between Dr Mutlukan and himself. Dr Mutlukan, however, in his evidence, explained that only two calls were made between himself and Mr J at the very beginning of his involvement with DRC Locums. Dr Mutlukan went on to explain that one was a long call, which he went on to describe as a 'heart to heart' conversation, and the second was very brief and at no point was he rude, threatening or confrontational in either of these calls.

94. Mr J described calls made between Dr Mutlukan and his colleagues Ms M and Mr N which left them both upset. Mr J described Ms M as 'visibly upset and shaken' by the conversation she had with the doctor. Indeed, Mr J gave evidence (which was consistent with his witness statement) that he was played a copy of the recording of this conversation and that he was shocked by the manner in which Ms M was verbally berated by Dr Mutlukan. In his oral evidence, he described the conversation to be one where Dr Mutlukan was 'flippant, belittling' and seemed to be 'trying to back someone into a corner… I have never heard a doctor speak so rudely'. The Tribunal also had regard to an email dated 23 December 2014 sent by Mr J to Dr Mutlukan in which he states 'Ms M gave me a phone call detailing the recorded contents of your conversation. No-one in the agency needs to be spoken to in that manner'.

95. The Tribunal found Mr J's evidence consistent and reliable in relation to the telephone conversation between Dr Mutlukan and Ms M, and accordingly found Dr Mutlukan's conduct was rude and confrontational. However, the Tribunal was not satisfied that there was any evidence presented by the GMC that the particular conversation was 'threatening' and therefore, accordingly, that allegation 15.c was found not proved in relation to this phone call.

96. With regards to Mr N, the Tribunal did not hear from him directly and despite Mr J describing him as visually upset, he was unable to assist the Tribunal with the nature of the conversation due to the fact that the recording was said to have been deleted at the request of Mr N. Therefore the Tribunal was not satisfied that the GMC had discharged their burden in regards to this phone call.

97. The Tribunal had regard to the documentary evidence which detailed the email correspondence between Dr Mutlukan and Mr J. Dr Mutlukan accepted that there was rude content in the emails and acknowledged that they were 'wrong'; but in his submissions maintained that this was upon 'discovery of his [Mr J's] deceptive, misleading, non-existent job representation'. He explained there was no intention on his part of the content being racially derogatory or threatening. His evidence was that the emails were a response to conduct by DRC Locums that was deceptive and harassing, and described their conduct as 'criminal actions'. He asserted the

references within the emails were non-racial and related only to the sub-human primitive behaviour that was demonstrated by the employees of the agency. He maintained he had no knowledge of the race and ethnicity of any of the employees at the agency, including Mr J. However, Mr J, in his live evidence, recalled a conversation with Dr Mutlukan about his Facebook profile and his ethnicity. The Tribunal noted that the comment about discussing his ethnicity was also reflected in his witness statement.

98. The Tribunal carefully considered the email correspondence and had no doubt that the words such as 'I don't need your BS', 'dishonest scumbag', 'shove your QMC assignment up to yourselves' were all rude and confrontational. However, the Tribunal was unable to find any evidence that they were 'threatening' in nature, nor did it consider that the threats to report Mr J, and his colleagues, to others amounted to 'threatening'. Accordingly, that aspect of the allegation was found not proved.

99. The Tribunal found the references to apes and primates were racially derogatory, noting in particular the use of the words 'apes do too' and 'dishonest primates and apes' in the emails dated 23 December 2014 and the reference to 'keep your third world jungle you guys brought'. The Tribunal was not persuaded by how Dr Mutlukan sought to justify the use of these expressions.

100. The Tribunal preferred Mr J's evidence and found him to be consistent and reliable in this regard.

Paragraph Sixteen
On 10 March 2015, Dr K explained to you that you required a phased reintroduction to cataract surgery supervised and you responded to Dr K in an inappropriate manner, in that you were:

a. unpleasant;

b. confrontational;

c. aggressive. **Found proved in its entirety**

101. In considering paragraph 16, the Tribunal took note of Dr K's written statement; a contemporaneous email written by him; and his oral evidence.

102. The Tribunal found Dr K to be an honest witness; clear, consistent and calm in his responses.

103. In his email written on the day after the incident, Dr K states 'I am very disappointed with his professional attitude during this discussion'. In the same email, Dr K describes Dr Mutlukan's manner as 'confrontational'.

104. In his written statement, Dr K states of Dr Mutlukan that 'he became unpleasant and aggressive. He was standing very close to me, staring at me', 'As I was in the process of explaining my decision, he began shouting in my face. He was shouting in a very forceful and aggressive manner', 'I was trying to keep calm but my heart was pounding', 'I was shaking and had to take a 10 minute break before resuming my surgical list'.

105. In his oral evidence, Dr K gave a consistent account of events in line with his witness statement, rejecting alternative accounts given by Dr Mutlukan.

106. Dr K asserted that on his suggestion of a phased reintroduction to cataract surgery 'your attitude completely changed, shouting at me and became quite aggressive'.

107. In his oral evidence, Dr Mutlukan denied that he had become angry, unpleasant and aggressive. He denied shouting. He asserted that Dr K and the clinical lead had conspired to find an excuse to prevent him from operating. Dr K refuted Dr Mutlukan's account.

108. In written comments, Dr Mutlukan described Dr K's account as 'fraud and accusatory fiction'. In his oral evidence, he attributed this to 'hatred and retaliative feelings because I had made a complaint to the GMC about him'. In written comments, Dr Mutlukan accuses Dr K and the clinical lead of 'malice and supremacist xenophobia. No evidence was adduced to support this.

109. Taking all of these matters into account, the Tribunal found Dr K's version of events to be cogent, reliable and credible. It found his account to be more plausible than Dr Mutlukan's, and found that on the balance of probabilities, the allegations could be found proved in their entirety.

Paragraph Seventeen
Your behaviour at paragraphs 1, 2, 3, 7, 8, 12, 14, 15 and 16 caused upset to:

a. Patient A; **Found not proved**

110. The Tribunal found Paragraph One of the Allegation not proved in its entirety. Accordingly, it also found this subparagraph of the Allegation not proved.

b. Patient B; **Found proved**

111. As set out above under Paragraphs Two and Three of the Allegation, the Tribunal preferred Patient B's daughter's account to that given by Dr Mutlukan. In Patient B's daughter's evidence she records that both her and Patient B were upset

by the consultation, and she described how Patient B wanted to leave the hospital rather than go through with her treatment, partly as a result of this upset. Accordingly, based on this evidence, the Tribunal found this subparagraph of the Allegation proved.

c. Patient E; **Found proved**

d. Patient E's wife; **Found proved**

112. As set out in detail under Paragraph Seven of the Allegation, Dr Mutlukan's comment towards Patient E and his wife regarding their lack of respect for doctors was overheard by patients in the waiting area. The Tribunal was persuaded, to the civil standard, that the comment itself, and the fact that it was overheard, caused both Patient E and his wife to feel upset. The Tribunal therefore found subparagraphs (c) and (d) proved.

e. ~~Secretary F;~~ ***Removed in accordance with Rule 17(2)(g)***

f. hospital switchboard staff; **Found proved**

113. The Tribunal noted the observation of SSM3 that his colleagues were distraught and upset by Dr Mutlukan's conduct; and the Tribunal noted too the upset displayed by two of the operators in their live evidence when recounting the effect of his conduct. The Tribunal was persuaded that the staff were indeed caused upset.

g. Patient I's daughter; **Found proved**

114. This witness, whose evidence the Tribunal found compelling, described her heart 'pounding' as a result of Dr Mutlukan's behaviour, and indicated that she was left 'shocked, dumbfounded and very upset' as a result of his behaviour towards her and her mother. The Tribunal accepted this as a reliable and accurate account of its effect.

h. Mr J; **Found proved**

115. It was evident, both in his written evidence, some of his emails, and in his live evidence, that Mr J was upset by Dr Mutlukan's behaviour.

i. Dr K. **Found proved**

116. Dr K describes himself persuasively as having been left 'tremulous' as a result of Dr Mutlukan's conduct.

Paragraph Eighteen
Your behaviour at paragraphs 2, 3, 4, 5, 8, 9, 10 and 11 caused the following people to be fearful:

a. Patient B; **Found proved**

117. In Patient B's daughter's witness statement, she records that Patient B:

'…said that Dr Mutlukan had frightened her and that he had hurt her twice'

118. Patient B's daughter added that Dr Mutlukan had made Patient B 'more frightened' about medical procedures, and that as a result, Patient B had not yet been back for her treatment. Based on this evidence, the Tribunal was satisfied that Dr Mutlukan caused Patient B to feel fearful, and it therefore found this subparagraph of the Allegation proved.

b. Chemist C; **Found proved**

119. As set out in detail under Paragraph Five of the Allegation, Chemist C described feeling left 'shaken' and 'frightened' after her interaction with Dr Mutlukan in the Basket Room. She commented that she would seek to ensure, after this incident, that a third party was present whenever she had to engage with Dr Mutlukan. The Tribunal found this subparagraph of the Allegation proved.

c. ~~Secretary F;~~ ***Removed in accordance with Rule 17(2)(g)***

d. Dr G; **Found proved**

120. In Dr G's witness statement, he describes the incident involving Dr Mutlukan as 'terrifying and threatening', adding that he did not want to be in the same room as Dr Mutlukan again. The Tribunal found Dr G to be an honest and credible witness, and it found his account to be plausible. Accordingly, it found this subparagraph of the Allegation proved.

e. Dr H. **Found proved**

121. In Dr H's witness statement of 3 June 2017, he records:

'Mr [sic] Mutlukan was so angry that I was afraid he might physically assault me'

He maintained this in his live evidence; and the Tribunal was satisfied that Dr H's account was plausible, and it therefore found this subparagraph of the Allegation proved.

Paragraph Nineteen
Your behaviour at paragraphs 5, 8, 9, 10, 12 and 15 caused the following people to feel threatened:

a. Chemist C; **Found proved**

122. As set out above under Paragraph Five of the Allegation, Chemist C explained in evidence how she felt threatened by Dr Mutlukan's behaviour, which included his aggressive manner and his physical positioning of himself between her and the door. The Tribunal therefore found this subparagraph of the Allegation proved.

b. ~~Secretary F;~~ ***Removed in accordance with Rule 17(2)(g)***

c. Dr G; **Found proved**

123. Dr G clearly described feeling threatened by Dr Mutlukan's behaviour and the Tribunal accepted this. The Tribunal therefore found this subparagraph of the allegation proved.

d. hospital switchboard staff; **Found proved**

124. The Tribunal noted that switchboard staff member 2 expressly said in her statement, 'I was worried that Dr Mutlukan was going to come into the office as I felt threatened, so I fast bleeped 100'. In live evidence, a switchboard staff member described his tone as 'threatening' and it made her fearful.

e. Mr J. **Found not proved**

125. The basis of the alleged threat here seemed to derive from Mr J's assertion that Dr Mutlukan had threatened to complain about his conduct, and that of his colleagues, to others. The Tribunal was not satisfied to the civil standard, that Dr Mutlukan's behaviour in this, or in any other regard in relation to Mr J, was sufficient to amount to 'threatening'.

DETERMINATION ON IMPAIRMENT - 24/07/2018

1. 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 Mutlukan's fitness to practise is impaired by reason of misconduct.

The Outcome of Application(s) Made during the Impairment Stage

2. The Tribunal granted the GMC's application, pursuant to Rule 31 of the Rules, to proceed in Dr Mutlukan's absence. The Tribunal was satisfied, on the evidence

provided, that Dr Mutlukan was aware of the reconvened hearing and had voluntarily absented himself. The Tribunal's full decision on the application is included at Annex C.

3. The Tribunal granted the GMC's application to consider the VE application after concluding the impairment stage of the hearing. The Tribunal's full decision on the application is included at Annex D.

The Evidence

4. 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.

5. Mr Taylor, on behalf of the GMC, provided copies of emails between Dr Mutlukan and the GMC dated between 19 and 27 June 2018 with respect to an application for voluntary erasure.

6. Dr Mutlukan sent an email to various staff at the MPTS and the GMC dated 19 July 2018. This email enclosed, amongst other things, a letter to the Tribunal with respect to Dr Mutlukan's non-attendance at the reconvened hearing (see Annex C) and an application for voluntary erasure.

Submissions

7. On behalf of the GMC, Mr Taylor submitted that Dr Mutlukan's fitness to practise is currently impaired by reason of his misconduct.

8. Due to written representations made by Dr Mutlukan, Mr Taylor referred to the previous Fitness to Practise Panel's findings from 2012 ('the 2012 Panel'), submitting that while the 2012 Panel did not find Dr Mutlukan's fitness to practise to be impaired, it was critical of aspects of his conduct (contrary to Dr Mutlukan's written submissions). Set against that background, Mr Taylor submitted that Dr Mutlukan's conduct in relation to the matters before the current Tribunal should cause it to consider his current insight and the extent to which he has learned (if at all) from his experience with the 2012 Panel.

9. Mr Taylor submitted that the Tribunal has found facts proved which amount to Dr Mutlukan having been confrontational, verbally abusive, physically threatening and racially derogatory. He listed examples of these behaviours including the *"appalling emails to Mr J referring to apes and primates"* and *"the physically threatening manner to Dr G, when he hit the Dictaphone away from his hand and attempted to stamp on it"*. Mr Taylor submitted that these actions go beyond a lack of self-control and a mere loss of temper.

10. Mr Taylor submitted that the Tribunal's findings covered a period of some two years, from April 2013 until March 2015. Further, it involved colleagues and patients, including elderly and vulnerable patients. He submitted that this was a sustained and repeated pattern of appalling behaviour which had occurred since the matters which were considered by the 2012 Panel. Furthermore, Dr Mutlukan's behaviour has occurred at four separate hospitals and now includes physically threatening behaviour.

11. Mr Taylor submitted that Dr Mutlukan's *"disgraceful and deplorable"* conduct has brought the medical profession into disrepute. Turning to the question of current impairment, Mr Taylor submitted that the Tribunal has had ample indication as to Dr Mutlukan's view of the proceedings. He has contested every charge and cross-examined every patient; and, since the finding of facts, Dr Mutlukan has continued to contest those facts, and indeed to impugn the integrity of the witnesses.

12. Mr Taylor referred the Tribunal to the paragraphs of GMP ('Good Medical Practice'), which in his submissions Dr Mutlukan had breached, namely: 31, 32, 33, 35, 36, 46, 47, 49 and 59 (set out below).

13. Mr Taylor submitted that Dr Mutlukan's misconduct is serious and constitutes significant breaches of GMP. He submitted that Dr Mutlukan is a doctor who has brought the profession into disrepute and has breached fundamental tenets of the profession. He concluded that Dr Mutlukan's fitness to practise is impaired by reason of misconduct.

The Tribunal's Determination

14. Whilst the Tribunal has borne in mind the submissions made, the decision as to whether Dr Mutlukan's fitness to practise is impaired is a matter for this Tribunal exercising its own judgement. In so doing, the Tribunal has had regard to the Statutory Overarching Objective: namely to ensure the health, safety and well-being of the public, the promotion and maintenance of public confidence in the profession, and the promotion and maintenance of proper standards of behaviour.

15. 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 then whether, as a result, Dr Mutlukan's fitness to practise is currently impaired.

The Tribunal's Determination on Impairment

Misconduct

16. The Tribunal reminded itself that misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances.

17. The Tribunal took account of the following paragraphs of GMP:

> *'31 You must listen to patients, take account of their views, and respond honestly to their questions.*
>
> *32 You must give patients the information they want or need to know in a way they can understand. You should make sure that arrangements are made, wherever possible, to meet patients' language and communication needs.*
>
> *33 You must be considerate to those close to the patient and be sensitive and responsive in giving them information and support*
>
> *…*
>
> *46 You must be polite and considerate.*
>
> *47 You must treat patients as individuals and respect their dignity and privacy.'*

On the basis of the facts found proved, as set out above, the Tribunal decided that Dr Mutlukan has breached GMP paragraphs 31 33, 46 and 47 in relation to each of the following: Patient B, Patient E and Patient I.

18. Furthermore, it found that Dr Mutlukan had breached GMP paragraph 32 in relation to Patient B.

19. The Tribunal considered that Dr Mutlukan's conduct in these regards was thoroughly reprehensible. It considered that such behaviour in itself amounted to serious misconduct.

20. The Tribunal went on to consider the requirement upon Dr Mutlukan to work collaboratively with colleagues. The Tribunal had regard to the following paragraphs of GMP:

> *'35 You must work collaboratively with colleagues, respecting their skills and contributions.*
>
> *36 You must treat colleagues fairly and with respect.*
>
> *37 You must be aware of how your behaviour may influence others within and outside the team.'*

21. The Tribunal determined that the facts found proven against Dr Mutlukan, as set out above in relation to Chemist C, Dr D, Dr G, Dr H, Dr K, the hospital switchboard staff and DRC Locums/Mr J, contravened GMP paragraphs 35, 36 and

37. Both individually and taken together Dr Mutlukan's conduct here amounted to shocking and deplorable behaviour.

22. Furthermore, in relation to Mr J, the Tribunal determined that (among other things) the racially derogatory manner of Dr Mutlukan's correspondence breached GMP paragraph 59, namely:

> *'59 You must not unfairly discriminate against patients or colleagues by allowing your personal views to affect your professional relationships or the treatment you provide or arrange...'*

23. In all the circumstances, the Tribunal has determined that Dr Mutlukan's acts and omissions amount to misconduct.

Impairment

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

25. In considering this issue the Tribunal reminded itself that:

a. The question of whether Dr Mutlukan's fitness to practise is impaired is posed, and is to be answered, in the present tense; the Tribunal looks forward not back. However, in order to form a view as to the fitness of a person to practise today, the Tribunal will have to take into account the way in which Dr Mutlukan has acted, or failed to act, in the past (*Meadow v GMC* [2006] EWCA Civ 1390);
b. Case law has established that it must be 'highly relevant' in determining if a doctor's fitness to practise is impaired '*that, first, his or her conduct which led to the charge is easily remediable; that, second, it has been remedied; and, third, that it is highly unlikely to be repeated'* (*R (on the application of Cohen) v GMC* [2008] EWHC 581 [Admin]);
c. The attitude of Dr Mutlukan to the matters which give rise to the specific allegation against, is (in principle) something which can be taken into account either in his favour, or against him, by the Tribunal. (*Nicholas-Pillai v GMC* [2009] EWHC 1048 [Admin]).

26. In relation to (b) the Tribunal determined that whilst such behaviour could be remediable, there was no evidence that it had been remedied, nor was there any objective basis to conclude that it was "highly unlikely" to be repeated again. Whilst the Tribunal noted evidence of various courses Dr Mutlukan had attended pertaining to the relevant issues (e.g. "Managing Difficult Patients", "Managing Workplace Conflict",

"Communication and Active Listening"), there is no evidence of what he learned from these, nor is there persuasive evidence of him putting any such learning into practice.

27. In relation to (c) above, the Tribunal notes the intemperate correspondence of June and July 2018 to the GMC and the Tribunal, and his recent critical and abusive characterisation of the complainants. For example, Patient B is described as *'a xenophobic racist hateful Scottish woman',* Chemist C as '*xenophobic and prejudiced',* and Patient I's daughter as an *'abusive and disruptive racist Englishwoman'.* Meanwhile, the Tribunal's findings on fact were characterised as *'holding the words of the corrupt parties lying under oath against the word of the defendant honourable physician targeted by the corrupt.'* This material (sent under cover of the email dated 19 July 2018) strongly suggests a continuing absence of insight or remorse.

28. In short, there was no persuasive evidence before the Tribunal to establish any remediation by Dr Mutlukan, nor any evidence to show insight or remorse by him.

29. The Tribunal went onto remind itself of the question it should ask, namely *'do the findings of fact in respect of this doctor's misconduct show that his fitness to practise is impaired in the sense that he;*

> *a. has in the past acted or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
> *b. has in the past brought and/or liable in the future to bring the medical profession into disrepute; and/or*
> *c. has in the past breached or 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.'* (*CHRE v NMC & Grant*, quoting Dame Janet Smith in paragraph 25.67 in her Fifth Report from Shipman).

30. The Tribunal found that the answer to limbs (b) and (c) of this question was in the affirmative.

31. In all the circumstances the Tribunal concluded that public confidence in the profession would be undermined if a finding of impairment were not made.

32. The Tribunal has therefore determined that Dr Mutlukan's fitness to practise is impaired by reason of his misconduct.

DETERMINATION ON SANCTION - 27/07/2018

1. Having determined that Dr Mutlukan'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.

Submissions

2. On behalf of the GMC, Mr Taylor submitted that the appropriate sanction in this case was that of erasure.

3. In drawing attention to mitigating factors, Mr Taylor reminded the Tribunal that there were testimonials and references proffered by Dr Mutlukan. However, he submitted that most of these pre-dated the matters that formed the subject of the misconduct; and that, of those that did not, there was no suggestion the authors were aware of the facts upon which the Tribunal had reached it determination.

4. References and testimonials aside, Mr Taylor submitted that none of the other factors provided as examples of mitigation in the Sanctions Guidance ('SG') paragraphs 29-45 applied. There were, for example (he submitted) no expressions of regret or apology by Dr Mutlukan; nor was there evidence of remediation or of any insight by Dr Mutlukan into his behaviour.

5. Mr Taylor submitted that Dr Mutlukan's recent correspondence raised the possibility that XXX might somehow be a relevant issue – though he submitted that Dr Mutlukan did not explain how this might be so in his correspondence. Mr Taylor said it was hard to see how it might be relevant.

6. Turning to aggravating features, Mr Taylor submitted that Dr Mutlukan's lack of insight was relevant – as were the circumstances surrounding the Allegation. In the latter regard, he drew the Tribunal's attention to Dr Mutlukan's failures per paragraph 55(b), 55(c) and 55(d) of the SG:

> *'Circumstances surrounding the event*
>
> *55. Aggravating factors that are likely to lead the tribunal to consider taking more serious action include:*
>
> *…*
>
> *b. a failure to work collaboratively with colleagues (see paragraphs 136–138)*
>
> *c. discrimination against patients, colleagues and other people (see paragraphs 139–141)*
>
> *d. abuse of professional position (see paragraphs 142–150), particularly where this involves:*
>
> *i. vulnerable patients (see paragraphs 145–146)'*

7. Finally, Mr Taylor also suggested that while there had not been a previous finding of impairment in previous fitness to practise proceedings, the 2012 Panel had expressed

an expectation and hope in relation to Dr Mutlukan's behaviour which, said Mr Taylor, subsequent events had shown to be unjustified. He suggested this was something to which this Tribunal could now have regard.

8. Mr Taylor then addressed the issue of the appropriate sanction.

9. Mr Taylor submitted that having found Dr Mutlukan's fitness to practise impaired, and in the absence of any exceptional circumstances, it would be wholly inappropriate to take no action. He also submitted that conditions would not be appropriate or workable given the complete absence of insight. Further, he submitted that the misconduct in this case was far too serious for conditions to be a proportionate response. Mr Taylor submitted that suspension was also inadequate and disproportionate as Dr Mutlukan's conduct is fundamentally incompatible with continued registration.

10. Turning to erasure, Mr Taylor submitted that, having regard to paragraph 109 of the SG, those factors itemised at (a), (b) and (j) were relevant here. Namely:

> *109. Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*
>
> > *a. A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.*
> >
> > *b. A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.*
> >
> > *…*
> >
> > *j. Persistent lack* of insight into the seriousness of their actions or the consequences.

11. Mr Taylor reminded the Tribunal that, if it found any one of those, it may indicate erasure is appropriate. Mr Taylor submitted that (b) and (j) were of particular application in this case, given Dr Mutlukan's numerous contraventions of GMP (as set out previously by this Tribunal), and the fact that Dr Mutlukan's deep-seated attitudinal problems had resulted in a persistent lack of insight.

12. Mr Taylor concluded that, taking into account the statutory overarching objective, erasure is the only appropriate and proportionate sanction in the circumstances of this case.

The Tribunal's Approach

13. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken account of the Sanctions Guidance. It has borne in mind that the purpose of any sanction is not to be punitive, but to protect patients and the wider public interest, although it may have a punitive effect.

14. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Mutlukan's interests with the public interest. It has taken into account the Statutory Overarching Objective as set out in the Medical Act 1983 (as amended) and as repeated in the Sanctions Guidance. That overarching objective is the protection of the public, which involves the pursuit of the following objectives:

- 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.

Mitigating and aggravating factors

15. The Tribunal identified the following mitigating factors in this case:

16. Firstly, the Tribunal noted that Dr Mutlukan has no previous finding of impairment against his registration. It considered this to be a mitigating factor.

17. Secondly, the Tribunal had regard to the references and testimonials provided by Dr Mutlukan. These were numerous, and indicated that historically Dr Mutlukan had been held in high regard, both by colleagues and patients. In considering the weight to attach to these, the Tribunal noted that most of them significantly predated the matters which form the subject of the present Allegation. Furthermore, there was no information to suggest that the limited few which post-dated the Allegation were written by the authors in the knowledge of the facts before this Tribunal.

XXX

21. Dr Mutlukan said the following:

> *'On two occasions of charges brought against me, I did write and say things that I should not have. One of them was that I wrote in an email to the locum*

agency people who were pretending to make job offers when there was no job to offer that they were 'apes and primates' for I felt they were making a monkey of me (I would not do it now; when that happened I was in fact XXX). On another I said to a nurse aid after a harassing phone call from another locum agency that 'I would never serve their arrogant nation again'. These I should not have said, and XXX may have played a role in it. But, this had nothing to do with anything else because everything else I said did not happen just did not happen.'

22. However, the Tribunal noted that the link between XXX and his actions on those two occasions is, even from his perspective, tenuous and entirely speculative (it *'may have'*). Dr Mutlukan has produced XXX no other evidence on this point, and he chose to absent himself from attending the impairment and sanction stages of the hearing and so he did not develop the issue. The Tribunal also noted in its considerations that Dr Mutlukan's account of these two occasions did not entirely accord with the circumstances as characterised by the relevant witnesses. Their characterisation of events had already been found proved by the Tribunal at the facts stage of the hearing. The Tribunal therefore did not attach any weight to this aspect of Dr Mutlukan's submissions.

23. The Tribunal next considered whether there was any mitigating evidence of insight. As the Tribunal has already noted above, there were occasional instances in the written evidence supplied by Dr Mutlukan where he appeared to acknowledge, to some extremely limited extent, that his performance might have been sub-optimal. However, even in these instances, Dr Mutlukan lacked insight into the impact of his conduct, insisting that the context, together with the conduct of the complainants, somehow justified his behaviour to some extent:

- Thus, in relation to Patient I and her daughter:

  '…harassing phone calls and texts were repeatedly coming from the intermediary locum agency to have me retract my resignation, and I blurted my unfortunate comment to the nurse aid in the room that 'I would never serve your arrogant nation again'. It was wrong and should not have said it when the patient was in the room let alone the abusive and disruptive racist Englishwoman [sic] *daughter of the patient and equally racist and xenophobic English nurseaid* [sic]. *It was silly of me. But it is not physician misconduct.'*

- In relation to DRC Locums and Mr J:

  'Nothing I wrote to him was misconduct and that was confirmed by the direct comments of the GMC. I called both him (had no idea he was a black man) and his boss (had no idea he was a white Englishman) 'apes and primates' in writing by email (in plural) as the lower

> *branches of the tree of evolution for both of them "making a monkey of me" with fraudulent representation and by making false job offer representations. They invented a story.'*

24. The Tribunal noted that, in each of these instances, Dr Mutlukan's acknowledgement of fault is slight, and unaccompanied by any expression of apology, remorse or insight. Indeed the absence of any expression of apology, remorse or insight characterises his position in relation to all those patients, doctors, colleagues and other people affected by his conduct. The Tribunal determined that a defining feature of Dr Mutlukan's behaviour is precisely his profound lack of insight.

25. Finally, the Tribunal looked for evidence of remediation. Given that Dr Mutlukan appeared to consider himself a victim in these matters, evidence of remediation did not exist. Putting matters at their highest on Dr Mutlukan's behalf, the Tribunal noted that there were certificates referring to the courses that Dr Mutlukan has attended since the Allegation (e.g. "Managing Difficult Patients", "Managing Workplace Conflict", "Communication and Active Listening"). However, there was no persuasive evidence concerning what Dr Mutlukan has learned from these, nor evidence of him putting any such learning into practice.

26. Turning to aggravating factors, the Tribunal found (as set out above) that Dr Mutlukan clearly lacked insight. Per SG/paragraph 52:

> *'52. A doctor is likely to lack insight if they:*
>
> *a. refuse to apologise or accept their mistakes*
>
> *b. promise to remediate, but fail to take appropriate steps, or only do so when prompted immediately before or during the hearing*
>
> *c. do not demonstrate the timely development of insight'*

27. Indeed, Dr Mutlukan maintains that the complainants whose evidence form the subject of the Allegation are acting dishonestly; characterising them in the most disparaging terms. For example:

- Patient B's daughter

'*…her truck driver driver racist Xenophobic hateful daughter…'*

- Hospital switchboard staff

'*…the three xenophobic and racist belligerent unhelpful phone operators and their equally corrupt supervisor…'*

- Patient E

'very angry elderly male Scottish patient…'

- Dr D

'falsely fraudulently and fictitiously' (making allegations)

28. While, therefore, the Tribunal has noted some very limited acknowledgement by Dr Mutlukan of sub-optimal performance, this was framed by him within a wider narrative, which suggested that his was a deep-seated attitudinal problem, as evidenced by comments such as the following:

'…supremacist and xenophobic disruptive patients and patient relatives'.

'My case further defines the hateful colleagues, hateful peers, hateful professional and hateful public support officers too, for those who are truly interest.'

'…although a huge amount of corrupt, fictitious, fraudulent and perjury material had been invited, instigated, sponsored and attempted to be factored in by organized assistance of the GMC and the cooperation of the paid Tribunal members who at the end prove to be not at all so independent…'

29. In addition to the aggravating feature of Dr Mutlukan's lack of insight, the Tribunal went onto determine that his repeated failure to work collaboratively with his colleagues was an aggravating factor. It was particularly concerned regarding the 'Dictaphone' incident involving Dr G, and the racial comments directed towards Mr J. The Tribunal noted in these regards that (per SG/paragraph 138):

'138. More serious outcomes are likely to be appropriate if there are serious findings that involve:

…

c. physical violence towards colleagues

d. unlawful discrimination…'

The Tribunal found that both 138(c) and 138(d) were present here.

30. Additionally, the Tribunal took into account that a number of the patients involved were vulnerable, elderly and/or frail and that they were fearful, threatened and/or upset by Dr Mutlukan's behaviour. The Tribunal determined that this was an additional aggravating feature, per SG/paragraph 55(d)(i) and 145.

31. Finally, the Tribunal considered Mr Taylor's comments regarding the 2012 Panel. However, notwithstanding that panel's general comments, in the absence of a

finding of impairment or a warning, this Tribunal did not consider it could properly form the basis of an aggravating factor.

The Tribunal's Decision

32. The Tribunal considered each sanction in ascending order of seriousness starting with the least restrictive.

No action

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

34. The Tribunal determined that there were no exceptional circumstances to justify taking no action against Dr Mutlukan's registration. The Tribunal determined that, in view of its finding of impairment, and the nature of this doctor's misconduct, it would be neither sufficient, proportionate, nor in the public interest, to conclude this case by taking no action.

Conditions

35. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Mutlukan's registration. It has also borne in mind that any conditions must be appropriate, proportionate, workable and measurable.

36. The Tribunal has regard to Paragraph 82 of the Sanctions Guidance which indicates when conditions are likely to be workable:

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

37. The Tribunal decided that, in the absence of any evidence to the contrary, there is no objective basis to find that conditions would be workable. None of the factors in Paragraph 82 of the Sanctions Guidance apply. The Tribunal noted, furthermore, that the misconduct here was particularly serious and that the lack of

insight was significant. In such circumstances, conditions would not in any event be appropriate and proportionate to the Allegation.

Suspension

38. The Tribunal then went on to consider whether a period of suspension would be an appropriate and proportionate sanction to impose on Dr Mutlukan's registration.

39. In so doing it had regard to paragraph 92 of the Sanctions Guidance:

> *'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).'*

40. The Tribunal reminded itself of paragraph 93 of the SG:

> *'93. Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions'*

In this regard, the Tribunal has already noted that there has been only very limited acknowledgement. Dr Mutlukan's position had instead been to maintain that blame should be attributed to each of the patients, doctors and other colleagues whose complaints formed the subject of the Allegation. In the circumstances, the Tribunal was not satisfied that the behaviour that caused the subject of the Allegation is unlikely to be repeated. Further, no evidence has been provided demonstrating that Dr Mutlukan has taken effective steps to mitigate his action. In sum, therefore, suspension in Dr Mutlukan's case could not be justified by reference to paragraph 93.

41. The Tribunal considered carefully Paragraph 97 which sets out some or all of the factors being present which would indicate that suspension may be appropriate:

> *'97. Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*
>
> > *a. A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register*

would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.

b. In cases involving deficient performance where there is a risk to patient safety if the doctor's registration is not suspended and where the doctor demonstrates potential for remediation or retraining.

c. In cases that relate to the doctor's health, where the doctor's judgement may be impaired and where there is a risk to patient safety if the doctor were allowed to continue to practise even under conditions, or the doctor has failed to comply with restrictions or requirements.

d. In cases that relate to knowledge of English, where the doctor's language skills affect their ability to practise and there is a risk to patient safety if the doctor were allowed to continue to practise even under conditions.

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.'

42. Of these the Tribunal found that (b), (c) and (d) were not relevant to Dr Mutlukan's positon.

43. In relation to (f), the Tribunal was not aware of any evidence of repetition of similar behaviour since this 'incident'. It was cognizant, though, that the 'incident' here amounts to a sequence of behaviour over a two year period, in four different hospitals, and involving a significant number of different people – patients, doctors, a chemist, and others. In other words, the Allegation did not arise out of a single incident or single complainant, but rather amounted to a pattern of behaviour.

44. In relation to (g), the Tribunal found that Dr Mutlukan did not have any insight. Additionally, the Tribunal could not find that he did not pose a significant risk of repeating behaviour.

45. In relation to (e), the Tribunal found that the nature of Dr Mutlukan's engagement with the regulatory process, and his continued stance in relation to the Allegation is capable of being in itself evidence that remediation is unlikely to be successful. The Tribunal noted that Dr Mutlukan had not himself suggested that he

would be prepared to undergo any process of remediation; indeed, there has been no acceptance on his part that this is even necessary.

46. Finally the Tribunal considered whether paragraph (a) could be asserted. The Tribunal determined that, in view of the nature of the numerous breaches of GMP, and the particular facts in relation to Dr G and Mr J, Dr Mutlukan's misconduct is fundamentally incompatible with his continued registration.

47. In the circumstances, the Tribunal determined that a period of suspension would not be an appropriate or sufficient sanction to mark the seriousness of the misconduct or to meet the Statutory Overarching Objective.

Erasure

48. The Tribunal has therefore determined that it is appropriate and proportionate to erase Dr Mutlukan's name from the medical register. In reaching its decision, the Tribunal had regard to the SG and in particular paragraph 109, which sets out a number of factors, any one of which may indicate erasure is appropriate.

49. The Tribunal decided that those particularly relevant to Dr Mutlukan's misconduct are:

> *'109. Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*
>
> > *a. A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.*
> >
> > *b. A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.*
> >
> > *…*
> >
> > *j. Persistent lack of insight into the seriousness of their actions or the consequences.'*

50. The Tribunal has regard to Dr Mutlukan's profound and continuing lack of insight. It also had regard to the serious nature of his misconduct across the two year period – both in relation to colleagues and in relation to elderly, frail and vulnerable patients. This conduct included the improper use of physical force on one occasion, and racially derogatory language in another. The impact of his behaviour was to cause his victims (patients, doctors and others alike) to be upset, fearful and threatened.

51. Taking all these matters into account, the Tribunal considered that Dr Mutlukan's behaviour is fundamentally incompatible with continued registration. He has failed to acknowledge both the seriousness and the impact of the behaviour which has formed the subject of the Allegation. Additionally, Dr Mutlukan has demonstrated a total lack of insight and potential for remediation, and has shown no remorse. The Tribunal has therefore determined that erasure is the only sufficient sanction which would protect patients, maintain public confidence in the profession and send a clear message to Dr Mutlukan, the profession and the public that his misconduct constituted behaviour unbefitting and incompatible with that of a registered doctor.

52. The Tribunal therefore directs that Dr Mutlukan's name be erased from the Medical Register.

53. The effect of the foregoing direction is that, unless Dr Mutlukan exercises his right of appeal, his name will be erased from the Medical Register 28 days from the date on which written notice of this decision is deemed to have been served upon him. A note explaining his right of appeal will be sent to him.

DETERMINATION ON IMMEDIATE ORDER - 27/07/2018

1. Having determined that Dr Mutlukan's name should be erased from the Medical Register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Mutlukan's registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Mr Taylor submitted that, given the extremely serious nature of the circumstances of this case and the Tribunal's previous determinations on impairment and sanction, particularly that Dr Mutlukan has demonstrated a total lack of insight and has not remediated, an immediate order is appropriate and necessary in order to protect members of the public and is otherwise in the public interest.

The Tribunal's Determination

3. In reaching its decision, the Tribunal has exercised its own judgement, and has taken account of the principle of proportionality. The Tribunal has borne in mind that it may impose an immediate order where it is satisfied that it is necessary for the protection of members of the public, is in the public interest, or is in the best interests of the practitioner.

4. Given the seriousness of Dr Mutlukan's misconduct, which the Tribunal found was fundamentally incompatible with continued registration, and his persistent lack of insight, the Tribunal determined that an immediate order is necessary in order to protect members of the public and is otherwise in the public interest.

5. This means that Dr Mutlukan's registration will be suspended from when notification is deemed to have been served. The substantive direction, as already announced, will take effect 28 days from when written notice of this determination has been served upon Dr Mutlukan, 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.

6. There is no interim order to revoke.

7. Case concluded.

Confirmed
Date 27 July 2018 Mr Neil Dalton, Chair

ANNEX A – 1 December 2017

Rule 34 (1) application

Secretary F's witness statement and accompanying exhibit

1. On day 9 of the hearing Mr Taylor, for the GMC, confirmed that Secretary F was unable to give oral evidence to the Tribunal as she is currently on long-term sick leave from her employer. Mr Taylor provided the Tribunal with email correspondence between Secretary F and the GMC, indicating that as of 20 November 2017 Secretary F remained in hospital undergoing treatment.

2. Mr Taylor informed the Tribunal that Secretary F went into hospital a short time after her undated witness statement was taken by the GMC. He confirmed that the GMC has contacted Secretary F to enquire whether she would be able to give evidence over the telephone or via Video Link, but that Secretary F has yet to respond. Mr Taylor informed the Tribunal that the GMC was unaware of her prognosis, and that her employer was unable to disclose any further information.

3. Bearing all of the above in mind, Mr Taylor invited the Tribunal to admit Secretary F's witness statement and accompanying exhibit into evidence. He conceded that Secretary F's witness statement is unsigned, but asked the Tribunal to bear in mind the following:

- That it is fair to admit the evidence, given the Tribunal has already heard from another witness who speaks to the same alleged incident;
- That Dr Mutlukan acknowledges there was an incident involving Secretary F;
- That, although Secretary F will not be cross-examined, the Tribunal can take this into consideration when determining what weight to place on her evidence.

4. Dr Mutlukan objected to Secretary F's witness statement and accompanying exhibit being admitted into evidence. He accepted that the evidence was relevant, but stated that it would be unfair to admit it given that the statement remains unsigned. Dr Mutlukan reminded the Tribunal that Secretary F has recently emailed the GMC, and he questioned why – given she was well enough to email as recently as 20 November 2017 – she has as yet been unable to sign her witness statement. Dr Mutlukan reminded the Tribunal that he disputed Secretary F's account of events, and he submitted that - even if the statement were signed - he would still wish Secretary F to come and give oral evidence, allowing her evidence to be tested under oath.

5. In reaching its decision the Tribunal had regard to Rule 34(1) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), which sets out that:

> (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.

6. Looking at the statement attributed to Secretary F the Tribunal was clear that this was material capable of being relevant. That is to say, it was capable of increasing or diminishing the probability of the existence of a factual issue: generally, in relation to those matters set out in paragraphs 9, 18, and 19, and decisively in relation to those matters set out in paragraphs 8, 17, 18, and 19.

7. The Tribunal next asked itself whether it would be fair to admit the evidence, given Secretary F is unable to attend the hearing and undergo cross-examination. In reaching this decision, the Tribunal bore in mind the following:

- That it does not know the nature of Secretary F's illness, and as such, cannot be sure that there is a clear and cogent reason for her non-attendance;

- The witness statement attributed to Secretary F's remains unsigned, despite the GMC requesting that she sign the document at least nine days ago. Therefore, Secretary F has never formally adopted its content as being true to the best of her knowledge and belief.

- That the GMC has made enquiries of Secretary F in relation to possible telephone/video evidence, but that Secretary F has yet to respond.

8. The Tribunal bore in mind that Dr Mutlukan has indicated that Secretary F's account is a total fabrication, and a result of colleagues 'ganging up' on him. Given the nature and extent of his challenge to the application, it considered that it would benefit from Secretary F giving oral evidence, allowing her account to be challenged under cross-examination. Given this, the Tribunal determined that – whilst Secretary F's evidence is clearly relevant – it would not be fair to Dr Mutlukan to admit it into evidence. It therefore rejected Mr Taylor's application.

<u>CHFT Incident/Near Miss Sign Off Form</u>

9. Mr Taylor next asked the Tribunal to admit into evidence a Calderdale and Huddersfield NHS Foundation Trust ('CHFT') Incident/Near Miss Sign Off Form. Mr Taylor confirmed that the information on this form was provided by the Healthcare Assistant, and he submitted that it was both fair and relevant to admit it into evidence, given it had already heard from Patient I's daughter.

10. Dr Mutlukan did not object to this document being admitted into evidence, informing the Tribunal that he wished to address it on the contents of the document at a later stage.

11. In reaching its decision the Tribunal again had regard to Rule 34(1), and it was content that the evidence was clearly relevant to the paragraphs of the allegation involving Patient I. It noted that Dr Mutlukan did not object to the document being admitted into evidence, and bearing this in mind, it was satisfied that it was both fair and appropriate to admit the document into evidence.

ANNEX B – 7 December 2017

Rule 17(2)(g) ('No case to answer') application

1. Following the closure of the GMC's case by Mr Taylor, Dr Mutlukan made submissions under Rule 17(2)(g) of the Rules. Rule 17(2)(g) states that:

> 'The practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld'

2. The Tribunal was provided with written Rule 17(2)(g) submissions on behalf of Dr Mutlukan, which he supplemented with oral submissions. The Tribunal was also presented with a written and oral response from Mr Taylor. It has fully considered the submissions made by both sides. In summary, Dr Mutlukan submitted that there was no case to answer in respect of each paragraph and subparagraph of the allegation. Mr Taylor rejected this submission, submitting that the GMC had adduced sufficient evidence in respect of each paragraph and subparagraph of the allegation, with the exception of Paragraph Seventeen (e), Paragraph Eighteen (c), and Paragraph Nineteen (b). In relation to those three subparagraphs he accepted that there was insufficient evidence.

The Tribunal's Decision

3. In reaching its decision the Tribunal has had regard to the case of *R v Galbraith [1981] 1 WLR 1039* ('Galbraith'). The Tribunal has not considered or decided upon the facts of the case at this stage, but it has instead looked at the evidence adduced by the GMC, and considered whether or not this evidence could be sufficient to find each paragraph of the allegation proved. If it finds that the GMC has not adduced sufficient evidence, then Dr Mutlukan's submission of no case to answer regarding that paragraph or subparagraph will be upheld.

4. The Tribunal considered Dr Mutlukan's submissions in relation to each paragraph and subparagraph of the allegation, applying the law as set out above.

> **Paragraph One**
> On 15 April 2013, you consulted with Patient A, you behaved in a manner that was:
>
> a. rude; **Rule 17(2)(g) application not upheld**
>
> b. abrupt. **Rule 17(2)(g) application not upheld**

5. In relation to Paragraph One the Tribunal received a signed witness statement from Patient A dated 21 May 2017 and a letter of complaint from Patient A to the Princess Alexandra Eye Pavilion dated 18 April 2013. The Tribunal also heard oral evidence from Patient A.

6. In Patient A's witness statement, she wrote that:

> 'During the appointment, Dr Mutlukan was quite abrupt with me which I found rude… the way [he] had spoken to me during to the appointment made me feel angry and upset.'

7. Similarly, in her earlier letter of complaint to the Princess Alexandra Eye Pavilion Patient A wrote:

> '[Dr Mutlukan's] attitude towards me was very rude and dictatorial… Having never been treated in such an unkind and abrupt manner before has left me feeling hurt and angry and very disappointed.'

8. Patient A's oral evidence at this hearing was consistent with both her written accounts.

9. Given the above, the Tribunal was satisfied that the GMC has adduced sufficient evidence that this paragraph of the allegation could be found proved. It therefore rejected Dr Mutlukan's submission in relation to this paragraph of the allegation, and Paragraph One stands.

Paragraph Two
On 25 April 2013, you consulted with Patient B, you behaved in a manner that was:

a. rude; **Rule 17(2)(g) application not upheld**

b. unpleasant; **Rule 17(2)(g) application not upheld**

c. dismissive. **Rule 17(2)(g) application not upheld**

Paragraph Three
During your consultation with Patient B you:

a. banged into the table forcefully on two occasions causing it to bang into Patient B; **Rule 17(2)(g) application not upheld**

b. failed to:

i. acknowledge your actions as set out at 3(a); **Rule 17(2)(g) application not upheld**

ii. apologise for your actions as set out at 3(a). **Rule 17(2)(g) application not upheld**

10. In relation to Paragraphs Two and Three of the allegation the Tribunal received a signed witness statement from Patient B dated 22 June 2017, a signed witness statement from Patient B's daughter dated 12 June 2017, as well as Patient B's letter of complaint to the Princess Alexandra Eye Pavilion dated 9 May 2013. Patient B's daughter also gave oral evidence at this hearing.

11. In Patient B's letter of complaint she described Dr Mutlukan as 'volatile', and wrote:

> '[Dr Mutlukan's] obvious ill-temper displayed itself in his unpleasant manner, very sharp questions and comments'.

In the same letter Patient B described Dr Mutlukan banging the table into her, commenting that this behaviour was witnessed by her daughter. Patient B described the collision as 'forceful', and described the consultation as 'extremely distressing'.

12. Patient B also describes this incident in her witness statement, where she wrote:

> 'As Dr Mutlukan moved his chair closer to the table… he banged into the table which them moved forward and collided with me. This caused me pain and surprised me… As Dr Mutlukan prepared to perform the treatment again, he moved forward more forcefully this time and, again, launched the table into me… Dr Mutlukan did not apologise…'

13. Patient B continued:

> '[Dr Mutlukan] did frighten me… I was afraid of him… Dr Mutlukan had really upset me for a long time…Dr Mutlukan did instil the fear of death in me.'

14. Patient B's daughter accompanied Patient B to the consultation in question. In Patient B's daughter's witness statement she states that when she raised an issue with Dr Mutlukan regarding some photos, he 'just dismissed me', and he seemed 'very irritated'. She also describes Dr Mutlukan forcefully banging a table into Patient B twice and not acknowledging this or saying sorry. In her oral evidence Patient B's daughter described that they were 'summarily dismissed', and she described the impact this had on her mother, commenting that Dr Mutlukan was 'bullish'.

15. Given the above, the Tribunal was satisfied that the GMC has adduced sufficient evidence that Paragraphs Two and Three of the allegation could be found proved. It therefore rejected Dr Mutlukan's submission in relation to these paragraphs of the allegation, and these paragraphs stand.

> **Paragraph Four**
> In or around September 2013, you had cause to speak with Chemist C in the pharmacy regarding a non-formulary request form, during which your manner was aggressive. **Rule 17(2)(g) application not upheld**
>
> **Paragraph Five**
> In or around September 2013, you had cause to speak with Chemist C in the basket room, during which your manner was:
>
> a. aggressive; **Rule 17(2)(g) application not upheld**
>
> b. threatening. **Rule 17(2)(g) application not upheld**

16. In relation to Paragraphs Four and Five of the allegation the Tribunal received a signed witness statement from Chemist C dated 14 June 2017, as well as an undated email from Chemist C to a Consultant at NHS Lothian. In addition, Chemist C gave oral evidence to the Tribunal.

17. In Chemist C's undated email, she describes Dr Mutlukan speaking to her in the pharmacy regarding a non-formulary request form, writing:

> '…I was a bit taken aback by [Dr Mutlukan's] aggressive attitude…'

In the same email Chemist C wrote that she later went into the basket room to use the photocopier; she wrote that Dr Mutlukan was already in the basket room, and described a conversation between the two of them where Dr Mutlukan was 'aggressive', stating that she felt 'slightly threatened'.

18. In Chemist C's witness statement she again described these two incidents, writing that Dr Mutlukan displayed an 'aggressive attitude' towards her, and commenting that – during the incident in the basket room – she felt 'slightly threatened'. In oral evidence Chemist C informed the Tribunal that the incident in the basket room had left her feeling fearful and shaken.

19. Given the above, the Tribunal was satisfied that the GMC has adduced sufficient evidence that Paragraphs Four and Five of the allegation could be found proved. It therefore rejected Dr Mutlukan's submission in relation to these paragraphs of the allegation, and these paragraphs stand.

Paragraph Six
On 20 September 2013, you worked with Dr D. You were:

a. rude; **Rule 17(2)(g) application not upheld**

b. disrespectful; **Rule 17(2)(g) application not upheld**

c. dismissive. **Rule 17(2)(g) application not upheld**

20. In relation to Paragraph Six of the allegation, the Tribunal received a signed witness statement from Dr D dated 2 June 2017 and an email from Dr D to the Clinical Director of Ophthalmology at the Eye Hospital in Edinburgh dated 1 October 2013. Dr D also gave oral evidence to this Tribunal.

21. In Dr D's email of 1 October 2013 he described how, on 20 September 2013, Dr Mutlukan refused to speak with him in theatre, writing:

> '[Dr Mutlukan] seemed completely dismissive of my opinions and my experience in ophthalmic anaesthesia… Dr Mutlukan's refusal to speak with me in theatre 2 was rude and disrespectful'

22. In Dr D's witness statement he again wrote that Dr Mutlukan seemed to be 'completely dismissive of my opinions and experience'. In his oral evidence at this hearing Dr D described Dr Mutlukan's behaviour as 'rude' and 'disrespectful', and he informed the Tribunal that he felt 'quite shaken' after his interaction with Dr Mutlukan.

23. Bearing the above in mind, the Tribunal was satisfied that the GMC has adduced sufficient evidence that Paragraphs Four and Five of the allegation could be found proved. It therefore rejected Dr Mutlukan's submission in relation to these paragraphs of the allegation, and these paragraphs stand.

Paragraph Seven
On 7 October 2013, you consulted with Patient E, you behaved in a manner that was:

a. aggressive; **Rule 17(2)(g) application not upheld**

b. rude. **Rule 17(2)(g) application not upheld**

24. In respect of Paragraph 7, the Tribunal had regard to Patient E's signed witness statement of 16 May 2017, Patient E's wife's signed witness statement of 17 May 2017, as well as Patient E's wife's letter of complaint to NHS Lothian dated 7 October 2013. In addition, Patient E and Patient E's wife gave oral evidence to the Tribunal.

25. In Patient E's wife's letter of complaint (written on behalf of Patient E who is registered blind), Patient E's wife described Dr Mutlukan's manner towards her husband as rude, adding that they were both upset by the consultation, feeling they had been 'verbally abused'.

26. In Patient E's wife's witness statement she described the consultation in more detail, stating:

> '[Dr Mutlukan] looked as though he was ready for an argument…. I did not appreciate Dr Mutlukan's manner. I thought he was a bit aggressive to start with'.

27. In their oral evidence both Patient E and Patient E's wife told the Tribunal that they felt upset by Dr Mutlukan, commenting that he was aggressive and rude. Patient E's wife described how Dr Mutlukan said 'yes' in a rude manner when asked if they could see another doctor.

28. Bearing the above in mind, the Tribunal was satisfied that the GMC has adduced sufficient evidence that Paragraph Seven of the allegation could be found proved. It therefore rejected Dr Mutlukan's submission in relation to this paragraph of the allegation, and Paragraph Seven stands.

> **Paragraph Eight**
> On 24 June 2014, you were involved in an incident involving Secretary F, during which you were:
>
> a. aggressive; **Rule 17 (2)(g) application upheld**
>
> b. threatening. **Rule 17 (2)(g) application upheld**

29. The Tribunal has already determined not to admit Secretary F's witness statement into evidence; the full reasons for this decision are set out in Annex A. The Tribunal has since put the contents of Secretary F's witness statement (along with its supporting exhibit) from its minds.

30. The incident involving Secretary F was overheard, in part, by Dr G. The Tribunal was provided with a signed witness statement dated 11 July 2017 from Dr G, and Dr G gave oral evidence at this hearing. In oral evidence Dr G described hearing Dr Mutlukan 'shouting' at Secretary F, however he did not provide any detail or clarity about the nature of this exchange. Similarly, in his witness statement, Dr G described Dr Mutlukan giving Secretary F 'a mouthful', but he did not elaborate on this in any detail, adding:

'I do not remember much about what happened when Secretary F got to the office'.

31. Whilst Dr G suggested in oral evidence that Dr Mutlukan was 'aggressive' and 'threatening' during the incident involving Secretary F, those words were not used in his original witness statement of 11 July 2017. The words 'aggressive' and 'threatening' were only used by Dr G in relation to Secretary F much later in his evidence after he had had sight of Secretary F's now-excluded evidence. He did not elaborate on what he meant by those terms, and the Tribunal considered the inherent vagueness of his evidence in this regard meant it could not be relied upon.

32. Bearing the above in mind, and on the basis of the remaining evidence, the Tribunal determined that the GMC has not adduced sufficient evidence that Paragraph Eight of the allegation could be found proved, and it therefore upheld Dr Mutlukan's application in respect of this paragraph. The Tribunal therefore determined that there is no case to answer in respect of Paragraph Eight of the allegation.

Paragraph Nine
In June 2014, you were involved in an incident involving Dr G, during which you were:

a. aggressive; **Rule 17(2)(g) application not upheld**

b. physically threatening; **Rule 17(2)(g) application not upheld**

c. verbally abusive; **Rule 17(2)(g) application not upheld**

Paragraph Ten
During the incident with Dr G, as set out in paragraph 9 above, you:

a. hit a Dictaphone from Dr G's hand; **Rule 17(2)(g) application not upheld**

b. attempted to stamp on the Dictaphone. **Rule 17(2)(g) application not upheld.**

33. In relation to Paragraphs Nine and Ten of the allegation the Tribunal received a signed witness statement dated 11 July 2017 from Dr G, and Dr G gave oral evidence at this hearing.

34. In Dr G's witness statement he sets out that he found Dr Mutlukan to be aggressive, physically threatening, and verbally abusive, stating:

> 'Dr Mutlukan did not say more than a few sentences but his tone of voice was loud and threatening…. Dr Mutlukan came out with a torrent of abuse, swearing, and aggression towards me, although I cannot now remember the exact words he told me but an extremely distressing situation… He continued with the threatening behaviour, swearing, abuse, including racial slurs… I cannot remember the exact words he used but they were threats of physical violence. It was quite a frightening situation.'

35. Dr G stated that he took out his Dictaphone to record the abuse, and that:

> 'Dr Mutlukan jumped up from his desk and came to the side of me and behind my desk. He caught me by my shirt near my neck and hit the Dictaphone off my hands. The Dictaphone fell on the floor and he then tried to stamp on it. He missed but the Dictaphone broke and the tape flew off'.

36. In his oral evidence Dr G elaborated on his statement, confirming that he was left feeling threatened, frightened, and distressed, adding that he felt the need to call security to deal with the situation.

37. Based on the above evidence the Tribunal was satisfied that the GMC has adduced sufficient evidence that Paragraphs Nine and Ten of the allegation could be found proved. It therefore rejected Dr Mutlukan's submission in relation to these paragraphs of the allegation, and these paragraphs stand.

> **Paragraph Eleven**
> On 13 July 2014, Dr H informed you that cataract cases had been taken off your operating list and you responded to Dr H's opinion in an inappropriate manner, in that you were:
>
> a. angry; **Rule 17(2)(g) application not upheld**
>
> b. aggressive. **Rule 17(2)(g) application not upheld**

38. In relation to Paragraph Eleven the Tribunal received a signed witness statement dated 13 June 2017 from Dr H, and Dr H gave oral evidence at this hearing.

39. In his witness statement Dr H wrote:

> 'The tone of his voice became extremely aggressive and loud… Mr Mutlukan was so angry that I was afraid he might physically assault me'

40. Dr H elaborated on this in his oral evidence, telling the Tribunal that he was astonished by Dr Mutlukan's extremely loud unprofessional behaviour.

41. Based on this evidence, the Tribunal was satisfied that the GMC has adduced sufficient evidence that Paragraph Eleven of the allegation could be found proved, and it therefore rejected Dr Mutlukan's application in relation to this paragraph.

> **Paragraph Twelve**
> On 14 July 2014, you spoke with hospital switchboard staff, your manner was:
>
> a. abusive; **Rule 17(2)(g) application not upheld**
>
> b. aggressive; **Rule 17(2)(g) application not upheld**
>
> c. rude. **Rule 17(2)(g) application not upheld**

42. In relation to Paragraph Twelve, the Tribunal received witness statements from three hospital switchboard operators dated 8, 13, and 14 June 2017, as well as notes from the operators in relation to the telephone calls. These notes were said to be relatively contemporaneous to the events described. In addition, all three operators gave oral evidence at this hearing.

43. In her statement of 13 June 2017 Operator 1 states that:

> 'Dr Mutlukan was irate and abusive'

44. In her statement of 14 June 2017 Operator 2 wrote:

> 'I couldn't hear Dr Mutlukan speaking but I thought that he must have started to get abusive as [Operator 1] said that she would terminate the call if he carried on being abusive. [Operator 1] then cut the call off… I was worried that Dr Mutlukan was going to come into the office as I felt threatened…'

45. Operator 2 stated that Dr Mutlukan was then abusive to her in a subsequent second telephone call, telling her that:

> '… we were racist and we were worse than a third world county'.

46. In his witness statement of 8 June 2017 Operator 3 stated that Dr Mutlukan had shouted at Operators 1 and 2 in telephone calls. He wrote that Dr Mutlukan telephoned a third time and came through to him, adding that on this call:

> '…Dr Mutlukan was calling us primitive and said that we were worse than a third world county'.

47. In oral evidence Operators 1, 2, and 3 confirmed their accounts, with Operator 1 adding that Dr Mutlukan used an 'abusive tone' and was 'very aggressive'.

48. In addition to the evidence of the three operators, the Tribunal also received a witness statement from the police officer who was called to the incident. In this statement, dated 31 May 2017, the police officer stated:

> '…Mutlukan became abusive to the operator swearing and calling her names… There were approx. three or four switchboard operators on duty at the time and I recall having spoken to them that all appeared to be upset by what had occurred stating that nobody had the right to speak to them in the way that Mutlukan had using swearwords and being generally inpolite [sic].'

49. Based on the evidence of the three operators, as well as the evidence of the police officer, the Tribunal was satisfied that the GMC has adduced sufficient evidence that Paragraph Twelve of the allegation could be found proved. It therefore rejected Dr Mutlukan's application in relation to this paragraph, and Paragraph Twelve of the allegation stands.

> **Paragraph Thirteen**
> On 14 July 2014, you spoke to a Police Officer, your manner was:
>
> a. rude; **Rule 17(2)(g) application not upheld**
>
> b. abusive. **Rule 17(2)(g) application not upheld**

50. In relation to Paragraph Thirteen the Tribunal received the police officer's witness statement (as referred to above). The police officer also gave oral evidence at this hearing.

51. In the police officer's witness statement she wrote that Dr Mutlukan shouted at her, resulting in her terminating the call. In her oral evidence the police officer confirmed that Dr Mutlukan had been both rude and abusive, informing the Tribunal that Dr Mutlukan was 'shouting and screaming' so much that she had to hold the telephone away from her face.

52. In addition to her own evidence, the police officer's evidence is corroborated by that of the three switchboard operators. In Operator 2's witness statement she records that:

> '[Police officer] kept having to tell Dr Mutlukan to stop shouting at her or shouting over her….[Police officer] said that if Dr Mutlukan carried on being abusive and threatening she would go down to the residence block'

53. Based on the evidence of the police officer, as well as the evidence of the three switchboard operators, the Tribunal was satisfied that the GMC has adduced sufficient evidence that Paragraph Thirteen of the allegation could be found proved. It therefore rejected Dr Mutlukan's application in relation to this paragraph, and Paragraph Thirteen of the allegation stands.

Paragraph Fourteen
On 19 September 2014, you consulted with Patient I, your manner was:

a. rude; **Paragraph 17(2)(g) application not upheld**

b. abrupt; **Paragraph 17(2)(g) application not upheld**

c. aggressive. **Paragraph 17(2)(g) application not upheld**

54. In relation to Paragraph Fourteen, the Tribunal received a letter of complaint from Patient I's daughter to Huddersfield Royal Infirmary dated 23 September 2014, a DATIX incident report form dated 19 September 2014, as well as a signed witness statement from Patient I's daughter dated 30 May 2017. Patient I's daughter also gave oral evidence at this hearing. Patient I's daughter accompanied Patient I to the consultation in question; Patient I has since passed away.

55. In Patient I's daughter's letter of complaint she described herself and her mother as 'shaken' by the consultation, stating:

> 'He appeared rushed and impatient and became very rude as the consultation went on… His attitude was one of distain [sic]… He then proceeded to ask me to leave in an abrupt manner…The eye clinic department were extremely helpful in dealing with our upset over the matter and we were offered a separate room to sit in and offered a hot drink which was a comfort in a time of distress to us.'

56. In Patient I's daughter subsequent witness statement she states that:

> 'I couldn't believe how rude Dr Mutlukan was behaving… Dr Mutlukan asked me to leave… He said this in quite an abrupt, almost aggressive tone'.

57. In Patient I's daughter's oral evidence she confirmed that Dr Mutlukan had been rude, abrupt, and aggressive during the consultation.

58. Based on the above evidence the Tribunal was satisfied that the GMC has adduced sufficient evidence that Paragraph Fourteen of the allegation could be found proved. It therefore rejected Dr Mutlukan's submission in relation to this paragraph of the allegation.

Paragraph Fifteen
Between November 2014 and January 2015, you corresponded via telephone and email with employees of DRC locums, including Mr J. The manner in which you corresponded was:

a. rude; **Rule 17(2)(g) application not upheld**

b. confrontational; **Rule 17(2)(g) application not upheld**

c. threatening; **Rule 17(2)(g) application not upheld**

d. racially derogatory. **Rule 17(2)(g) application not upheld**

59. In relation to Paragraph Fifteen of the allegation the Tribunal received a signed witness statement dated 9 August 2017 from Mr J, as well as copies of email correspondence variously between Dr Mutlukan, Mr J, the GMC, and DRC Locums. In addition, Mr J gave oral evidence to this Tribunal.

60. The Tribunal had regard to the email correspondence between Dr Mutlukan and Mr J. In an email sent at 1022 on 23 December 2014 Dr Mutlukan wrote (to Mr J):

> 'keep your third world jungle you guys brought with dishonest manipulative yourselves to your ownselves [sic]. You dont [sic] deserve to be spoken in any form in the first place'.

61. At 1114 on 23 December 2014 Dr Mutlukan again emailed Mr J calling him a 'dishonest scumbag', and in a later undated email addressed to Mr J Dr Mutlukan referred to 'dishonest primates and apes'.

62. In Mr J's subsequent witness statement he wrote:

> 'Dr Mutlukan began making racially derogatory comments towards me. I believed Dr Mutlukan's comments were racially motivated as Dr Mutlukan had previously specifically questioned me about my ethnicity during a phone conversation… Dr Mutlukan was consistently rude and confrontational and began making derogatory comments which I considered to be racist… I was very upset and shocked to receive such racist abuse from a doctor'.

63. In oral evidence Mr J confirmed that he found Dr Mutlukan's use of the terms 'ape' and 'dishonest primate' to have been racist, and he informed the Tribunal that Dr Mutlukan was rude, aggressive, confrontational, and threatening.

64. Based on the above evidence the Tribunal was satisfied that the GMC has adduced sufficient evidence that Paragraph Fifteen of the allegation could be found

proved. It therefore rejected Dr Mutlukan's submission in relation to this paragraph of the allegation, and Paragraph Fifteen stands.

Paragraph Sixteen
On 10 March 2015, Dr K explained to you that you required a phased reintroduction to cataract surgery supervised and you responded to Dr K in an inappropriate manner, in that you were:

a. unpleasant; **Rule 17(2)(g) application not upheld**

b. confrontational; **Rule 17(2)(g) application nor upheld**

c. aggressive. **Rule 17(2)(g) application not upheld**

65. In relation to Paragraph Sixteen, the Tribunal received a signed witness statement from Dr K dated 22 May 2017 and a letter from Dr K to the Royal Devon & Exeter Hospital dated 11 March 2015. In addition, Dr K gave oral evidence at this hearing.

66. In Dr K's letter of 11 March 2015 he described a conversation between himself and Dr Mutlukan, writing:

'…[Dr Mutlukan] rather aggressively stated that he was "my equal…"… I have to state that I am very disappointed with his professional attitude during this discussion'

67. In Dr K's subsequent witness statement he states that:

'[Dr Mutlukan] became unpleasant and aggressive. He was standing very close to me, staring at me… He was shouting in a very forceful and aggressive manner… I was trying to keep calm but my heart was pounding. After shouting at me he stormed off. I was shocked and upset. I was shaking and had to take a 10 minute break before resuming my surgical list'

68. In oral evidence, Dr K confirmed that Dr Mutlukan had been aggressive, unpleasant, and confrontational.

69. Given this evidence, the Tribunal was satisfied that the GMC has adduced sufficient evidence that Paragraph Sixteen of the allegation could be found proved. It therefore rejected Dr Mutlukan's submission in relation to this paragraph of the allegation, and Paragraph Fifteen stands.

Paragraph Seventeen
Your behaviour at paragraphs 1, 2, 3, 7, 8, 12, 14, 15 and 16 caused upset to:

a. Patient A; **Rule 17(2)g application not upheld**

b. Patient B; **Rule 17(2)g application not upheld**

c. Patient E; **Rule 17(2)g application not upheld**

d. Patient E's wife; **Rule 17(2)g application not upheld**

e. Secretary F; **Rule 17(2)g application upheld**

f. hospital switchboard staff; **Rule 17(2)g application not upheld**

g. Patient I's daughter; **Rule 17(2)g application not upheld**

h. Mr J; **Rule 17(2)g application not upheld**

i. Dr K. **Rule 17(2)g application not upheld**

70. In relation to subparagraph (e) of Paragraph Seventeen Mr Taylor conceded that the GMC had not adduced sufficient evidence that this could be found proved. The Tribunal agrees, and therefore Dr Mutlukan's application is upheld in relation to subparagraph (e).

71. The Tribunal has not upheld Dr Mutlukan's application in relation to Paragraphs One, Two, Three, Seven, Twelve, Fourteen, Fifteen, and Sixteen of the allegation. As described in detail under the corresponding Paragraphs, the Tribunal has found that the GMC has adduced sufficient evidence that could allow it to find these paragraphs proved. Patients A, B, and E, Patient E's wife, the hospital switchboard staff (the operators), Patient I's daughter, Mr J, and Dr K all described being upset by Dr Mutlukan's behaviour in their evidence, and accordingly, the Tribunal rejected Dr Mutlukan's application in respect of the rest of Paragraph Seventeen.

Paragraph Eighteen
Your behaviour at paragraphs 2, 3, 4, 5, 8, 9, 10 and 11 caused the following people to be fearful:

a. Patient B; **Rule 17(2)(g) application not upheld**

b. Chemist C; **Rule 17(2)(g) application not upheld**

c. Secretary F; **Rule 17(2)(g) application upheld**

d. Dr G; **Rule 17(2)(g) application not upheld**

e. Dr H. **Rule 17(2)(g) application not upheld**

72. In relation to subparagraph (c) of Paragraph Eighteen Mr Taylor conceded that the GMC had not adduced sufficient evidence that this could be found proved. The Tribunal agrees, and therefore Dr Mutlukan's application is upheld in relation to subparagraph (c).

73. The Tribunal has not upheld Dr Mutlukan's application in relation to Paragraphs Two, Three, Four, Five, Nine, Ten, and Eleven of the allegation. As described in detail under the corresponding Paragraphs, the Tribunal has found that the GMC has adduced sufficient evidence that could allow it to find these paragraphs of the allegation proved. Patient B, Chemist C, Dr G, and Dr H all described feeling fearful in their evidence, and accordingly, the Tribunal rejected Dr Mutlukan's application in respect of the rest of Paragraph Eighteen.

Paragraph Nineteen
Your behaviour at paragraphs 5, 8, 9, 10, 12 and 15 caused the following people to feel threatened:

a. Chemist C; **Rule 17(2)(g) application not upheld**

b. Secretary F; **Rule 17(2)(g) application upheld**

c. Dr G; **Rule 17(2)(g) application not upheld**

d. hospital switchboard staff; **Rule 17(2)(g) application not upheld**

e. Mr J. **Rule 17(2)(g) application not upheld**

74. In relation to subparagraph (b) of Paragraph Nineteen Mr Taylor conceded that the GMC had not adduced sufficient evidence that this could be found proved. The Tribunal agrees, and therefore Dr Mutlukan's application is upheld in relation to subparagraph (b).

75. The Tribunal has not upheld Dr Mutlukan's application in relation to Paragraphs Five, Nine, Ten, Twelve and Fifteen of the allegation. As described in detail under the corresponding Paragraphs, the Tribunal has found that the GMC has adduced sufficient evidence that could allow it to find these paragraphs proved. Chemist C, Dr G, the hospital switchboard staff (the operators) and Mr J all described feeling threatened by Dr Mutlukan in their evidence, and accordingly, the Tribunal rejected Dr Mutlukan's application in respect of the rest of Paragraph Nineteen.

ANNEX C – 19/07/2018

Application to proceed in Dr Mutlukan's absence

1. The hearing adjourned part-heard on 15 December 2017 and has reconvened on 19 July 2018.

2. Dr Mutlukan is not present and is not represented at the reconvened hearing. The Tribunal considered whether to proceed in his absence, pursuant to Rule 31 of the Rules. This states:

> *"Where the practitioner is neither present nor represented at a hearing, the Committee or Tribunal may nevertheless proceed to consider and determine the allegation if they are satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with these Rules."*

3. The Tribunal took into account the submissions made by Mr Taylor on behalf of the GMC, though it exercised its own judgement in making its decision. The Tribunal also bore in mind that although it has the discretion to proceed with the case in the doctor's absence, that discretion should be exercised with the utmost care and caution and with the overall fairness of the proceedings in mind.

4. On behalf of the GMC, Mr Taylor submitted that Dr Mutlukan is aware of these reconvened proceedings and has voluntarily absented himself from them. During the course of his submissions, Mr Taylor referred the Tribunal to authorities which are used by tribunals in regulatory proceedings when considering the issue of impairment.

5. Mr Taylor referred the Tribunal to emails between Dr Mutlukan and the GMC dated between 19 June 2018 and 27 June 2018 pertaining to an application by the doctor for voluntary erasure ('VE'). Mr Taylor submitted that this correspondence indicates that Dr Mutlukan is aware of the reconvened hearing.

6. Mr Taylor also referred the Tribunal to a letter from Dr Mutlukan dated 18 July 2018. In this letter, Dr Mutlukan stated that he was unable to attend the reconvened hearing due to XXX which prevented him from travelling from his current residence in the United States.

7. Mr Taylor submitted that Dr Mutlukan had not requested an adjournment. Rather, he has provided the Tribunal with material to consider at the hearing and has requested for the hearing to continue in order for the Tribunal to consider his application for voluntary erasure. He submitted that it was appropriate in the circumstances to proceed with the reconvened hearing in Dr Mutlukan's absence.

8. In reaching its decision, the Tribunal carefully considered all the information before it, including Mr Taylor's submissions and the correspondence from Dr Mutlukan.

9. The Tribunal had regard to the cases of *GMC v Adeogba* [2016] EWCA Civ 162, *R v Hayward, Jones and Purvis* [2001] 2 Crim.App. R 11, *Tait v The Disciplinary Committee of the Royal College of Veterinary Surgeons* [2003] UKPC 34, and *R v Jones* [2002] UKHL 5.

10. The Tribunal took into account the following factors:

- The nature and circumstances giving rise to Dr Mutlukan's absence, in particular, whether his actions were voluntary and that he had therefore waived the right to be present either explicitly or implicitly;
- Whether an adjournment would result in Dr Mutlukan's attendance;
- The likely length of any such adjournment;
- Whether Dr Mutlukan, although absent, wished to attend and/or be represented or whether he had waived his right to be represented;
- The extent of any disadvantage to Dr Mutlukan in not being able to present his account of events and the risk of the panel reaching the wrong conclusion because of his absence;
- The risk of the Tribunal reaching an improper conclusion about the absence of Dr Mutlukan;
- The public interest that a hearing should take place within a reasonable time and without undue delay.

11. The Tribunal considered carefully, too, the words of Lord Bingham in *R v Jones:*

> *"If the absence of the defendant is attributable to involuntary illness or incapacity, it would very rarely, if ever, be right to exercise the discretion in favour of commencing the trial, at any rate, unless the defendant was represented and asks that the trial should begin."*

12. The Tribunal was satisfied that Dr Mutlukan is aware of these proceedings, as he was present on 15 December 2017, when the reconvened hearing date was set. It also noted Dr Mutlukan's awareness was evident from the email correspondence referred to above. Taken together, the Tribunal determined that he had waived his right to be present at the hearing.

13. In considering whether to exercise its discretion under Rule 31 of the Rules, the Tribunal was satisfied that Dr Mutlukan has voluntarily absented himself from the reconvened hearing. It took into account that Dr Mutlukan has cited XXX as the reason for his non-attendance. It noted also, though, that XXX did not preclude Dr Mutlukan from, in his view, being able to practise as a doctor with full effectiveness.

Furthermore, it noted that Dr Mutlukan has made no application for an adjournment and has not requested to attend the hearing at a future date.

14. The Tribunal took account that these proceedings have been adjourned since December 2017.

15. The Tribunal have, therefore, concluded that it would be both in the public interest and Dr Mutlukan's own interests for it to proceed with the case and to do so expeditiously. It determined that it would not be contrary to the interests of justice to do so. In all the circumstances, the Tribunal determined to exercise its discretion in accordance with Rule 31 and proceed with the case in Dr Mutlukan's absence.

16. The Tribunal wished to emphasise that it drew no adverse inference from Dr Mutlukan's decision not to attend the hearing.

ANNEX D – 20 July 2018

Application to consider Voluntary Erasure prior to the Impairment stage

1. Mr Taylor, on behalf of the GMC, informed the Tribunal that Dr Mutlukan had made an application for voluntary erasure ('VE') from the Medical Register in accordance with the GMC (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations 2004, as amended ('the Regulations').

2. Mr Taylor submitted the Tribunal was empowered to do so under Regulation 3(8) of the Regulations.

3. Mr Taylor stated that Dr Mutlukan had indicated in correspondence to the GMC that he wished for his VE application to be considered prior to the commencement of the Impairment stage.

4. Mr Taylor submitted that it was outside the Tribunal's powers to consider the VE application prior to the Impairment stage. He referred the Tribunal to Rules 17(2)(k), 17(2)(l) and 17(2)(m) of the Rules, which state:

> *'(2) The order of proceedings at the hearing before a Medical Practitioners Tribunal shall be as follows—*
>
> > *(k) the Medical Practitioners Tribunal shall receive further evidence and hear any further submissions from the parties as to whether, on the basis of any facts found proved, the practitioner's fitness to practise is impaired;*
> >
> > *(l) the Medical Practitioners Tribunal shall consider and announce its finding on the question of whether the fitness to practise of the practitioner is impaired, and shall gives its reasons for that decision;"*
> >
> > *(m) the Medical Practitioners Tribunal may receive further evidence and hear any further submissions from the parties as to the appropriate sanction, if any, to be imposed or, where the practitioner's fitness to practise is not found to be impaired, the question of whether a warning should be imposed;'*

5. Mr Taylor submitted that, at the Impairment stage, which is addressed under Rule 17(2)(l), the Tribunal was bound by the word 'shall' to proceed with that stage before considering an application for VE. Mr Taylor was unable to produce any case law on this issue.

6. Mr Taylor further submitted that, if the Tribunal granted the VE application before considering impairment, it precluded any determination by the Tribunal of whether Dr Mutlukan's fitness to practise is impaired by reason of misconduct.

The Tribunal's Decision

7. The Tribunal had regard to Regulation 3(8) of the Regulations:

> *'Where, on the date the Registrar receives an erasure application, an allegation against the practitioner has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal under the Fitness to Practise Rules and the hearing before the Medical Practitioners Tribunal has commenced, the Registrar shall refer the application to the MPTS for them to arrange for it to be determined by the Medical Practitioners Tribunal, and the application shall be determined by the Medical Practitioners Tribunal accordingly.'*

The Tribunal noted that the Regulations do not stipulate at which stage within the hearing process it should consider a VE application once the hearing has commenced. Further, it noted that the Rules were silent on this matter.

8. In the absence of any indication in the Regulations or Rules limiting when the Tribunal can consider the VE application, the Tribunal was not persuaded it could not consider it at this stage.

9. The Tribunal then considered, though, if it could reach an informed decision on VE at this stage in the proceedings prior to reaching a determination on whether Mr Mutlukan's fitness to practise is impaired.

10. The Tribunal reminded itself of the statutory overarching objective.

11. The Tribunal also took account of the '*Guidance on making decisions on voluntary erasure applications',* April 2014 ('the Guidance'):

> *'6 Decision makers should be satisfied that it is right in all the circumstances to agree to voluntary erasure (and not to proceed with the inquiry proper) before any application is granted. 'All the circumstances' can be divided into two categories:*
>
> - *the public interest*
> - *the doctor's health and likelihood of return to practise.*
>
> *7 The public interest incorporates three elements.*

- *The protection of patients and the public generally from doctors whose fitness to practise is impaired.*
- *The maintenance and promotion of public confidence in the medical profession.*
- *The maintenance and promotion of public confidence in the GMC's performance of its statutory functions'.*

12. Taking into account the statutory overarching objective and the Guidance referred to above, the Tribunal determined that in order to reach an informed decision on VE in the circumstances of this case, the public interest would be served by the Tribunal first reaching a determination on whether Dr Mutlukan's fitness to practise is impaired by reason of misconduct. Once it has arrived at a decision on impairment, the Tribunal will then consider Dr Mutlukan's VE application.

ANNEX E – 24 July 2018

Application for Voluntary Erasure

The Evidence

1. The Tribunal has taken into account all the evidence received during the facts and impairment stages of the hearing, both oral and documentary. The Tribunal particularly took account of Dr Mutlukan's GMC application for voluntary erasure (and his accompanying written submissions) received prior to the impairment stage.

Submissions

2. Mr Taylor submitted that the application for VE should be refused. In support of this, Mr Taylor reminded the Tribunal of the 'Guidance on making decisions on voluntary erasure applications' ('the Guidance'). He drew particular attention to paragraphs 6, 7, 9, 11, 12, 13, 16, 25, 26, 29, 31, 32, 33, 34 and 35, and submitted that, taken together, these paragraphs lead "*inexorably to the conclusion that this application for VE should be refused"*.

3. Mr Taylor submitted that it was not in the public interest for the application to be granted, and that it was not for Dr Mutlukan to dictate the outcome of the hearing. XXX

4. Mr Taylor reminded the Tribunal that it had found various breaches of GMP; and the Tribunal had determined that Dr Mutlukan has brought the profession into disrepute and has breached one of the fundamental tenets of the medical profession. He submitted that, in the absence of evidence of remediation and insight, the Tribunal cannot be satisfied that he will not repeat his misconduct. Further, where an impairment of fitness to practise has been found on the basis of misconduct, VE is only appropriate in exceptional circumstances. Mr Taylor submitted that there are no exceptional circumstances in this case (per Guidance/paragraph 16).

5. In relation to the Guidance/paragraphs 31–35, and the genuineness of the doctor's desire to cease to be registered, Mr Taylor submitted that the Tribunal does not have evidence that Dr Mutlukan is going to permanently retire. In fact, he is continuing medical work in a different jurisdiction. As such, Mr Taylor submitted that the Tribunal cannot discount the possibility he will reapply to practise in the UK.

6. Mr Taylor submitted that Dr Mutlukan had not made a single admission and, indeed, continues to protest his innocence, railing against the unfairness of these proceedings. He submitted that the Tribunal has no evidence before it of Dr Mutlukan's remediation or insight.

7. Mr Taylor also pointed out that (per Guidance/paragraph 32), Dr Mutlukan's application for VE was not made until four months after the fact finding stage had been determined by the Tribunal. In other words, this was not a case where the doctor had already instigated steps to retire from medical practice before any concerns were raised (the Guidance indicates that this *'may be a strong indicator that the doctor's desire to cease to be registered is sincere'*). Mr Taylor submitted that Dr Mutlukan's motivation was to conclude his case without an adverse outcome, and that he intends to practise elsewhere, as per his written submission.

8. In these circumstances, Mr Taylor submitted that it would not be appropriate to grant Dr Mutlukan's application for VE.

The Tribunal's Approach

9. The decision as to whether to accede to the application for Voluntary Erasure is a matter for this Tribunal alone to determine, exercising its own judgement. In reaching its decision, the Tribunal took account of all the evidence, oral and documentary, provided by the GMC and by Dr Mutlukan. The Tribunal also took account of the Guidance and the submissions made by the GMC.

The Tribunal's Decision

10. The Tribunal's determination was to refuse Dr Mutlukan's application for VE.

11. In reaching this decision, the Tribunal bore in mind the Statutory Overarching Objective: namely to ensure the health, safety and well-being of the public, the promotion and maintenance of public confidence in the profession, and the promotion and maintenance of proper standards of behaviour.

12. Throughout its consideration of the application, the Tribunal's approach was also framed by paragraphs 6 and 7 of the Guidance:

> *'6 Decision makers should be satisfied that it is right in all the circumstances to agree to voluntary erasure (and not to proceed with the inquiry proper) before any application is granted. 'All the circumstances' can be divided into two categories:*
>
> - *the public interest*
> - *the doctor's health and likelihood of return to practise.*
>
> *7 The public interest incorporates three elements.*
>
> - *The protection of patients and the public generally from doctors whose fitness to practise is impaired.*

- *The maintenance and promotion of public confidence in the medical profession.*
- *The maintenance and promotion of public confidence in the GMC's performance of its statutory functions.'*

13. Set against this, the Tribunal considered the following factors pertinent to its decision:

- Per Guidance/Paragraph 9

'…decision makers need to bear in mind that voluntary erasure is not necessarily permanent. The (potential) threat posed by a doctor might be revived by a future application for restoration to the register. Of course, the Voluntary Erasure Regulations provide a safeguard in that such applications for restoration would not be granted automatically. Such an application would be referred once again for the case examiners to consider where any unresolved complaints would be taken into consideration.'

The Tribunal was aware that VE was not necessarily permanent. In Dr Mutlukan's case, he had not evinced an intention to retire from practising as a doctor generally; but purely not to practise in the UK.

- Per Guidance/Paragraph 16

'If the allegations are primarily about misconduct, a conviction or a determination concerning the doctor's conduct, there are more likely to be arguments in favour of refusing the application for voluntary erasure…'

The Tribunal noted that the facts found proved were numerous, were serious and related entirely to misconduct. In such circumstances, *'there are more likely to be arguments in favour of refusing the application for VE'*. Furthermore, given that an impairment to Dr Mutlukan's fitness to practise had been found, the Tribunal noted that *'voluntary erasure is only likely to be accepted in exceptional circumstances'.* Dr Mutlukan had produced no evidence to this Tribunal to establish exceptional circumstances.

- Per Guidance/Paragraph 26

'Where a doctor applies for voluntary erasure during the later stages of their career and can provide evidence to support their intention to permanently retire from the profession this is generally a strong indicator that they are unlikely to seek restoration in the future. However, caution should be applied where the doctor is at an early or mid-career point, where the prospect of return to work is significantly higher.'

In this regard, the Tribunal noted that Dr Mutlukan had provided no evidence to support an intention permanently to retire from the profession; on the contrary he continues to practise. Therefore it cannot be said in Dr Mutlukan's case that there exists *'a strong indicator'* that he is unlikely to seek restoration in the future.

14. Turning to the genuineness of Dr Mutlukan's desire to cease to be registered, the Tribunal took account of the following Guidance

> *'31 The genuineness or sincerity of a doctor's desire to cease to be registered is a significant factor for consideration in deciding whether or not it may be appropriate to grant voluntary erasure.*
>
> *32 Where there is evidence to support the fact a doctor had already instigated steps to retire from medical practice, or reduce the scope of their medical practice before any concerns were raised, this may be a strong indicator that the doctor's desire to cease to be registered is sincere. Caution should be applied where an application for voluntary erasure appears to be triggered by fitness to practise proceedings.*
>
> *33 In assessing the genuineness of a doctor's desire to cease to be registered, decision makers should consider any insight the doctor has shown in relation to any concerns raised about their fitness to practise. Decision makers may also wish to consider whether the doctor has previously been truthful in any communication with the GMC and other reputable bodies, in assessing the doctor's credibility and sincerity.*
>
> *34 In general, except where the allegations and concerns relate solely to a doctor's health, if decision makers believe that a doctor intends to practise in the UK or elsewhere in the future it will not be appropriate to grant voluntary erasure. In other cases where the doctor is mentally unwell, decision makers should consider the doctor's state of mind when expressing their plans for the future.*
>
> *35 Where a doctor expresses an intention to practise medicine either overseas, on a part-time basis, or in private practice in the future this is as equally relevant as where the doctor expresses an intention to practise medicine on a full-time basis in the UK. Whilst the remit of the GMC is confined to regulating doctors in the UK we have a wider public interest in ensuring the protection of patients everywhere.'*

In relation to Guidance/paragraphs 31 – 35, the Tribunal noted the following:

- That Dr Mutlukan only instigated steps to seek VE after concerns were raised, MPTS proceedings had commenced, and four months after a fact-finding determination had been announced. Therefore, the Tribunal decided that the

application for VE appeared to have been triggered by the fitness to practise proceedings and that (per Guidance/paragraph 32) it should apply caution to an application in such circumstances.

- The Tribunal had found at the impairment stage that (per Guidance/paragraph 33) there was a continuing absence of insight or remorse on the part of Dr Mutlukan.
- Per Guidance/paragraph 34 and 35, the Tribunal noted that *'if decision makers believe that a doctor intends to practise in the UK or elsewhere in the future it will not be appropriate to grant voluntary erasure'*. The Tribunal noted that Dr Mutlukan had expressed a clear intention to practise medicine overseas. In this regard, the Tribunal took account of the UD8 form, dated 13 April 2018, which states he is an Ophthalmologist in 'independent private solo practice', that he is working in a medical capacity and that he is required to hold registration with a medical regulator. As such, the Tribunal concluded that Dr Mutlukan continues to practise outside the UK and has not given any indication that he intends to cease doing so. While the remit of the GMC is confined to UK, the Tribunal noted that there exists *'a wider public interest to ensure protecting patients everywhere'*.

  XXX

15. In all the circumstances, therefore, the Tribunal has concluded that the maintenance and promotion of public confidence in the medical profession and the GMC's performance of its statutory functions would be undermined if it acceded to the application for VE. It considered that granting the VE application would have a significant negative impact on public confidence; both on account of the nature of the Allegation against Dr Mutlukan, and because the motivation of Dr Mutlukan's VE application appears intended to circumvent the hearing process and avoid an adverse judgement.

16. Accordingly, having considered all the information before it, the Tribunal is not satisfied that it would be in the interests of the public, or in accordance with the statutory overarching objective, to agree to VE. It has therefore determined not to allow Dr Mutlukan's application.