

Dates:

14/09/2017 to 31/09/2017: Adjourned Part-Heard
19/03/2018 to 23/03/2018: Adjourned Part-Heard
02/05/2018 to 04/05/2018: Adjourned Part-Heard
11/06/2018 to 15/06/2018

Medical Practitioner's name: Dr Nivedita BISWAS

GMC reference number: 6073730

Primary medical qualification: MB BS 2004 Rajiv Gandhi University of Health Sciences

Type of case

New - Misconduct
New - Conviction / Caution
XXX

Outcome on impairment

Impaired
Impaired
XXX

Summary of outcome

Erasure
Immediate order imposed

Tribunal:

Medical Tribunal Member (Chair)	Dr Janet Nicholls
Lay Tribunal Member:	Mr Bernard Carter (14/09/2017 to 31/09/2017) Mrs Carol Jackson (02/05/2018 to 15/06/2018)
Medical Tribunal Member:	Dr Peter Kyle

Legal Assessor:	<u>14/09/2017 to 28/09/2018, and 30/09/2017 to 31/09/2017</u> Mr David Mason <u>29/09/2017</u> Mr Neil Mercer <u>19/03/2018 to 23/03/2018</u> Mr Julian Weinberg
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Record of Determinations – Medical Practitioners Tribunal

	<p><u>02/05/2018 to 04/05/2018, and 11/06/2018 to 15/06/2018</u> Mr Johnathan James</p> <p><u>11/06/2018 to 15/06/2018</u> Ms Nicola Murphy</p>
Tribunal Clerk:	<p><u>14/09/2017 to 31/09/2017</u> Ms Miriam Bonabana</p> <p><u>19/03/2018 to 23/03/2018</u> Ms Josephine Jenner</p> <p><u>02/05/2018 to 04/05/2018, and 11/06/2018 to 13/06/2018</u> Mr Stuart Peachey</p> <p><u>13/06/2018 to 15/06/2018</u> Miss Chloe Ainsworth</p>

Attendance and Representation:

Medical Practitioner:	Not present and not represented
GMC Representative:	<p><u>14/09/2017 to 31/09/2017 and 21/03/2018 to 23/03/2018</u> Mr Ciaran Rankin, Counsel, instructed by GMC Legal</p> <p><u>02/05/2018 to 04/05/2018 and 11/06/2018 to 15/06/2018</u> Ms Janet Ironfield</p>

Allegation and Findings of Fact

Misconduct

- 1** You failed to obtain insurance or indemnity cover for medical work carried out by you between 25 September 2012 and 10 January 2013. **Found Proved**
- 2** Between 12 November 2012 and 15 August 2014 you were employed as a GP trainee at the Ashley Medical Centre ('the Centre'). **Found Proved**

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- 3** You saw patients at the Centre on the following dates when you knew or ought to have known that you were administratively erased from the GMC's list of registered Medical Practitioners ('LRMP') on 20 December 2012:
 - a** 20 December 2012; **Found Proved**
 - b** 21 December 2012; **Found Proved**
 - c** 27 December 2012. **Found Proved**
- 4** You failed to inform the Centre that you had been erased from LRMP. **Found Proved**
- 5** Whilst working at the Centre, you set up a taxi account for your personal use in the name of another GP, Dr A. **Found Proved**
- 6** You failed to pay the taxi account in full. **Found Proved**
- 7** Between 22 July 2013 and 20 August 2013 you failed to make patient referrals on one or more occasions as referred to in Schedule 1. **Found Proved**
- 8** On 2 September 2013 you emailed the Centre in the terms contained in Schedule 2. **Found Proved**
- 9** On 4 September 2013 you emailed the Centre in the terms contained in Schedule 3. **Found Proved**
- 10** On 11 December 2013 you emailed the Centre in the terms contained in Schedule 4. **Found Proved**
- 11** You knew the emails referred to above at paragraphs 8 – 10 contained information which was untrue. **Found Proved**
- 12** Between 22 June 2013 and 7 August 2013 you were a treating GP for Patient B. **Found Proved**
- 13** You knew Patient B was a vulnerable patient and you:
 - a** befriended Patient B; **Found Proved**
 - b** took advantage of Patient B's vulnerability; **Found Proved**

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- c** provided confidential information regarding other patients to Patient B.
Found Proved

- 14** On 8 April 2015 you informed the Interim Orders Panel of the Medical Practitioners Tribunal Service ('IOP') that when meeting Patient B you had never met her, socially, on a one-to-one basis and you always saw her in a social group, or words to that effect. **Found Proved**

- 15** You knew the statement made by you referred to above at paragraph 14 was untrue. **Found Proved**

- 16** On 25 April 2014 you informed the IOP, via your representatives RadcliffesLeBrasseur, that you had paid the taxi account invoices, referred to above at paragraphs 5 and 6, on an instalment basis. **Found Proved**

- 17** You knew the statement made and referred to above at paragraph 16 was untrue. **Found Proved**

- 18** Between 18 August 2014 and 17 August 2015 you were employed as an ST3 GP trainee at the Ifield Medical Practice ('the Practice'). **Found Proved**

- 19** On 19 March 2015 you emailed the Practice in the terms contained in Schedule 5. **Found Proved**

- 20** On 7 April 2015 you emailed the Practice in the terms contained in Schedule 6. **Found Proved**

- 21** On 8 April 2015 you emailed the Practice in the terms contained in Schedule 7. **Found Proved**

- 22** On 14 April 2015 you emailed the Practice in the terms contained in Schedule 8. **Found Proved**

- 23** You took paid leave from the Practice on the following dates, as you had indicated that the IOP was taking place:
 - a** 18 March 2015; **Found Proved**

 - b** 2 April 2015; **Found Proved**

 - c** 9 April 2015. **Found Not Proved**

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- 24** You did not attend the IOP on the dates referred to at paragraph 23 above.
Found Proved
- 25** You knew the statements made in the emails referred to above at paragraphs 19-22 contained information which was untrue. **Found Proved in relation to paragraphs 19 and 22. Found Not Proved in relation to paragraph 20 and 21.**
- 26** During your employment at the Practice you failed to:
- a** review lab links; **Found Proved**
 - b** action post. **Found Proved**
- 27** On the following dates you took paid study leave from the Practice to update your e-portfolio:
- a** 23 January 2015; **Found Proved**
 - b** 26 January 2015. **Found Proved**
- 28** You did not update your e-portfolio on the dates referred to in paragraphs 27a and b above. **Found Not Proved**
- 29** On 12 May 2014 you:
- a** ~~were convicted~~ in the County Court Division of Fermanagh and Tyrone you admitted and were found guilty of knowing that payment on the spot was required from you for goods supplied or services done namely room and telephone bill dishonestly made off without having paid as required or expected and with intent to avoid payment of the amount due namely £170.66 contrary to Article 5(1) of the Theft (Northern Ireland) Order 1978; **Found Proved**
 - b** received a conditional discharge for one year. **Found Proved**

Conviction

- 30** On 14 May 2014 you were convicted in the County Court Division of Craigavon of:
- a** Assaulting C, a constable in the execution of her duty, contrary to section 66(1) of the Police (Northern Ireland) Act 1998; **Found Proved**

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- b** Resisting D, a constable in the execution of his duty, contrary to section 66(1) of the Police (Northern Ireland) Act 1998. **Found Proved**

31 On 14 May 2014 you were sentenced to:

- a** Fine £150.00; **Found Proved**

- b** Fine £75.00. **Found Proved**

32 You failed to declare your convictions in relation to paragraphs 30 and 31 to the GMC. **Found Proved**

33 On 8 April 2015 you informed the IOP that the Northern Ireland Court had dismissed the case, referred to in paragraph 30 above, completely. **Found Not Proved**

34 You knew the statement made by you referred to above at paragraph 33 was untrue. **Found Not Proved**

35 Your actions as paragraphs 1, 3, 4, 5, 6, 8, 9, 10, 14, 16, 19, 20, 21, 22, 23, 27, 29 and 33 were dishonest. **Found Proved in relation to paragraphs 1, 3, 4, 5, 6, 8, 9, 10, 14, 16, 19, 23(a), 23(b) and 29.**

Found Not Proved in relation to paragraphs 20, 21, 23(c), 27 and 33.

XXX

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

- a** Misconduct in relation to paragraphs 1, 3, 4, 5, 6, 7, 11, 13, 15, 17, 24, 25, 26, 28, 29, 32 and 34;

- b** conviction in relation to paragraphs 30-31;

XXX

Attendance of Press / Public

The tribunal agreed, in accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004, that the press and public be excluded from the hearing as the matters under consideration were deemed confidential.

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Determination on Service and Proceeding in the Doctor's absence - 14/08/2017

1. This case relates to allegations of misconduct, conviction XXX. XXX are private and a redacted determination will be published at the conclusion of this hearing.

Service

2. Dr Biswas is neither present nor represented at these proceedings. The Tribunal was invited to consider whether the notice of hearing had been properly served upon Dr Biswas in accordance with Rule 40 of the General Medical Council (GMC) (Fitness to Practise) Rules ('the Rules') Order of Council 2004 and paragraph 8 of Schedule 4 of the Medical Act 1983. In so doing, the Tribunal has taken into account all the information placed before it, together with your submissions on behalf of the GMC. The Tribunal noted that it is the responsibility of the registrant to maintain an effective registered address and email address.

3. In respect of these proceedings, the GMC's Notice of Allegation was sent to Dr Biswas' registered address, by special delivery, on 13 July 2017. A MPTS Notice of hearing, dated 13 July 2017, was sent to Dr Biswas' registered address. The Tribunal has regard to the Royal Mail special delivery track receipts which confirmed an attempt was made to deliver the notices to the registered address on 14 July 2017. This was unsuccessful and the notices were returned to the Manchester Mail Centre. In addition, the Tribunal was informed that the notice of this hearing was also sent to Dr Biswas' email address, held by the GMC, on 12 July 2017 and a further email enclosing the notice was sent by the MPTS, dated 13 July 2017. Furthermore, the Tribunal noted that Dr Biswas had been in very recent communication with the GMC, using that email address in her email dated 23 August 2017 and this was her signature email.

4. The Tribunal, therefore, is satisfied that all reasonable efforts have been made to serve Dr Biswas with notice of this hearing in accordance with the Rules.

Proceeding in the Doctor's Absence

5. The Tribunal next considered whether to proceed with this hearing in Dr Biswas' absence, in accordance with Rule 31.

6. In determining this matter, the Tribunal had in mind that its discretion to do so should be exercised with great care and caution and with close regard to the overall fairness of the proceedings. The Tribunal balanced Dr Biswas' interests with its responsibility to uphold the overarching objective, which is 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 the medical profession.

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7. On day one of these proceedings, the Tribunal determined to postpone its final deliberations on proceeding in Dr Biswas' absence. XXX In postponing its deliberations on that matter, the Tribunal stated on record that it would proceed on the proviso that it could revisit this matter prior to any deliberations on the facts. On 23 August 2017, Dr Biswas made contact with the GMC in respect of another matter. The Tribunal took account of the email and attached documents which showed that Dr Biswas had been working in India during the period in question.

8. Contact was made with Dr Biswas on 24 August 2017 via telephone and during that telephone conversation, she confirmed to the Tribunal that she was currently in India. She did not refer to XXX in relation to her absence from the current proceedings and stated that although she was aware that there would be MPTS proceedings, she had not received any notification regarding the date. Dr Biswas expressed a wish to attend but stated she would need at least two weeks' notice. The Tribunal took into account that Dr Biswas was currently engaging in correspondence on other proceedings and it was therefore reassured that it was unlikely that XXX had prevented Dr Biswas from taking part in these proceedings.

9. The Tribunal balanced Dr Biswas' interests with the wider public interest, which includes hearing cases expeditiously and without undue delay. The Tribunal recognised that its discretion to proceed in the practitioner's absence is to be exercised with care and caution.

10. The Tribunal considered Dr Biswas' interests and balanced these with the risk of reaching the wrong conclusions by proceeding in her absence. The Tribunal noted that Dr Biswas is currently in India and appears to have intermittently engaged with her regulator in respect of other proceedings but not in relation to her MPT hearing. The Tribunal considered that it could not be confident that a postponement to a future date would be likely to result in Dr Biswas' attendance.

11. The Tribunal was satisfied that a fair hearing can take place in the absence of Dr Biswas. In the course of its deliberations it will ensure that any matter in Dr Biswas' interests is taken into account. In all the circumstances, the Tribunal has determined to proceed with the hearing whether or not Dr Biswas is present.

Determination on Facts - 31/08/2017

1. This case relates to allegations of misconduct, conviction XXX. XXX are private and a redacted determination will be published at the conclusion of this hearing.

Background

2. Dr Biswas was employed as a GP trainee at the Ashley Medical Centre ('the Centre') between November 2012 and August 2014. It is alleged that Dr Biswas

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failed to obtain insurance or indemnity cover for medical work carried out between 25 September 2012 and 10 January 2013. In addition, she saw patients at the Centre on dates in December 2012, when she knew or ought to have known that she was administratively erased from the GMC's list of registered Medical Practitioners on 20 December 2012.

3. It is also alleged that Dr Biswas acted dishonestly in respect of the content of emails sent to the Centre and Ifield Medical Practice ('the Practice' where she was a GP trainee between August 2014 and August 2015) and dishonestly took paid leave from the Practice. In addition, it is alleged that, whilst Dr Biswas was a treating GP for Patient B, she took advantage of Patient B's vulnerability and provided confidential information regarding other patients to her. Whilst she was working at the Centre, it is alleged that Dr Biswas set up a taxi account in the name of another doctor and failed to pay the account in full.

4. Dr Biswas, in May 2014, was convicted in the County Court Division of Fermanagh and Tyrone of offences relating to dishonestly avoiding payment of an amount for a room and telephone bill, and received a conditional discharge for one year. In addition, in May 2014, she was also convicted in the County Court Division of Craigavon of offences relating to assaulting/resisting constables in the execution of their duty, and was sentenced to fines. Furthermore, it is alleged that Dr Biswas failed to declare her convictions to the GMC and acted dishonestly in regard to information provided to the Interim Orders Panel of the Medical Practitioners Tribunal Service.

XXX

Evidence

6. The Tribunal was presented with documentary evidence which included witness statements and exhibits, patient medical records, transcripts from IOP proceedings and XXX.

Application to hear witness evidence via telephone

7. You made an application to the Tribunal for Mrs F, Practice Manager at the Centre, to give her evidence via telephone. You submitted that due to holiday arrangements overseas, Mrs F was unable to attend in person. You advised that she could be available on 17 August 2017 by telephone link.

8. The Tribunal determined that in the interests of justice and fairness to all parties, it would hear Mrs F's evidence via telephone link. The Tribunal has a responsibility to ensure that this case is completed within the time allocated to it. To delay Mrs F's evidence to enable her to give evidence via video link or in person could result in there being insufficient time to conclude these proceedings. The Tribunal therefore allowed the application.

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Further application to hear witness evidence via telephone

9. During the course of proceedings, you made another application to hear evidence from Dr O, XXX, via telephone. You submitted that Dr O could not attend the hearing in person due to prior work commitments but would be available via telephone link on 23 August 2017.

10. The Tribunal determined that in the interests of justice and fairness to all parties, it would hear Dr O's evidence via telephone link XXX. The Tribunal therefore allowed the application.

Witnesses

11. The Tribunal received the witness statements and heard oral evidence from the following GMC witnesses:

- Dr G, Associate Dean: Health Education Kent Surrey and Sussex Local Education and Training Board,
- Dr A, GP Partner at the Ashley Centre Surgery,
- Mrs F, Practice Manager at the Ashley Centre Surgery
- Dr H, GMC expert witness
- Dr I, GP Partner at the Ashley Centre Surgery

XXX

Dr G

12. The Tribunal found Dr G to be a credible witness who assisted it in forming an overall view of Dr Biswas' conduct in respect of the professional and XXX aspects in this case. However, the Tribunal noted that Dr G was unable to say whether Dr Biswas' performance or conduct varied as a consequence of XXX. Dr G was clearly knowledgeable and helpful about GP trainees.

Dr A

13. The Tribunal found Dr A to be a credible witness who was straightforward and consistent about the professional nature of her relationship with Dr Biswas and what had happened with regards to the taxi invoices.

Mrs F

14. The Tribunal found Mrs F overall to be a clear, consistent and credible witness. Mrs F did her best to provide her account of what happened at the Centre, given that she is Practice Manager. Mrs F was also able to provide evidence of interaction and correspondence with Dr Biswas on a regular basis and had experience of dealing with and looking after a large number of trainees.

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Dr H

15. The Tribunal found Dr H to be a straightforward and reliable witness who assisted it by providing a good overview as an experienced GP who gave evidence about Dr Biswas' failure to make referrals she had said she would make.

Dr I

16. The Tribunal found Dr I to be a reliable witness who endeavoured to recall what had happened around the time of the incidents alleged. The Tribunal noted notwithstanding his attempt at recollection, Dr I, on at least one occasion, referred to the fact that it had been some time since he wrote his statement. Nonetheless, Dr I provided the Tribunal with additional background information about Dr Biswas, XXX.

XXX

Application to admit further evidence

21. You made an application to adduce the taxi invoices from Epsom and Ewell Cars Ltd and to disregard the witness statement of Mr J.

22. The Tribunal exercised its discretion to admit the evidence. The Tribunal was satisfied that Dr A and Mrs F had both seen these invoices, copies of which were sent by Mrs F to the GMC on 17 October 2013. The Tribunal also determined to disregard Mr J's evidence.

Amendments

23. Prior to your submissions on the facts, you made an application to amend a paragraph of the allegation. You applied to withdraw the reference to 'ST3' in paragraph 1 of the allegation.

24. The Tribunal determined that as this proposed amendment would not significantly alter the allegation in any way given that there is still reference to the fact that Dr Biswas was a GP trainee at the time, it would be fair and in the interests of justice to allow this application.

Facts

25. The Tribunal has given careful consideration to all of the documentary and oral evidence adduced in this case. It has also taken account of the submissions made by you on behalf of the GMC.

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Tribunal approach

26. The Tribunal has borne in mind throughout that the burden of proof rests with the GMC and that the standard of proof is on the balance of probabilities. That means the Tribunal will be satisfied that an event occurred if it considers that the occurrence of the event was more likely than not.

27. In relation to the allegation of dishonesty the Tribunal considered the following:

- whether Dr Biswas' conduct was dishonest by the ordinary standards of reasonable and honest members of the medical profession, and if so,
- whether she realised that what she was doing was dishonest by those standards.

Tribunal's decision

28. The Tribunal has considered each paragraph of the allegation separately. It was mindful that the burden of proof rests throughout on the GMC to the civil standard of proof, namely on the balance of probabilities. Accordingly, it has made the following findings on the facts:

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

Misconduct

1 You failed to obtain insurance or indemnity cover for medical work carried out by you between 25 September 2012 and 10 January 2013. **Found Proved**

30. In reaching this decision, the Tribunal took account of the evidence before it which confirmed that Dr Biswas' insurance or indemnity cover ended on 25 September 2012. The Tribunal also took account of Mrs F's written statement in which she confirmed that on production of Dr Biswas' recent indemnity certificate, it was noted that she had been without insurance between 25 September 2012 to 10 January 2013. There is a mandatory requirement on all doctors to ensure that they have insurance or indemnity cover for any medical work they carry out. Dr Biswas did not have the necessary cover in place between 25 September 2012 and 10 January 2013. The Tribunal therefore found this paragraph proved.

2 Between 12 November 2012 and 15 August 2014 you were employed as an ~~ST3~~ GP trainee at the Ashley Medical Centre ('the Centre'). **Found Proved**

31. The Tribunal took account of Mrs F's written and oral evidence in which she confirmed that Dr Biswas joined the Practice as a ST2 GP trainee in November 2012 and became a ST3 trainee on 1 March 2013. In addition, the Tribunal took account

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of the oral and written evidence of Dr I and Dr G, who both confirmed that Dr Biswas was employed as a GP trainee between those dates. The Tribunal therefore found this paragraph proved.

3 You saw patients at the Centre on the following dates when you knew or ought to have known that you were administratively erased from the GMC's list of registered Medical Practitioners ('LRMP') on 20 December 2012:

a 20 December 2012; **Found Proved**

b 21 December 2012; **Found Proved**

c 27 December 2012. **Found Proved**

32. The Tribunal had regard to and noted that Dr Biswas was administratively erased from the LRMP on 20 December 2012. It also noted that Dr Biswas was informed of her pending erasure in a letter of 30 November 2012 which gave her 14 days' notice that erasure would occur. In addition, prior to this letter, Dr Biswas had been sent to her registered address, both a fee notice and a reminder notice regarding non-payment of her annual retention fee, which was due on 19 October 2012.

33. In determining whether Dr Biswas knew or ought to have known that she was administratively erased when seeing patients at the Centre on the dates in question, the Tribunal had regard to the correspondence outlined in the paragraph above. In view of this correspondence, Dr Biswas knew or ought to have known that she would be administratively erased for non-payment of her annual retention fee on 20 December 2012. The Tribunal therefore finds the above sub-paragraphs proved

4 You failed to inform the Centre that you had been erased from LRMP. **Found Proved**

34. The Tribunal has already found proved that Dr Biswas did not inform the Centre that she was administratively erased from the LRMP. The Tribunal was of the view that Dr Biswas had a duty to inform the Centre and failed to do so, particularly given that she was seeing patients at the time and was no longer registered as a medical practitioner. The Tribunal therefore found this paragraph proved

5 Whilst working at the Centre, you set up a taxi account for your personal use in the name of another GP, Dr A. **Found Proved**

35. The Tribunal took account of the taxi account invoices from Epsom and Ewell taxis which were in the name of Dr A. It also had regard to Dr A's oral and documentary evidence in which she stated that she did not set an account up with the firm and had spoken to someone in the taxi office who confirmed that Dr Biswas

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had opened the account. In addition, the account address was that of Dr Biswas in Weybridge. The Tribunal therefore found this paragraph proved.

6 You failed to pay the taxi account in full. **Found Proved**

36. The Tribunal took account of Dr A's written statement in which she stated that several months after speaking to a gentleman in the taxi office, she saw him at the practice as he was a registered patient. She asked if Dr Biswas had paid the bill for the taxi account and was informed she had not. The Tribunal therefore found this paragraph proved.

7 Between 22 July 2013 and 20 August 2013 you failed to make patient referrals on one or more occasions as referred to in Schedule 1. **Found Proved**

37. The Tribunal took account of Dr A's written statement that she had carried out a review of all consultations that Dr Biswas had undertaken over the month preceding the discovery of missed referrals. She found from the medical records that there were 27 patients that Dr Biswas had identified as needing a referral but for whom a referral had not been made. The Tribunal considered that once Dr Biswas identified that a referral needed to be made, she had a duty to act. The Tribunal therefore found this paragraph proved.

8 On 2 September 2013 you emailed the Centre in the terms contained in Schedule 2. **Found Proved**

9 On 4 September 2013 you emailed the Centre in the terms contained in Schedule 3. **Found Proved**

38. In reaching this decision, the Tribunal determined to consider paragraph 8 in conjunction with paragraph 9 of the allegation. The Tribunal took account of the email correspondence between Mrs F and Dr Biswas from 27 August 2013 to 4 September 2013. The Tribunal noted on 2 September 2013, Dr Biswas emailed Mrs F to inform her that XXX which is contained in Schedule 2. The Tribunal also noted that on 4 September 2013, Dr Biswas emailed Mrs F again to inform her that XXX which is contained in Schedule 3. The Tribunal therefore found these paragraphs proved.

10 On 11 December 2013 you emailed the Centre in the terms contained in Schedule 4. **Found Proved**

39. The Tribunal took account of the email correspondence from Dr Biswas to Mrs F and Dr G dated 11 December 2013. In this email, the Tribunal noted that Dr Biswas stated she informed the Centre that Surrey Police were investigating an assault XXX and that the case had reopened and she needed to go for an interview, as contained in Schedule 4. The Tribunal therefore found this paragraph proved.

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11 You knew the emails referred to above at paragraphs 8 – 10 contained information which was untrue. **Found Proved**

40. XXX. With regards to the Surrey Police turning up at the surgery looking for Dr Biswas and making reference to the Northern Ireland Police, the Tribunal considered that Dr Biswas was trying to obfuscate by linking this visit with her own assault case. The Tribunal determined that she knew that content within the emails was untrue and therefore the Tribunal has found this paragraph proved.

12 Between 22 June 2013 and 7 August 2013 you were a treating GP for Patient B. **Found Proved**

41. The Tribunal had regard to Patient B's medical records in which it noted that Dr Biswas' name appears on a number of the records. Tribunal considered that it is clear from Patient B's medical records that Dr Biswas was her treating GP, and saw the patient on a number of occasions. The Tribunal therefore found this paragraph proved.

13 You knew Patient B was a vulnerable patient and you:

- a** befriended Patient B; **Found Proved**
- b** took advantage of Patient B's vulnerability; **Found Proved**
- c** provided confidential information regarding other patients to Patient B. **Found Proved**

42. The Tribunal took account of Patient B's medical records which confirmed that she had mental health issues. Dr Biswas at her first consultation with Patient B, on 27 June 2013, recorded that the patient was known to have bipolar affective disorder and had attended with her carer. Patient B was therefore a vulnerable patient. Patient B in her written statement stated that not long after she had first seen Dr Biswas, Patient B saw Dr Biswas in Epsom. Patient B stated that since the two of them were both due to get married, they exchanged numbers and met up. Patient B also went on to state that she saw Dr Biswas every day for two weeks and spent all day with her going out for food and to a pub for drinks and that Dr Biswas also went to her house on a number of occasions. In addition, Patient B stated that she paid for a lot of the meals even though she was not working and was on benefits. Patient B also stated that Dr Biswas informed her about some of her other patients and passed on confidential information about them. The Tribunal determined that Dr Biswas knew Patient B was vulnerable and should not have embarked upon the 'friendship' that she did with her. The Tribunal took into account Patient B did not give oral evidence, but it found her witness statement, combined with a record she had made on 21 October 2013 and her medical records to be credible. The Tribunal therefore found these sub-paragraphs proved.

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14 On 8 April 2015 you informed the Interim Orders Panel of the Medical Practitioners Tribunal Service ('IOP') that when meeting Patient B you had never met her, socially, on a one-to-one basis and you always saw her in a social group, or words to that effect. **Found Proved**

43. The Tribunal had regard to the transcript from Dr Biswas' IOP hearing on 8 April 2015 and noted that she informed the IOP that:

'XXX'

44. The Tribunal therefore found this paragraph proved

15 You knew the statement made by you referred to above at paragraph 14 was untrue. **Found Proved**

45. Following on from paragraph 13 of the allegation, the Tribunal has already found that Dr Biswas took advantage of Patient B. It noted from Patient B's written statement that there are several references to meeting Dr Biswas on a one to one basis. The Tribunal therefore finds this paragraph proved

16 On 25 April 2014 you informed the IOP, via your representatives RadcliffesLeBrasseur, that you had paid the taxi account invoices, referred to above at paragraphs 5 and 6, on an instalment basis. **Found Proved**

17 You knew the statement made and referred to above at paragraph 16 was untrue. **Found Proved**

46. In reaching this decision, the Tribunal has considered paragraph 16 in conjunction with paragraph 17 of the allegation. The Tribunal had regard to the IOP transcript of the proceedings which confirmed that Dr Biswas, through her legal representatives, stated that she had accepted responsibility for the invoices and she had subsequently paid them on an instalment basis. The Tribunal noted that Dr Biswas however, after her IOP, informed Dr O on 27 October 2014 that she had promptly paid the bill once she received it.

47. The Tribunal has considered the different accounts Dr Biswas provided in relation to the taxi account invoices and that she has repeatedly contradicted herself, particularly that in her most recent explanation she said that there was still an amount outstanding. The Tribunal determined that Dr Biswas knew that she had not paid the taxi invoices at the time of her IOP and therefore the statement she made was not true. The Tribunal therefore found these paragraphs proved.

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18 Between 18 August 2014 and 17 August 2015 you were employed as an ST3 GP trainee at the Ifield Medical Practice ('the Practice'). **Found Proved**

48. The Tribunal had regard to Dr Biswas' training record from the Deanery which confirms that she was employed as an ST3 GP trainee at the Practice between those dates. The Tribunal therefore found this paragraph proved

19 On 19 March 2015 you emailed the Practice in the terms contained in Schedule 5. **Found Proved**

49. In reaching this decision, the Tribunal took account of the email correspondence from Dr Biswas to Ms K, dated 19 March 2015, in which she stated the terms contained in Schedule 5. The Tribunal therefore found this paragraph proved

20 On 7 April 2015 you emailed the Practice in the terms contained in Schedule 6. **Found Proved**

50. The Tribunal also took into account the email correspondence from Dr Biswas to Ms K dated 7 April 2015, which contained the terms in Schedule 6. The Tribunal therefore found this paragraph proved

21 On 8 April 2015 you emailed the Practice in the terms contained in Schedule 7. **Found Proved**

51. On 8 April 2015, Dr Biswas emailed the Practice informing them she was in Manchester for the review of her GMC conditions and was thereby on leave. She also stated that she would know the outcome of her IOP either later on that day or the next evening. The Tribunal noted that these are the terms contained in Schedule 7 and therefore found this paragraph proved.

22 On 14 April 2015 you emailed the Practice in the terms contained in Schedule 8. **Found Proved**

52. On 14 April 2015, Dr Biswas emailed Ms K regarding an update which stated that she had her GMC review last Wednesday and the outcome would be that day. The Tribunal noted that these terms are contained in Schedule 8 and therefore found this paragraph proved.

23 You took paid leave from the Practice on the following dates, as you had indicated that the IOP was taking place:

a 18 March 2015; **Found Proved**

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b 2 April 2015; **Found Proved**

c 9 April 2015. **Found Not Proved**

53. The Tribunal took account of a report prepared by Dr L, Dr Biswas' trainer/educational supervisor during her time at the Practice. The Tribunal noted that on all three dates, it stated in the report that Dr Biswas was at a GMC review. In addition, the Tribunal noted that on 2 April and 9 April 2015, Dr Biswas notified the Practice, prior to those dates, that she would not be available and therefore not at the Practice. The Tribunal noted that Dr Biswas had indicated that the IOP was taking place so would have required leave to attend the proceedings. The Tribunal determined that Dr Biswas would have taken paid leave in order to attend her IOP hearings on the dates specified above. However, in an email dated 8 April 2015, Dr Biswas clarified the position regarding the leave for 9 April 2015 as she requested that this be taken as annual leave. The Tribunal has therefore found sub-paragraphs 23(a) and 23(b) proved and found not proved in relation to sub-paragraph 23(c).

24 You did not attend the IOP on the dates referred to at paragraph 23 above.
Found Proved

54. The Tribunal took account of Mr M, GMC Investigation Officer, written statement. Mr M stated that Dr Biswas was invited to an IOP review hearing on 18 March 2015. On 13 March 2015, a request was sent by Dr Biswas' legal representatives to postpone the hearing. This postponement was granted on 16 March 2015 and the IOP hearing was relisted to take place on 2 April 2015. Mr M went on to state that on 2 April 2015, the IOP hearing opened and considered an adjournment request from Dr Biswas, who was not present, and the IOP determined to adjourn that hearing. A determination was produced confirming that adjournment. Further, Mr M stated that an IOP hearing then took place on 8 April 2015 when Dr Biswas was present. The Tribunal took into account that Mr M did not give oral evidence but accepted the contents of his statement which contained information from GMC records. The Tribunal therefore found this paragraph proved.

25 You knew the statements made in the emails referred to above at paragraphs 19-22 contained information which was untrue. **Found Proved in relation to paragraphs 19 and 22. Found Not Proved in relation to paragraph 20 and 21.**

55. In respect of paragraph 19, the Tribunal noted that the initial IOP hearing was postponed at Dr Biswas' request, through her legal representatives. The Tribunal considered that she would have known that the hearing would not have taken place on that date. The IOP had been relisted for another date. The Tribunal determined that Dr Biswas knew the statement she made in this email dated 19 March 2015 was untrue. The Tribunal therefore found this paragraph proved.

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56. In respect of paragraph 20, the Tribunal took note of the email in Schedule 6 sent by Dr Biswas to Ms K on 7 April 2015. As Dr Biswas did attend an IOP on the 8 April 2015, the information in this email is not untrue and the Tribunal therefore found this paragraph not proved.

57. In respect of paragraph 21, the email in Schedule 7 was sent by Dr Biswas to Mr N and Ms K at 05.44hrs on 8 April 2015. The Tribunal noted this early hour and felt it conceivable that Dr Biswas reference to knowing the outcome 'later on tomorrow' could have referred to later the same day i.e. the 8 April 2015 when the IOP hearing was known to take place. Dr Biswas had requested that 9 April 2015 be taken as annual leave. The Tribunal therefore found this paragraph not proved.

58. In respect of paragraph 22, the Tribunal considered Dr Biswas was aware of the IOP hearings process, given that she had attended on previous occasions, and had been previously legally represented. The Tribunal noted that during the process of an IOP hearing, an outcome is announced on that day. The Tribunal determined that Dr Biswas would have been well versed in the IOP proceedings and therefore knew that the statement she was making in that email was untrue. The Tribunal therefore found this paragraph proved.

26 During your employment at the Practice you failed to:

a review lab links; **Found Proved**

b action post. **Found Proved**

59. In reaching its decision in respect of whether Dr Biswas failed to review lab links and action post, which were allocated to her, the Tribunal relied on the written evidence of Ms K, who had clearly documented occasions when Dr Biswas was falling behind with respect to both reviewing lab links and actioning post. As a GP trainee employed at the Practice, Dr Biswas had a duty to review laboratory links and to action relevant post. As she failed in this regard, the Tribunal therefore found these sub-paragraphs proved.

27 On the following dates you took paid study leave from the Practice to update your e-portfolio:

a 23 January 2015; **Found Proved**

b 26 January 2015. **Found Proved**

60. The Tribunal had regard to Dr Biswas' training record which confirmed that she took study leave on those dates. The Tribunal noted from Ms K's witness statement that Dr Biswas took study leave on those dates to allow her to get her e-portfolio up to date. The Tribunal therefore found these sub-paragraphs proved.

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28 You did not update your e-portfolio on the dates referred to in paragraphs 27a and b above. **Found Proved in relation to sub-paragraph 27(a) and 27(b) and Found Not Proved in relation to paragraph 28.**

61. The Tribunal received evidence from Dr G regarding the e-portfolio entries made by Dr Biswas. From the e-portfolio there is evidence that work on an audit project was carried out on 23 January 2015 and the e-portfolio, with respect to this work, was updated on 11 February 2015. The Tribunal accepts that similar work could have been carried out on 26 January 2015 and therefore found this paragraph not proved.

Conviction

29 On 12 May 2014 you:

- a** were convicted in the County Court Division of Fermanagh and Tyrone of knowing that payment on the spot was required from you for goods supplied or services done namely room and telephone bill dishonestly made off without having paid as required or expected and with intent to avoid payment of the amount due namely £170.66 contrary to Article 5(1) of the Theft (Northern Ireland) Order 1978; **Found Proved**
- b** received a conditional discharge for one year. **Found Proved**

62. The Tribunal has had regard to the Certificate of Conviction from County Court Division of Fermanagh and Tyrone, dated 12 May 2014. The Tribunal accepted the certificate as conclusive proof of Dr Biswas' conviction and the sentence imposed. Accordingly, the Tribunal has therefore found both paragraphs of the allegation proved.

30 On 14 May 2014 you were convicted in the County Court Division of Craigavon of:

- a** Assaulting C, a constable in the execution of her duty, contrary to section 66(1) of the Police (Northern Ireland) Act 1998; **Found Proved**
- b** Resisting D, a constable in the execution of his duty, contrary to section 66(1) of the Police (Northern Ireland) Act 1998. **Found Proved**

31 On 14 May 2014 you were sentenced to:

- a** Fine £150.00; **Found Proved**

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b Fine £75.00. **Found Proved**

63. The Tribunal also had regard to the Certificate of Conviction from County Court Division of Craigavon, dated 14 May 2014. The Tribunal accepted the certificate as conclusive proof of Dr Biswas' conviction and the sentence imposed. Accordingly, the Tribunal has therefore found paragraphs 30(a), 30(b), 31(a) and 31(b) of the allegation proved.

32 You failed to declare your convictions to the GMC. **Found Proved**

64. The Tribunal took account of correspondence sent to the GMC dated 9 July 2014 which confirmed that it was the police that informed them of Dr Biswas' conviction, rather than Dr Biswas herself. The Tribunal determined that the onus is on the registrant to inform the GMC that he/she has been convicted of a criminal offence. Dr Biswas did not do this. The Tribunal therefore found this paragraph proved.

33 On 8 April 2015 you informed the IOP that the Northern Ireland Court had dismissed the case, referred to in paragraph 30 above, completely. **Found Not Proved**

65. The Tribunal took account of the IOP transcripts in which Dr Biswas stated that:

'XXX'

66. The Tribunal determined that by stating to the IOP that she had received a fine, Dr Biswas indicated that there had been a criminal conviction. The Tribunal therefore found this paragraph not proved.

34 You knew the statement made by you referred to above at paragraph 33 was untrue. **Found Not Proved**

67. Given the above findings, the Tribunal has therefore found this paragraph not proved.

35 Your actions as paragraphs 1, 3, 4, 5, 6, 8, 9, 10, 14, 16, 19, 20, 21, 22, 23, 27 and 33 were dishonest. **Found Proved in relation to paragraphs 1, 3, 4, 5, 6, 8, 9, 10, 14, 16, 19, 23(a) and 23(b).**

Found Not Proved in relation to paragraphs 20, 21, 23(c), 27 and 33.

68. In reaching these findings, the Tribunal has applied the two stage test of dishonesty advised by the Legal Assessor. The Tribunal has considered the first

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stage of the test, namely, whether Dr Biswas' actions would be considered dishonest by the standards of reasonable and honest members of the medical profession and secondly whether Dr Biswas herself must have realised at the time that her conduct would be regarded as dishonest by those standards.

69. In relation to paragraph 1, the Tribunal determined that a doctor attending work and seeing patients, knowing that they were not on the medical register, would be considered by the standards of reasonable and honest members of the medical profession, a dishonest act. Dr Biswas must have known that her conduct would be considered as dishonest.

70. In relation to paragraph 3 and 4, the Tribunal determined that given the above findings, it would have been equally dishonest by the standards of reasonable and honest members of the medical profession to not inform the Centre that Dr Biswas had been administratively erased from LRMP and continued to see patients when not a registered medical practitioner. Further, the Tribunal determined that Dr Biswas at the time, knew her conduct would be regarded as dishonest by those standards.

71. In relation to paragraph 5, the Tribunal noted that this account was set up for personal use and so should have been set up in the name of the person who would be using it. Dr Biswas in setting up a taxi account in another doctor's name would be considered as dishonest by reasonable and honest members of the medical profession and that Dr Biswas at the time, knew her conduct would be regarded as dishonest by those standards.

72. In relation to paragraph 6, the Tribunal noted that Dr Biswas availed herself of the taxi service and did not pay for it in full. The Tribunal has heard no cogent reasons as to why the taxi invoice was not paid in full and it considered that Dr Biswas' actions would be considered as dishonest by the standards of reasonable and honest members of the medical profession. Further, the Tribunal determined that Dr Biswas, at the time, knew her conduct would be regarded as dishonest by those standards.

73. In relation to paragraphs 8, 9 and 10, the Tribunal has already found that Dr Biswas knew the statements contained within those emails were untrue and therefore would be considered as dishonest by the standards of reasonable and honest members of the medical profession and that she knew at the time her conduct would be regarded as dishonest by those standards.

74. In relation to paragraph 14, the Tribunal has already found that Dr Biswas took advantage of Patient B and that she had met with the patient on several occasions on a one to one basis and not as she stated at her IOP hearing. The Tribunal considered that Dr Biswas' actions would be considered as dishonest by the

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standards of reasonable and honest members of the medical profession and that she knew at the time her conduct would be regarded as dishonest by those standards.

75. In relation to paragraph 16, the Tribunal has already found that Dr Biswas gave different accounts in relation to the taxi account invoices. The Tribunal determined that Dr Biswas knew that she had not paid the taxi invoices at the time of her IOP and therefore her actions would be considered as dishonest by the standards of reasonable and honest members of the medical profession and that she knew at the time her conduct would be regarded as dishonest by those standards.

76. In relation to paragraph 19, the Tribunal has already found that Dr Biswas provided statements regarding the IOP which she knew was untrue. The Tribunal considered that Dr Biswas' actions would be considered as dishonest by the standards of reasonable and honest members of the medical profession and that she knew at the time her conduct would be regarded as dishonest by those standards.

77. In relation to paragraph 23(a), the Tribunal has already found that an IOP hearing did not take place on this date. Taking paid leave when she knew she was not at her IOP hearing would be considered as dishonest by the standards of reasonable and honest members of the medical profession and that she knew at the time her conduct would be regarded as dishonest by those standards.

XXX

Determination on Adjourn XXX - 31/08/2017

1. The allegation which has been put to the Tribunal includes separate heads of charge relating to conduct, conviction XXX. From the evidence, and with the benefit of legal advice, the Tribunal was satisfied that it could produce a determination on the facts under these separate headings, which has been handed down. The Tribunal has considered whether it is possible to proceed to the next stage and adjudicate on impairment. In doing so it has noted XXX

XXX

The Tribunal's decision

XXX

10. Accordingly, these proceedings will be adjourned until 19 March 2018. The reconvened hearing will be scheduled for five days.

Directions

The Tribunal directs that the following timetable for XXX:

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XXX

Determination on Proceeding in Absence - 21/03/2018

1. Dr Biswas is neither present nor represented at today's hearing. The Tribunal considered your application that the hearing should proceed in Dr Biswas's absence.

Submissions

2. You submitted that it was just and fair to proceed in Dr Biswas's absence. You submitted that the GMC has made all reasonable efforts to contact Dr Biswas with respect to these proceedings. You referred the Tribunal to documentary evidence, including emails and phone calls made by the GMC to Dr Biswas between October 2017 and March 2018. You submitted that while Dr Biswas has been intermittently involved, she has not engaged with the regulatory process in a meaningful way.

The Tribunal's Decision

3. In its deliberations on the application, the Tribunal heard and accepted the advice of the Legal Assessor. It had regard to Rule 31 of the General Medical Council's (Fitness to Practise) Rules 2004 as amended ('the Rules'), which 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.'

4. The Tribunal applied Rule 31 of the Rules and the Court of Appeals guidance in Adeogba v GMC [2016] EWCA civ 162. The Tribunal has borne in mind that its discretion to go ahead in Dr Biswas's absence should be exercised with the utmost care and caution, having regard to all the circumstances of which it was aware, with fairness to the practitioner being a prime consideration, but also taking into account fairness to the GMC and the interests of the public, as enshrined in the overarching objective in Section 1 (1A) of the Medical Act 1983.

5. The Tribunal considered that it is in the public interest that the case should proceed in a timely manner. It determined that Dr Biswas is aware of the hearing, as demonstrated in her emails to the GMC dated 6 October 2017 and 9 February 2018,

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as well as a telephone conversation with the GMC on 9 February 2018. During the telephone call, Dr Biswas advised that she was in India.

6. The Tribunal determined that although Dr Biswas had expressed a desire to attend the hearing, there is no evidence to suggest that she has made attempts to do so and appears to have ceased communication since 9 February 2018. The Tribunal further noted that Dr Biswas did not respond to the GMC's request as to whether she wished to attend the hearing by telephone.

7. Having had regard to all of the above, the Tribunal concluded that Dr Biswas has elected not to attend, and has not made any application to adjourn. The Tribunal was of the view that no useful purpose would be served by an adjournment, as it could not be satisfied that any adjournment would secure her attendance. It therefore concluded that the balance of fairness required the hearing should proceed in Dr Biswas's absence.

Determination on Reopening of facts determination in relation to paragraphs 29 and 35 of the Allegation - 22/03/2018

1. This case relates to allegations of misconduct, conviction XXX. XXX are private and a redacted determination will be published at the conclusion of this hearing.

Reopening of facts stage

2. Taking into account the decision to amend the Allegations, under Rule 17(3), with regards to paragraphs 29, 32 and 35, the tribunal was advised by the Legal Assessor to make a finding of facts on the amended allegations.

3. For the avoidance of doubt, the tribunal did not consider that any further finding of facts in relation to the amended allegation at paragraph 32 was required because, for the reasons set out in its earlier determination, paragraph 29 does not relate to a conviction.

The Tribunal's Decision

4. The Tribunal has considered each paragraph of the allegation separately. It was mindful that the burden of proof rests throughout on the GMC to the civil standard of proof, namely on the balance of probabilities. In reaching its findings of

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fact the tribunal drew no adverse inference from Dr Biswas's non-attendance at this hearing.

5. The tribunal has made the following findings on the facts:

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

29. On 12 May 2014:

- a. ~~were convicted~~ in the County Court Division of Fermanagh and Tyrone you admitted and were found guilty of knowing that payment on the spot was required from you for goods supplied or services done namely room and telephone bill dishonestly made off without having paid as required or expected and with intent to avoid payment of the amount due namely £170.66 contrary to Article 5(1) of the Theft (Northern Ireland) Order 1978; **Found proved**

7. The tribunal has had regard to the statements produced relating to Dr Biswas's stay at the hotel in question and failure to pay the bill and to the Certificate of Conviction from County Court Division of Fermanagh and Tyrone, dated 12 May 2014. The tribunal accepted this as compelling evidence of her admission and finding of guilt at that court. Accordingly the tribunal finds the facts of allegation 29(a) proved.

35. Your actions as paragraphs 1, 3, 4, 5, 6, 8, 9, 10, 14, 16, 19, 20, 21, 22, 23, 27, 29 and 33 were dishonest. **Further found proved in relation to allegation 29**

8. The tribunal bore in mind the advice given by the legal assessor and noted the reference to the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67* and the test to be applied for dishonesty. The tribunal was satisfied to the required standard that, based on her admission to the court, Dr Biswas was aware that she needed to pay for the service in question and did not do so, with the intent to avoid payment. The tribunal considered Dr Biswas's state of mind at the time was dishonest as she knew she needed to pay. The tribunal concluded that a doctor who had been charged for a service and knowingly did not pay would be considered dishonest by the objective standards of ordinary, decent people.

9. In the circumstances, the tribunal finds that Dr Biswas's actions were dishonest, and therefore finds the facts of this allegation proved.

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Determination on Application to amend the Allegation - 22/05/2018

The Outcome of Application(s) made during the Hearing

Amendment of tribunal composition

1. During the adjournment of Dr Biswas's hearing it came to light that Mr Bernard Carter (lay tribunal member), could no longer sit on the hearing due to unforeseen circumstances. The matter was escalated to the MPTS office administration. In order to remain quorate and to enable the hearing to continue, the MPTS arranged for Mrs Carol Jackson to sit as a lay tribunal member.

2. This course of action was open to the MPTS by virtue of paragraph 3 of Schedule 4 of The General Medical Council (Constitution of Panels, Tribunals and Investigation Committee) Rules 2015 provides for a hearing to proceed with a new tribunal member, unless the tribunal decides that it is in the interests of justice to proceed with a freshly constituted tribunal, given the stage reached in the proceedings. The tribunal decided that it was not in the interests of justice to proceed with a freshly constituted tribunal, but that the hearing could proceed with the two original tribunal members and Mrs Jackson because:

- The tribunal had completed its determination on its findings of fact
- There was no objection from either yourself or Dr Biswas, who had been given the opportunity to comment
- Mrs Jackson had the opportunity had familiarised with the hearing bundle and decisions made.

3. The tribunal therefore considered that the hearing should proceed at the same stage as it would otherwise have done, had Mr Carter been available.

Application to amend the allegation under Rule 17(3) – 21 March 2018

GMC Submissions

4. On behalf of the GMC, you made an application for the amendment of paragraphs 29 and 35 to read as follows:

29. On 12 May 2014:

- a** ~~were convicted~~ in the County Court Division of Fermanagh and Tyrone you admitted and were found guilty of knowing that payment on the spot was required from you for goods supplied or services done namely room and telephone bill dishonestly made off without having paid as required or expected and with intent to avoid payment of the amount due namely

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£170.66 contrary to Article 5(1) of the Theft (Northern Ireland) Order 1978;

35. Your actions as paragraphs 1, 3, 4, 5, 6, 8, 9, 10, 14, 16, 19, 20, 21, 22, 23, 27, 29 and 33 were dishonest.

5. You submitted that paragraph 29 related to a conditional discharge but was classed under the 'Conviction' section of the allegation. You noted that, although it is a finding of guilt, it is not classed as a conviction for the purpose of these proceedings.

6. You submitted that paragraph 29 ought to be included in paragraph 35 as it was a matter relating to dishonesty.

7. You submitted that if paragraph 29 (as amended) were found proved, Dr Biswas's fitness to practise would be impaired by reason of misconduct and not conviction. The allegation at paragraph 29 should therefore be included in paragraph (a) in relation to impairment relating to misconduct and deleted from paragraph (b) in relation to impairment which relates to convictions. Paragraphs (a) and (b) in relation to impairment should now read:

- a** Misconduct in relation to paragraphs 1, 3, 4, 5, 6, 7, 11, 13, 15, 17, 24, 25, 26, 28, 29, 32 and 34;
- b** conviction in relation to paragraphs 30-31;

8. You further submitted that the original allegations were a drafting error. You submitted that the changes could be made without injustice to Dr Biswas as they did not affect the essence of the allegation as the proposed amendments relied on the same underlying facts.

Tribunal Decision

9. The tribunal accepted the advice of the Legal Assessor that it should have regard to whether the amendments to the allegation could be made without injustice to either party.

10. The tribunal had regard to the statutory over-arching objective: to protect and promote the health, safety and wellbeing 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 the profession.

11. The tribunal determined to make the following amendments to the allegation:

29. On 12 May 2014 you:

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~~a were convicted~~ in the County Court Division of Fermanagh and Tyrone you admitted and were found guilty of knowing that payment on the spot was required from you for goods supplied or services done namely room and telephone bill dishonestly made off without having paid as required or expected and with intent to avoid payment of the amount due namely £170.66 contrary to Article 5(1) of the Theft (Northern Ireland) Order 1978;

35 Your actions as paragraphs 1, 3, 4, 5, 6, 8, 9, 10, 14, 16, 19, 20, 21, 22, 23, 27, **29** and 33 were dishonest.

12. The tribunal determined to amend paragraph 29 as shown above. It also determined to amend paragraph 35 of the allegation to include Dr Biswas's actions at paragraph 29. The tribunal considered that to clarify the position regarding the Allegation at paragraph 29, that paragraph 32 should be amended to reflect that the failing alleged only relates to the convictions at paragraph 30. You did not object to this proposed amendment. Accordingly, the tribunal determined that paragraph 32 should be amended to read:

32 You failed to declare your convictions in relation to paragraphs 30 and 31 to the GMC.

13. It noted that the amendments did not materially change the substance of the charges, and could be made without injustice. It took into account the fact that, in relation to her actions at paragraph 29, Dr Biswas was found guilty and received a conditional discharge. It therefore concluded paragraph 29 required a change to reflect this distinction. To have not made this amendment would result in this aspect of the case proceeding on an error of law.

14. For the reasons as stated above the tribunal agreed that paragraphs (a) and (b) in relation to the impairment stage should be amended as proposed.

Determination on Consideration of XXX adjournment - 23/03/2018

XXX

4. XXX The Legal Assessor also reminded the Tribunal of its powers under Rule 29 to adjourn the proceedings if it considered it appropriate, XXX.

The Tribunal's decision

XXX

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8. The tribunal concluded that, in the interests of fairness, it was appropriate to adjourn the hearing, pursuant to Rule 29, XXX.

Determination on (1) Application under Rule 34(13)(14) for Dr Biswas to attend the hearing via Telephone Link; XXX - 03/05/2018

Private

1. This case relates to allegations of misconduct, conviction XXX. XXX are private and a redacted determination will be published at the conclusion of this hearing.

Application under Rule 34 (13)(14) for Dr Biswas to attend the hearing via Telephone Link

2. The Tribunal considered an application from Ms Janet Ironfield, Counsel, on behalf of the GMC, for Dr Biswas to attend the hearing by Telephone Link. Ms Ironfield submitted that Dr Biswas is currently in India and that she has taken the day off work to participate by Telephone Link.

3. The Tribunal had regard to Rule 34 (13) (14) which states:

13 *'A party may, at any time during a hearing, make an application to the Committee or Tribunal for the oral evidence of a witness to be given by means of a video link or a telephone link.'*

14 *'When considering whether to grant an application by a party under paragraph (13), the Committee or Tribunal must—*

(a) give the other party an opportunity to make representations;

(b) have regard to—

(i) any agreement between the parties, or

(ii) in the case of a Tribunal hearing, any relevant direction given by a Case Manager; and

(c) only grant the application if the Committee or Tribunal consider that it is in the interests of justice to do so.'

4. In reaching its decision, the Tribunal considered all the circumstances which included:

- the availability of Dr Biswas;

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- the importance of Dr Biswas' evidence to the proceedings; and
- fairness to all parties.

5. The Tribunal acceded to the application for Dr Biswas to attend the hearing via Telephone Link. It considered that it is in the interest of fairness for Dr Biswas to attend these proceedings. XXX

XXX

Determination on Application for Adjournment - 03/05/2018

Private

1. This case relates to allegations of misconduct, conviction XXX. XXX are private and a redacted determination will be published at the conclusion of this hearing.

Application for Adjournment

2. Dr Biswas made an application to the Tribunal to adjourn these proceedings to allow her time to seek legal advice XXX

3. Dr Biswas submitted that she thought the best way, initially, was for her to *'take charge'* and represent herself for these proceedings. However, as much as she would like to represent herself, Dr Biswas submitted that she has *'been finding it difficult to understand legal terms'* and she would like to receive advice and legal representation.

4. Dr Biswas indicated to the Tribunal that XXX. To this end she would like to seek legal representation.

GMC Response

5. Ms Ironfield submitted that the GMC opposes Dr Biswas' application to adjourn the hearing. She submitted that it is in the public interest to deal with these matters expeditiously.

6. Ms Ironfield submitted that this application comes at a late stage in the proceedings. She submitted that Dr Biswas has been given ample and repeated opportunity to seek legal advice and representation, even as recently as 20 March 2018. Ms Ironfield directed the Tribunal's attention to various email correspondence from the GMC to Dr Biswas which enclosed details of where a doctor can seek legal advice, such as *'information for doctors'* document.

7. Ms Ironfield acknowledged Dr Biswas cited difficulties arising from living abroad. However, she submitted that Dr Biswas has not disclosed her whereabouts

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to the GMC, except for saying that she lives in India. Ms Ironfield submitted that Dr Biswas' engagement with these proceedings has demonstrated she is able to make email and telephone contact with the UK.

8. Ms Ironfield submitted that the Medical Practitioners Tribunal and the Interim Order proceedings have been ongoing for a considerable amount of time. Further, she submitted that it has been made abundantly clear that consequences could follow the Tribunal's findings and that she had numerous opportunities to seek legal representation. Ms Ironfield submitted that at no previous point during this hearing, or prior to it, has Dr Biswas indicated that she would like to seek legal advice and representation.

The Tribunal's Decision

9. The Tribunal has considered Dr Biswas' application to adjourn under Rule 29(2). In doing so it has exercised its own judgement, balancing the public interest in the expeditious determination of this matter with her interests and her entitlement to a fair hearing.

10. The Tribunal has taken into account that these matters arose as long ago as late 2012, over five years ago. It further noted that Dr Biswas was made aware of the GMC's evidence against her in April 2015, and subsequently notified of her referral to a Medical Practitioners Tribunal in May 2017, which has been ongoing from August 2017 to date. The Tribunal regarded this as ample opportunity for Dr Biswas to prepare for her case and seek legal advice and representation.

11. The Tribunal noted in Dr Biswas' oral testimony, she stated that she had made efforts to obtain legal representation and that she has limited access to email and telephone facilities. However, the Tribunal had no evidence before it to indicate if or when she might be able to receive representation.

12. The Tribunal is mindful that instructing a legal representative at this stage in the proceeding must inevitably cause substantial delay in a case which has been ongoing for a number of years. This is contrary to the need for the matter to be resolved expeditiously.

13. In these circumstances, the Tribunal is of the view that it is in the public interest to continue with these proceedings today, and any further adjournment would bring unacceptable delay.

14. The Tribunal does not accede to Dr Biswas' application to adjourn the hearing and therefore the hearing will proceed.

XXX

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Determination on Adjournment - 04/05/2018

1. This case was listed until 4 May 2018. Due to there being insufficient time to conclude these proceedings, the Tribunal has determined to adjourn this hearing part-heard, under Rule 29(2).
2. The Tribunal determined that it will reconvene at the Impairment stage to resume this case, on the follow dates:
 - 11 June 2018;
 - 12 June 2018;
 - 13 June 2018;
 - 14 June 2018; and
 - 15 June 2018.

Parties are asked to attend on 11 June 2018 from 09:00hrs.

3. The hearing is now adjourned.

Determination on (1) Application for Adjournment (2) Proceeding in Absence - 11/06/2018

Private

1. This case relates to allegations of misconduct, conviction XXX. XXX are private and a redacted determination will be published at the conclusion of this hearing.

APPLICATION FOR ADJOURNMENT

2. Dr Biswas was not present, not represented and had not made contact since the last hearing. She was contacted via Telephone Link on the initiative of the Tribunal.
3. Dr Biswas made an application to the Tribunal to adjourn and reschedule these proceedings on the grounds that she cannot participate as she is in the process of travelling by bus to XXX. She told the Tribunal that this was due to an emergency and XXX in a remote part of India. Dr Biswas anticipated that the telephone reception would be difficult. Further, Dr Biswas submitted that she was not XXX ready to deal with the hearing due to ongoing personal stressors.
4. Dr Biswas submitted that she needed more time to prepare for the hearing. She stated that she had discussed her case with an advocate in India. XXX.

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5. Dr Biswas submitted that she is currently working and XXX.

GMC Response

6. Ms Ironfield submitted that the GMC opposes Dr Biswas' application to adjourn the hearing.

7. Ms Ironfield submitted that, although there was sympathy for anyone dealing with an emergency, the GMC opposes Dr Biswas' application to adjourn on the following grounds:

- She had been made aware of the adjourned hearing date at the conclusion of the last hearing and by correspondence sent to her shortly thereafter;
- She could not have been in any doubt about the significance of today's hearing having been sent a copy of the determination made following the May 2018 hearing by email;
- She had not responded to any of the correspondence that had been emailed to her. This included the latest email that was sent on 4 June 2018 which asked her to confirm whether she intended to participate in the hearing either by personal attendance or via telephone; and asking her to supply any documents on which she wished to rely;
- The last hearing was adjourned part heard which gave her the opportunity to obtain legal advice and/or representation if she chose to do so. She had now had 5 weeks to prepare her submissions and/or provide documents in support of her case but had failed to do so;
- She had persistently failed to engage with the regulatory process and had still not provided the GMC with a postal address for correspondence; and
- That it was in the public interest for the hearing to proceed expeditiously, and that it was now 10 months since the facts determination had been made.

The Tribunal's Decision

10. The Tribunal has considered Dr Biswas' application to adjourn under Rule 29(2). In doing so it has exercised its own judgement, balancing the public interest in the expeditious determination of this matter with her interests and her entitlement to a fair hearing.

11. The Tribunal noted that Dr Biswas was made aware of the date this Tribunal would reconvene (11 June 2018 to 15 June 2018): on the 5 May 2018 when it last adjourned; in the MPTS Outcome Letter, dated 8 May 2018; and in email correspondence on 4 June 2018.

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12. The Tribunal considered that it is Dr Biswas' duty to cooperate and comply with the regulatory process. It has seen no evidence that Dr Biswas has engaged with these proceedings or with any of the recent correspondence. The Tribunal has not been provided with evidence to support numerous claims made by Dr Biswas during these proceedings and is not persuaded by her submissions today.

13. In these circumstances, the Tribunal is of the view that it is in the public interest to continue with these proceedings today, any further adjournment would not achieve anything and would bring unacceptable delay.

14. The Tribunal does not accede to Dr Biswas' application to adjourn the hearing and therefore the hearing will proceed.

PROCEEDING IN ABSENCE

15. The Tribunal then sought to establish a Telephone Link with Dr Biswas to inform her of the outcome of her application for an adjournment. However, despite a number of attempts, the calls were not answered.

GMC Submissions

16. Ms Ironfield submitted that as Dr Biswas was not answering the telephone calls, the Tribunal could consider proceeding in Dr Biswas' absence.

17. Ms Ironfield submitted that there had been difficulty in making or maintaining contact with Dr Biswas in previous hearings. She also urged the Tribunal to assess the veracity of Dr Biswas.

18. Ms Ironfield submitted that the Tribunal could not be confident that any adjournment would result in establishing contact with Dr Biswas.

The Tribunal's Decision

19. The Tribunal has borne in mind that it is a matter for its discretion whether to proceed in the absence of the doctor. That discretion must be exercised with great caution and care. In exercising its discretion, fairness to the practitioner is the prime consideration but fairness to the GMC and to the interests of the public should also be taken into account.

20. The Tribunal had regard to all the circumstances of the case and in particular to the following matters:

1. The Tribunal noted that it had successfully initiated telephone contact with Dr Biswas earlier in the hearing session and she was therefore

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unquestionably aware that the hearing was in process. Despite four separate subsequent attempts to reach Dr Biswas by telephone, and despite the fact that her telephone was audibly ringing, Dr Biswas failed to answer the calls. The Tribunal determined that in these circumstances, Dr Biswas' conduct amounted to either a deliberate or voluntary waiver of her right to participate in the hearing.

2. The Tribunal noted that there was a substantial history of Dr Biswas' non-engagement in these proceedings and it determined that an adjournment was not likely to lead to Dr Biswas' attendance.

3. The Tribunal noted that Dr Biswas did indicate that she wished the hearing to be adjourned to enable her to participate, however it balanced this against the fact that there is a burden on medical practitioners to engage with their regulator. It noted that Dr Biswas had been aware of the adjourned hearing date from the time at which it had been set; that she had not engaged with the GMC or MPTS since the last hearing at all; that she had not made any arrangements to participate in the hearing, and had in fact only done so at the outset of the resumed hearing having been contacted by telephone at the request of the Tribunal itself. The Tribunal noted that Dr Biswas had not arranged legal representation for herself despite the fact that she had had the opportunity to do so. In these circumstances the Tribunal determined that Dr Biswas had by her conduct waived her right to be represented at the hearing.

4. The Tribunal considered the extent to which Dr Biswas would be disadvantaged by not being able to give evidence or make submissions on impairment. Whereas the Tribunal would have preferred to hear from Dr Biswas it noted that the question of impairment was one for its own judgement based on the findings of fact that it has already made and handed down. It therefore determined that any disadvantage to Dr Biswas arising from her non-attendance was not such as to be a determining factor.

5. The Tribunal does not draw any inference or conclusion from Dr Biswas' non-attendance at the hearing.

6. The Tribunal took into account the seriousness of the offence, which affects the doctor, patient and public. Although the findings against Dr Biswas are wide ranging and serious it noted that this hearing had already been protracted and that some of the matters alleged took place as long ago as 2012. It determined that the public interest namely the protection, promotion and maintenance of the health and safety of the public, in the fair, economical, expeditious and efficient disposal of allegations made against medical practitioners is of real importance. It took account of the general

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public interest that a hearing should take place within a reasonable time of the events to which it relates.

7. The Tribunal also took into account the fact that it would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process by reason of a deliberate failure to engage in it.

21. The Tribunal has therefore determined that in accordance with Rule 31 it is appropriate to proceed with the hearing in Dr Biswas' absence.

Determination on Impairment - 14/06/2018

1. Having given its determination on the Facts in this case, in accordance with Rule 17(2)(k) of the Rules, the Tribunal has considered whether, on the basis of the facts which it has found proved, Dr Biswas' fitness to practise is impaired by reason of misconduct, conviction XXX.

Private

2. This case relates to allegations of misconduct, conviction XXX. XXX are private and a redacted determination will be published at the conclusion of this hearing.

The Evidence

3. The Tribunal had regard to all of the evidence both oral and documentary adduced during the course of these proceedings, together with the submissions of Ms Ironfield, Counsel, on behalf of the GMC.

Submissions

4. Ms Ironfield submitted that Dr Biswas' fitness to practise is currently impaired by reason of her misconduct, conviction XXX.

XXX

6. In relation to the issue of misconduct, Ms Ironfield submitted that the Tribunal should adopt a two stage process of determining whether the facts found proved amounted to misconduct, which was serious; and then determining whether Dr Biswas' fitness to practise is impaired by reason of that misconduct. She directed the Tribunal's attention to *Roylance v GMC [2000] 1 AC 311* and *Nandi v GMC [2004] EWHC 2317 (Admin)* as the appropriate case law when reaching its decision on current impairment.

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7. Ms Ironfield submitted that the facts found proved amount to serious misconduct in that dishonesty underpinned the majority of them.
8. Ms Ironfield submitted that Dr Biswas' failure to refer patients amounted to serious misconduct. She directed the Tribunal's attention to Dr H's expert report where he referred to 24 such failings in 1 month. His report concluded that her clinical care fell seriously below the standard expected of a competent doctor.
9. Ms Ironfield submitted that Dr Biswas' conduct in relation to Patient B, a vulnerable patient, was a clear departure from Good Medical Practice ('GMP'). Dr Biswas disclosed other patients' confidential information to Patient B; formed a close personal relationship with Patient B and later denied meeting her socially. She submitted that Dr Biswas' actions were dishonest, were a breach of patient confidentiality, undermined public confidence and were such as to bring the medical profession into disrepute.
10. In relation to Dr Biswas dishonestly setting up a taxi account in a colleague's name for her own personal benefit, Ms Ironfield submitted that this conduct brought the medical profession into disrepute. She further directed the Tribunal's attention to the fact Dr Biswas lacked insight in relation to her actions over the period of time during which the account was set up, when she had opportunities to admit her culpability when challenged, but chose not to do so.
11. In relation to the issue of Dr Biswas' conviction, she submitted that Paragraphs 30 to 31 of the Allegation constituted serious misconduct in that they relate to violence against and obstruction of public servants (Police Officers) acting in the course of their respective duties. She further submitted that this serious misconduct undermines the public confidence in the medical profession and compromises the health and safety of the public.
12. In relation to Dr Biswas' dishonesty towards her regulator and to the Centre, Ms Ironfield submitted that Dr Biswas dishonestly informed the IOP that her case at the County Court of Craigavon was dismissed when she knew this to be untrue. Further, Ms Ironfield submitted that Dr Biswas failed to inform the Centre that her professional indemnity insurance had lapsed and continued to see patients during the time when she was administratively erased. She submitted that these actions demonstrate a clear departure from the standards outlined in GMP and formed a pattern of dishonest behaviour from Dr Biswas. Ms Ironfield submitted that Dr Biswas' failure to disclose her convictions to her regulator was an aggravating factor and demonstrated that she had little insight into her misconduct.
13. Ms Ironfield submitted that a practitioner is always required to show openness in all proceedings and must be trustworthy. Dr Biswas had not been honest, open and trustworthy throughout these proceedings. She submitted that there is no evidence before the Tribunal to suggest any insight or remediation on the

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part of Dr Biswas that may suggest that her various and wide ranging types of misconduct have been mitigated.

14. Ms Ironfield submitted that the Tribunal has evidence in relation to XXX as of October 2016, however there is no evidence to suggest XXX since that time.

15. Ms Ironfield made an application to the Tribunal to consider drawing an adverse inference from Dr Biswas' non-compliance with the Tribunal's direction that she was to undertake XXX.

16. Ms Ironfield submitted that Dr Biswas' misconduct was both serious and wide-ranging and affected both her patients and her colleagues. Ms Ironfield submitted that, in relation to the Allegation, there has been no admission by Dr Biswas, or apology or expression of regret. Ms Ironfield submitted that this demonstrates that Dr Biswas lacks insight, presents a clear risk to patients and that she has brought the medical profession into disrepute.

Background to Impairment Determination

17. Prior to considering the question of Dr Biswas' impairment, the Tribunal has given very careful consideration to its approach and ability to deal fairly with the issue of impairment in this case. It has reviewed and borne in mind its earlier determinations XXX.

XXX

The Relevant Legal Principles

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

35. In approaching its decision, the Tribunal was mindful of the two stage process to be adopted: first whether the Facts as found proved amount to misconduct which is sufficiently serious to call the doctor's fitness to practise into question. If so it must then consider whether the doctor's fitness to practice is currently impaired by reason of misconduct.

36. The Tribunal has been mindful of the overarching objective of the GMC set out in section 1 of the Medical Act 1983 (as amended) to:

- a. Protect, promote and maintain the health, safety and well-being of the public,
- b. Promote and maintain public confidence in the medical profession, and

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- c. Promote and maintain proper professional standards and conduct for members of that profession.

37. In relation to the issue of what constitutes misconduct, the Tribunal was guided by the cases of *Roylance v GMC [2000] 1 AC 311* and *Nandi v GMC [2004] EWHC 2317 (Admin)*.

38. Whilst there is no statutory definition of impairment, the Tribunal is assisted by the guidance set down by Dame Janet Smith in the Fifth Shipman Report and the more recent approach in *CHRE v NMC and Paula Grant* both of which recognise that as part of the process in determining whether a doctor is fit to practise today it must take account of past actions or failures to act. In particular, the relevant considerations as to whether Dr Biswas' Fitness to Practise is impaired in the sense that she:

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

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

Has in the past breached or is liable to breach in the future one of the fundamental tenets of the medical profession...'

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

39. The Tribunal must determine whether Dr Biswas' fitness to practise is currently impaired, taking into account her conduct at the time of the events and any relevant factors such as whether the matters are remediable, have been remedied, any development of insight and the likelihood of repetition.

The Tribunal's Determination on Impairment

MISCONDUCT

40. In determining whether Dr Biswas' fitness to practise is currently impaired by reason of misconduct, the Tribunal has first of all considered whether the Facts found proved amount to misconduct by reference to the rules and standards ordinarily required to be followed by a medical practitioner in particular circumstances, and whether that misconduct is serious in that it constitutes a serious departure from those standards.

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Dishonesty

41. In relation to dishonesty, the Tribunal noted GMP (2013 edition) namely the duties of a doctor registered with the GMC, where Domain 4 '*Maintaining Trust*' states that a doctor should:

- *Be honest and open and act with integrity.*
- *Never discriminate unfairly against patients or colleagues.*
- *Never abuse your patients' trust in you or the public's trust in the profession.*

42. Further, the Tribunal had regard to Paragraph 65 of GMP which states:

'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.'

Dishonesty with the Centre

Paragraphs 1, 3 and 4 of the Allegation

43. The Tribunal found that Dr Biswas failed to obtain insurance or indemnity cover for medical work that she carried out at the Centre. Further, it found that Dr Biswas saw patients at the Centre during the time she knew or ought to have known that she was administratively erased from the GMC's list of registered General Medical Practitioners.

44. The Tribunal considered that practising without insurance or indemnity and without regulation compromised herself, the centre and her patients' safety.

45. The Tribunal was of the view that Dr Biswas' actions fell below the standards expected of a medical practitioner and breached fundamental tenets of GMP. The Tribunal concluded that Dr Biswas's actions in this relation to Paragraphs 1, 3 and 4 amounted to serious misconduct.

Paragraphs 5 and 6 of the Allegation

46. The Tribunal found that Dr Biswas dishonestly set up a taxi account for personal use in the name of another GP whilst working at the Centre. Further, it found that Dr Biswas dishonestly failed to pay the taxi account in full.

47. The Tribunal considered that her actions in this regard were deliberate and calculated in that she set up an account without a colleague's knowledge or consent. It noted that Dr Biswas was given an opportunity to address her dishonesty but that she did not act upon it. Further, the Tribunal was of the view that her dishonest actions by obtaining by deception were for personal financial gain.

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48. The Tribunal was of the view that Dr Biswas' dishonest actions fell far below the standards expected of a medical practitioner, and breached fundamental tenets of GMP. Furthermore, it was of the view that these dishonest actions brought not only herself, but also the Centre into disrepute. The Tribunal concluded that Dr Biswas's actions in relation to Paragraphs 5 and 6 amounted to serious misconduct.

Paragraphs 8, 9 and 10 of the Allegation

49. The Tribunal found that Dr Biswas emailed the Centre on various occasions making false representation. XXX She also stated that police investigations related to an allegation made by her against another.

50. The Tribunal considered that her dishonesty in these instances was deliberate, calculated and sustained over a period of time rather than in the heat of the moment. Further, Dr Biswas' actions had an impact on her colleagues as last minute work cover had to be arranged due to the short notice absences.

51. The Tribunal was of the view that Dr Biswas' dishonest actions fell far below the standards expected of a medical practitioner, breached fundamental tenets of GMP and brought the profession into disrepute. The Tribunal concluded that Dr Biswas's actions in this relation to Paragraphs 8, 9 and 10, amounted to serious misconduct.

Paragraphs 19 and 23(a) and (b) of the Allegation

52. The Tribunal found that some statements made in emails to the Centre regarding regulatory hearings were untrue.

53. The Tribunal was of the view that Dr Biswas' dishonest actions were deliberate, calculated and sustained over a period of time and fell far below the standards expected of a medical practitioner, breached fundamental tenets of GMP and brought the profession into disrepute. The Tribunal concluded that Dr Biswas's actions in this relation to Paragraphs 19 and 23(a) and (b) of the Allegation amounted to serious misconduct.

Dishonesty towards the regulator

Paragraphs 14 and 16 of the Allegation

54. The Tribunal found that Dr Biswas gave false evidence to the IOP in relation to her interaction with Patient B and in relation to the taxi account.

55. The Tribunal considered that by Dr Biswas giving false statements to a regulatory body fell seriously below the standards expected of a medical practitioner.

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The Tribunal was of the view that fellow medical practitioners would regard Dr Biswas' conduct, in this regard, as deplorable.

56. The Tribunal concluded that Dr Biswas's actions in this relation to Paragraphs 14 and 16 of the Allegation amounted to serious misconduct.

Patient B

Paragraphs 12, and 13(a)(b)(c)

57. The Tribunal considered that Dr Biswas' failure to maintain professional boundaries with a vulnerable patient was wholly unprofessional. It was of the view that developing a close personal relationship with a vulnerable patient and the breach of confidence of other patients fell far below the standard expected of a medical practitioner. Further, the Tribunal was concerned that Dr Biswas exposed a vulnerable patient to additional risks in that she involved the patient in her own dramatic personal life events. It was of the view that Dr Biswas' actions were manipulative and for her own emotional and financial gain.

58. The Tribunal was of the view that Dr Biswas' actions would be considered deplorable by fellow practitioners. Further, the Tribunal determined that Dr Biswas' actions breached the fundamental tenets of the profession.

59. The Tribunal concluded that Dr Biswas's actions in this relation to Paragraphs 12 and 13(a)(b)(c) of the Allegation amounted to serious misconduct.

Clinical Care

60. The Tribunal was mindful of the standards set out in GMP, specifically in the domain of *Knowledge, Skills and Performance* where it states that a doctor should *'Provide a good standard of practice and care'*.

Paragraph 7 and 26 of the Allegation

61. The Tribunal found that Dr Biswas failed to make numerous patient referrals in a period of approximately one month at the Centre. Further, it found that at the Practice, Dr Biswas failed to review lab links and action post.

62. In relation to Dr Biswas' failure to make patient referrals, The Tribunal noted in Dr H's report, he states:

'Any doctor can forget to do the occasional referral, but 24 in 1 month is seriously below the standard expected of a reasonably competent ST3 GP registrar.'

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The Tribunal noted Dr H's statements that this failure put patients at risk of harm.

63. The Tribunal noted that Dr A spent a considerable period of time addressing Dr Biswas' failure to make the patient referrals. Furthermore, the Tribunal considered that Dr Biswas' failure to review lab links and action post at the Practice fell below the standards of good patient care.

64. The Tribunal concluded that Dr Biswas' poor clinical care as detailed in Paragraph 7 and 26(a) and (b) of the Allegation amounted to serious misconduct and fell far below the standards of GMP and breached the fundamental tenets of the profession.

The Tribunal's Decision

65. The Tribunal found a large number of instances where Dr Biswas' practice fell far below the standards that would be expected of a medical practitioner, namely in:

- Her calculated and persistent dishonesty;
- Her conduct with regards to a vulnerable patient (Patient B);
- Her poor clinical care towards a number of patients, impacting on patient safety and colleagues.

66. The Tribunal determined that Dr Biswas' conduct was of a morally culpable nature which brings the profession into disrepute. The Tribunal considered that this is misconduct which is serious.

67. The Tribunal went onto consider as a result of this whether Dr Biswas' fitness to practise is currently impaired by reason of misconduct.

68. The issue of impairment by misconduct is one for the Tribunal to determine exercising its own judgement. The Tribunal has taken into account the public interest, which includes the need to protect patients and the public, to maintain public confidence in the profession, and to declare and uphold proper standards of conduct and behaviour.

69. The Tribunal considered that the level and extent of Dr Biswas' dishonesty is so extreme, wide-ranging in time and scope and is aggravated by her behaviour towards a vulnerable patient, who she exploited for her own ends. The Tribunal determined that Dr Biswas demonstrated a pattern of behaviour over a long period of time which would be regarded as deplorable and reprehensible by any standards.

70. The Tribunal has been provided with no evidence of Dr Biswas' current insight, or that she has understood the gravity of her misconduct. Further, it has not been provided with evidence of any mitigation or remediation by Dr Biswas.

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71. The Tribunal concluded that Dr Biswas breached the following sections of domain 4 of GMP: she was dishonest and did not act with integrity; and abused her patients' trust in her and the public's trust in the profession. Further, her conduct violates all three limbs of the over-arching objective.

72. The Tribunal therefore determined that Dr Biswas' fitness to practise is currently impaired by reason of her misconduct.

CONVICTION AND FINDING OF GUILT

73. The Tribunal next considered if Dr Biswas' fitness to practice is currently impaired by reason of her conviction. The issue of impairment by conviction is one for the Tribunal to determine exercising its own judgement. The Tribunal has taken into account the public interest, which includes the need to protect patients and the public, to maintain public confidence in the profession, and to declare and uphold proper standards of conduct and behaviour.

74. The Tribunal found that Dr Biswas, on 14 May 2014, was convicted in the County Court Division of Craigavon for assaulting and resisting a constable in the execution of her duty, and was sentenced to a fine of £150.00 and £75.00. Further, it found that Dr Biswas did not declare her convictions to the GMC or an IOP.

75. The Tribunal also considered the finding of guilt against Dr Biswas, on 12 May 2014, at the County Court Division of Fermanagh. It noted she was guilty of knowing payment on the spot was required from her, namely for a room and telephone bill, dishonestly made off without having paid as required or expected and with intent to avoid payment and receiving a conditional discharge for one year. The Tribunal considered such dishonesty to be misconduct that was serious.

76. The Tribunal was of the view that the above is evidence of behaviour that is not compatible with the standards of behaviour expected of a doctor.

77. The Tribunal concluded that Dr Biswas' extraordinarily reprehensible behaviours would have been regarded as deplorable by fellow medical practitioners and brought the medical profession into disrepute.

78. The Tribunal therefore determined that Dr Biswas' fitness to practise is currently impaired by reason of her conviction and her finding of guilt.

XXX

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Determination on Sanction - 15/06/2018

1. Having determined that Dr Biswas' fitness to practise is impaired by reason of misconduct, conviction XXX, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

The Evidence

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

Submissions

3. On behalf of the GMC, Ms Ironfield submitted that the appropriate sanction was that of erasure. She referred the Tribunal to the relevant paragraphs of the Sanctions Guidance (May 2017) ('the SG') which she submitted applied in this case.

4. Ms Ironfield submitted that this case was characterised by a consistent lack of insight and that when Dr Biswas had been given the opportunity to demonstrate insight, she did not do so. Ms Ironfield submitted that the Tribunal should consider whether a sanction was necessary, in the light of Dr Biswas' misconduct, in order to protect the public.

5. Ms Ironfield submitted that imposing no sanction would be wholly inappropriate and that the question of undertakings did not arise as they had not been offered.

6. Ms Ironfield submitted that conditions were not appropriate as Dr Biswas' probity remains an issue. She submitted that whilst aspects of the case could be addressed by imposing conditions of supervision or retraining on Dr Biswas' registration, these would not address the persistent and serious nature of Dr Biswas' misconduct and dishonesty.

7. Ms Ironfield submitted that a period of suspension would also not be appropriate in this case. XXX Ms Ironfield submitted that Dr Biswas has embarked upon a course of conduct to frustrate the hearing process. Further, that the dishonesty and serious misconduct that the Tribunal has found undermines public trust in the medical profession. Ms Ironfield reminded the Tribunal that dishonesty when persistent or covered up was likely to result in erasure.

8. Ms Ironfield submitted that erasure was the appropriate and proportionate sanction in this case. She submitted that the misconduct was significant, serious and wide-ranging, involving taking advantage of a vulnerable patient and providing inadequate care. Further, the dishonesty found was so wide-ranging in time and scope that it was unlikely to be remediated. Ms Ironfield submitted that there had been numerous breaches of GMP and the fundamental tenets of practice and that her behaviour was fundamentally incompatible with being a doctor.

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The Tribunal’s Determination on Sanction

9. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgement. In reaching its decision, the tribunal has taken account of the SG and the statutory overarching objective, which includes protecting and promoting the health, safety and wellbeing of the public, promoting and maintaining public confidence in the profession, and promoting and maintaining proper professional standards and conduct.

10. The Tribunal reminded itself that the main reason for imposing sanctions is to protect the public and that sanctions are not imposed to punish or discipline doctors, but that they may have a punitive effect. Throughout its deliberations, the tribunal has applied the principle of proportionality, balancing the interests of Dr Biswas with the public interest.

11. The Tribunal has already set out its decisions on the facts and impairment and it took those determinations into account during its deliberations on sanction. It accepted the advice of the Legal Assessor, which is now a matter of record.

12. The Tribunal first considered the aggravating and mitigating factors in this case and then moved on to consider each sanction in ascending order of severity, starting with the least restrictive.

Aggravating and Mitigating Factors

13. From the outset of the hearing, the Tribunal has looked carefully for mitigating factors. It noted that Dr Biswas has no previous finding of impairment and in her position as a trainee doctor, there have been periods of time when her performance has been said to be satisfactory. XXX Further, it noted that she has intermittently engaged with the regulatory proceedings. Finally, it noted that there has now been some lapse in time since the events occurred. However, these factors did not mitigate Dr Biswas’ widespread and repeated dishonesty; could not excuse her convictions, and nor did they, in any way, mitigate her reprehensible abuse of her position of trust in relation to Patient B.

14. Further, the Tribunal noted that she demonstrated a continued lack of insight and despite being given the opportunity to XXX had refused to do so. It noted that she had consistently attempted to cover her behaviour up and had shown no sign of remediation.

No Action

15. In coming to its decision as to the appropriate sanction, if any, to impose, the Tribunal first considered whether to conclude Dr Biswas’ case by taking no action.

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16. The Tribunal concluded that in view of the nature and gravity of its findings, to take no action on Dr Biswas' registration would be wholly inappropriate. It noted that there are no exceptional circumstances in this case to warrant taking no action. The Tribunal concluded that taking no action would not reflect the findings of facts as this would not send an appropriate message to Dr Biswas or meet the over-arching objective.

Conditions

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

18. The Tribunal noted in its findings on impairment, that Dr Biswas' dishonesty was '*extreme*' and '*wide-ranging in time and scope*'. It determined that its findings were so serious that a sanction of conditions would not adequately protect the public. Further, due to the nature of the facts found proved, it determined it would not be possible to formulate conditions which would be workable, measurable or appropriate. In view of this, the Tribunal determined that the imposition of conditions could not adequately address Dr Biswas' impairment.

Suspension

19. The Tribunal went on to consider whether imposing a period of suspension would be a sufficient sanction in this case.

20. The Tribunal had regard to paragraph 91 of the SG, which states:

'91. Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor...'

The Tribunal acknowledged that suspension would have a deterrent effect, and could be used to signify to the medical profession and the general public that Dr Biswas' conduct was unbefitting a registered doctor. However, it considered whether or not it would have sufficient effect.

21. The Tribunal next had regard to 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 noted that throughout the proceedings Dr Biswas has not acknowledged fault or apologised for her actions. Dr Biswas' dishonesty was ubiquitous. She failed to obtain insurance or indemnity cover for the medical work

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she was conducting at the Centre demonstrating dishonesty towards her employer and her patients. Dr Biswas was also dishonest with her regulator, giving false information in relation to her interaction with Patient B and in relation to the taxi account. Further, she was dishonest XXX. In view of this persistent dishonesty, sustained over such a long period of time, the Tribunal could not be satisfied that Dr Biswas was unlikely to repeat the behaviour.

22. The Tribunal noted paragraph 92 of the SG:

'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...'

The Tribunal considered whether Dr Biswas' behaviour was fundamentally incompatible with continued registration. It noted that it had determined that her conduct was *'deplorable, reprehensible'* and as *'amounting to a gross violation of the standards of behaviour expected of a medical professional'*. Further, the Tribunal determined that Dr Biswas' misconduct was such that she was a risk to her patients, as detailed below.

Erasure

23. The Tribunal therefore determined that erasure is the necessary and proportionate response in Dr Biswas' case. It considered her actions to be a particularly serious departure from GMP and determined that erasure would be the only measure which would maintain public confidence in the medical profession.

24. The Tribunal had regard in particular to paragraph 124 of the SG:

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

The Tribunal noted that whilst there was no evidence that harm had actually come to Dr Biswas' patients arising from the clinical failures that had been found proved they were nevertheless exposed to the risk of harm. It found that she demonstrated a flagrant disregard to her duty of care in her failure to maintain professional boundaries with Patient B, a vulnerable patient. Further, she had abused her position and exploited this patient for her personal financial and emotional gain. The Tribunal

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had no evidence before it of insight into her behaviour or an attempt to remediate. As such, the Tribunal determined that Dr Biswas remains a risk to patients.

25. Finally, the tribunal had regard to paragraph 128 of the SG:

'128. Dishonesty, if persistent and/or covered up, is likely to result in erasure'

The Tribunal found that that Dr Biswas' multifaceted dishonesty was a consistent theme in different areas of her life. The Tribunal reminded itself of its findings of dishonesty towards her colleagues and patients. Further, it noted that she had attempted to conceal her dishonesty by lying to her regulator in the course of an IOP. The Tribunal determined that public confidence would be utterly undermined by allowing her to continue to practise and that the profession would be brought into disrepute if the most serious sanction was not imposed.

26. Accordingly, the Tribunal has determined Dr Biswas' conduct was so egregious that it is fundamentally incompatible with continued registration. Therefore, the Tribunal has concluded that erasing her name from the Medical Register would be the only proportionate sanction to impose in order to serve the public interest and maintain public confidence in the medical profession.

Determination on Immediate Order - 15/06/2018

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

Submissions

2. On behalf of the GMC, Ms Ironfield submitted that Dr Biswas' conduct was extremely serious and presented risks to patient safety. She submitted that Dr Biswas had been found to be impaired by reason of her misconduct, conviction XXX. She submitted that elements of her conduct were an attempt to frustrate the process and that the Tribunal had found her conduct to be reprehensible, deplorable and below standards of behaviour expected of a medical practitioner.

3. Ms Ironfield submitted that Dr Biswas' behaviour was incompatible with continued registration as risks to patients have been identified. Further, the Tribunal had no current information about XXX or remediation. Ms Ironfield submitted an immediate order was necessary to protect the public.

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The Tribunal's Determination

4. 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.

5. The Tribunal determined that in the light of the nature and gravity of its findings, it would be inconsistent if an immediate order of suspension were not made in this case. It noted that it had found that Dr Biswas remains a risk to patients. The Tribunal determined that an immediate order would prevent putting patients at risk and was necessary in order to protect members of the public and to otherwise protect the public interest. Therefore, the Tribunal has determined that an immediate order of suspension is appropriate in this case.

6. This means that Dr Biswas' 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 Biswas, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

7. The interim order currently imposed on Dr Biswas' registration will be revoked when the immediate order takes effect.

8. That concludes Dr Biswas' case.

Confirmed

Date 15 June 2018

Dr Janet Nicholls, Chair

Record of Determinations – Medical Practitioners Tribunal

Schedule 1

Patient 1	20 August 2013
Patient 3	20 August 2013
Patient 4	20 August 2013
Patient 5	15 August 2013
Patient 6	16 August 2013
Patient 7	19 August 2013
Patient 8	19 August 2013
Patient 9	19 August 2013
Patient 10	8 August 2013
Patient 11	12 August 2013
Patient 12	12 August 2013
Patient 13	13 August 2013
Patient 14	13 August 2013
Patient 15	22 July 2013
Patient 15	1 August 2013
Patient 16	1 August 2013
Patient 18	7 August 2013
Patient 19	8 August 2013
Patient 20	8 August 2013
Patient 21	8 August 2013
Patient 22	29 July 2013
Patient 23	29 July 2013

Schedule 2

“XXX.”

Schedule 3

“XXX”

Schedule 4

“Yes I am aware of the situation. As I have informed the surgery earlier Surrey police is investigating my assault case with XXX. This case has reopened and I need to go for an interview.”

Record of Determinations – Medical Practitioners Tribunal

Schedule 5

- a. 'I have to return to GMC today for the morning for the XXX (Arranged by GMC in the past). Yesterday went well. But the final meeting is on 2nd of April. I will be taking the train back from Manchester straight after. But not sure what time in the morning the update finishes;'
- b. 'XXX just presented. Waiting for the panel to get back. There is one more case after me. I have just spoken to my indemnity team and we are not sure if it can be after lunch time...As you can understand I was not aware that GMC panel would do 2 separate reviews.'

Schedule 6

"They are holding the meeting tomorrow as they want me to be represented. I came to know late on Thursday. Am serving the representation paperwork this am to GMC and will be travelling back."

Schedule 7

"I am Manchester for review of my GMC conditions, and thereby on leave. Kindly note as I will not know the outcome till later on tomorrow evening..."

Schedule 8

"I had my GMC review last Wednesday. The outcome is today."