Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 02/07/2018 - 09/07/2018

Medical Practitioner's name: Dr Shahriyar Khan

GMC reference number: 6161951

Primary medical qualification: MB BS 1988 University of Peshawar, Khyber Medical College

Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome
Suspension, 3 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Robin Ince
Lay Tribunal Member:	Ms April Marland
Medical Tribunal Member:	Mr Robert Mansel

Tribunal Clerk:	Mr Edward Kelly

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Jason MacAdam, Counsel, instructed by Robert Nelson LLP
GMC Representative:	Ms Shirlie Duckworth, Counsel

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

Overarching Objective

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

Determination on Facts – 06/07/2018

1. This determination includes mention of the health conditions of members of Dr Khan's family as these are relevant to the Tribunal's consideration of the Allegation. As these details could lead to the identification of individuals and their related health conditions, this determination will be announced in private. A redacted version of the determination will be published with any details which could lead to the identification of individuals via their specific relationship with Dr Khan removed.

Background

2. Dr Khan qualified at the University of Peshawar in Pakistan in 1988 where he practised before moving to Ireland in 1997. Prior to the events which are the subject of the hearing Dr Khan obtained GMC registration in 2007 and at the time of the events giving rise to the charges he was practising in various locum positions in Emergency Medicine principally in the North West of England and also in Wales (for a period of six months).

3. It is alleged that, between the dates of 3 March 2014 and 28 March 2016, Dr Khan inappropriately prescribed medications to three members of his family, XXX, identified in the Allegation and in this determination as Patient A, XXX, identified as Patient B and XXX, identified as Patient C. It is also alleged that Dr Khan dishonestly informed the pharmacist at Boots Pharmacy in Lancaster ('Boots Pharmacy') that the General Practitioner ('GP') to Patient B was aware of the private prescriptions written by Dr Khan for Patient B.

4. The initial concerns were raised with the GMC on 18 April 2016 by Mr D, Store Pharmacist at Boots Pharmacy in Lancaster. Mr D informed the GMC that Dr Khan had repeatedly presented him with hand written prescriptions for family members for different types of medication including XXX from December 2015 onwards.

5. An internal report was filed to Boots Pharmacy highlighting Mr D's concerns regarding Dr Khan. Following discussions with Dr G, Patient B's GP, Mr D visited Dalton Square Pharmacy ('Dalton Square') and established further private prescriptions had been submitted for Patient B and Patient A.

Mr D emailed the GMC on 18 April 2016 providing a statement detailing his concerns, such leading to a GMC investigation.

The Outcome of Applications Made during the Facts Stage

6. The Tribunal granted the GMC's application, made pursuant to Rule 17 (6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that, paragraphs 2, 3 and 9 of the Allegation be amended, as set out below. Mr MacAdam had no objection to this. The Tribunal considered that the amendments were necessary to correct typographical errors in the Allegation and could be made without any injustice.

7. The Tribunal granted Mr MacAdam's application, made pursuant to Rule 17 (2)g of the Rules, that paragraphs 7, 8 and paragraph 9 in relation to paragraph 7, of the Allegation be withdrawn as there was no case to answer in respect of them. The Tribunal's determination can be found in Annex A.

The Allegation and the Doctor's Response

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

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

1. You inappropriately prescribed medications for Patient A, on one or more occasions as set out in Schedule 1, in that Patient A was a family member. **Admitted and Found Proved**

2. In December 2015, you inappropriately presented a private prescription for Patient ~~A~~ B as set out in Schedule 2, in that Patient ~~A~~ B was a family member. **Admitted and Found Proved**

3. You inappropriately prescribed medications for Patient B, on one or more occasions as set out in Schedule 3, in that:

    a. Patient B was a family member; **Admitted and Found Proved**

    b. XXX was prescribed for longer than the recommended duration of 28 days. **Admitted and Found Proved**

4. You inappropriately prescribed medications for Patient C, as set out in Schedule 4 in that Patient C was a family member. **Admitted and Found Proved**

5. You inappropriately prescribed medications which were intended for use by Patient B on one or more occasions as set out in Schedule 5, in the name of Patient A when:

    a. you knew the prescriptions were not intended for use by Patient A; **Admitted and Found Proved**

    b. the medications prescribed were not clinically indicated for Patient A. **Admitted and Found Proved**

6. You failed to make a record and/or inform the patients' General Practitioners of the prescriptions referred to at paragraphs 1 to 4 above. **Admitted and Found Proved**

7. ~~On 25 March 2016, you presented a private prescription to Boots the Pharmacy, Lancaster and informed Mr D that the General Practitioner to Patient B was aware of the private prescriptions you had written for Patient B.~~ **Deleted following application under rule 17(2)g**

8. ~~Your comments as described at paragraph 7 were known by you to be untrue.~~ **Deleted following application under rule 17(2)g**

9. Your actions as described at paragraphs ~~4,~~ 5, 6 and ~~7~~ were dishonest. **Deleted in relation to paragraph 4**
Admitted in relation to paragraph 5, and Found Proved.
To be determined in relation to paragraph 6
No case to answer in relation to paragraph 7 and 8 following application under rule 17(2)g

The Admitted Facts

9. At the outset of these proceedings, through his counsel, Mr MacAdam, Dr Khan made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

10. In light of Dr Khan's response to the Allegation made against him, the Tribunal is required to determine whether the conduct of Dr Khan found proved was dishonest in relation to failing to record and inform GPs of prescribing to family members as alleged in paragraph 6.

Factual Witness Evidence

11. The Tribunal received oral and statement evidence on behalf of the GMC from the following witnesses:

- Mr D, Store Pharmacist, Boots referred to as Mr D in the Allegation; and
- Dr F, GP, at Lancaster Medical Practice.

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

- Dr G, GP at King Street & University Medical Practice, witness statement dated 13 October 2016; and
- Ms H, Pharmacy Manager at Dalton Square Pharmacy, witness statement dated 14 November 2016.

13. Dr Khan provided his own witness statement, dated 1 June 2018 and also gave oral evidence at the hearing. The Tribunal also received evidence from Patient A given on behalf of Dr Khan, in the form of a written statement dated 13 June 2018. Patient A also gave oral evidence at the hearing.

Expert Witness Evidence

14. The Tribunal also received a report from the GMC expert witness, Mr E, Consultant Surgeon in Emergency Medicine in evidence, dated 12 September 2017. Mr MacAdam confirmed the report was agreed.

Documentary Evidence

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

- various email correspondence involving Mr D concerning the incident on 25 March 2016, dated 29 March 2016 – 18 April 2016;
- prescriptions and drug history for Patient A from Boots Pharmacy and Dalton Square Pharmacy, dated 3 March 2014 – 28 March 2016;
- relevant extracts from the GP records of Patient A;
- GP records and Prescriptions and drug history for Patient B from Boots Pharmacy and Dalton Square Pharmacy, dated 7 September 2014 – 25 March 2016;
- patient drug history for Patient C from Boots Pharmacy, from 15 December 2014;
- testimonials written on behalf of Dr Khan; and
- letter correspondence between Dr Khan's legal representatives and the GMC, dated 10 April 2017 and 27 November 2017.

The Tribunal's Approach

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

17. The Tribunal heard submissions from the GMC that it does not dispute that Dr Khan's overwhelming motivation was to help his family. However, the GMC maintained that Dr Khan had deliberately failed to record and to report to his family's GPs that he had issued prescriptions for Patients A, B and C because he had written those prescriptions out of convenience and not out of necessity. It alleged that Dr Khan failed to follow Good Medical Practice because, if the GPs discovered what he was doing then they would likely have questioned his actions, which could have led to a referral to the GMC and to him being prevented from writing such prescriptions. This amounted to a dishonest motive. It also argued that it was not plausible (and therefore did not amount to an innocent explanation) that Dr Khan had not once, in the two year period, thought about whether his prescribing for family members was in breach of Good Medical Practice ('GMP'). In particular, the GMC suggested that it was not plausible that, upon being challenged by Mr D in December 2015 as to whether what Dr Khan was doing was ethical, Dr Khan was not then reminded about his obligations.

18. The Tribunal also notes paragraphs 17–19 of Good Practice in Prescribing and Managing Medicine and Devices (the guidance) which state:

> '*Prescribing for yourself or those close to you*
>
> *17. Wherever possible you must avoid prescribing for yourself or anyone with whom you have a close personal relationship.*
>
> *18. Controlled medicines present particular dangers, occasionally associated with drug misuse, addiction and misconduct. You must not prescribe a controlled medicine for yourself or someone close to you unless:*
>
> *a. no other person with the legal right to prescribe is available to assess and prescribe without a delay which would put your, or the patient's, life or health at risk or cause unacceptable pain or distress, and*
>
> *b. the treatment is immediately necessary to:*
>
> *i. save a life*

ii. avoid serious deterioration in health, or
iii. alleviate otherwise uncontrollable pain or distress.

19. If you prescribe for yourself or someone close to you, you must:

a. make a clear record at the same time or as soon as possible afterwards. The record should include your relationship to the patient (where relevant) and the reason it was necessary for you to prescribe.

b. tell your own or the patient's general practitioner (and others treating you or the patient, where relevant) what medicines you have prescribed and any other information necessary for continuing care, unless (in the case of prescribing for somebody close to you) they object.'

19. The Legally Qualified Chair reminded the Tribunal that when considering matters of dishonesty, the Tribunal must take in to account the principles in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67*. It bore in mind that it should first ascertain, subjectively, the actual state of Dr Khan's knowledge or belief as to the facts and should then decide whether his conduct was dishonest by applying the objective standards of ordinary decent people.

20. In the Legally Qualified Chair's advice to the Tribunal, he stated that a simpler approach to ascertaining whether Dr Khan had been dishonest might be summarised in 3 questions, namely (1) "What did the Doctor do?"; (2) "Why did he do it?" and (3) "Was what he did honest or dishonest by the objective standards of ordinary decent people?" When considering the question at (2) the Tribunal would be entitled to consider whether there was an innocent or negligent explanation for Dr Khan's actions and whether there was the necessary dishonest intent.

21. The Legally Qualified Chair also reminded the Tribunal that Dr Khan had made admissions to most of the Allegation at the outset of the GMC investigation and that he brought the facts of paragraph 5 of the Allegation to the attention of the GMC. The Tribunal was therefore entitled to consider whether these were the actions of a person who was trying to hide something. In addition the Tribunal needs to establish whether there was an intention to be dishonest or whether to accept Dr Khan's account as an innocent explanation for his actions, such being that, due to considerable stress and extreme circumstances, it did not occur to him to record or to advise Patient A, B or C's GPs that he was privately prescribing to them.

22. Finally, the Legally Qualified Chair advised that it was not appropriate to consider a Good Character direction in this case because Dr Khan had admitted dishonesty.

23. The Tribunal accepted his advice.

The Tribunal's Analysis of the Evidence and Findings

24. The Tribunal has evaluated the evidence in order to make its findings on the facts.

Witnesses

Dr Khan

25. The Tribunal found Dr Khan to be a credible witness who attempted to assist it to the best of his ability. It considered that he was open and transparent and was not attempting to hide inappropriate conduct on his part. The Tribunal found that Dr Khan's explanation that it did not occur to him to report his private prescription activities to Patient A, B or C's GPs and that this was due to considerable stress and strain, much less to hide his actions, to be plausible.

Patient A

26. The Tribunal found XXX Patient A XXX to be a straightforward and credible witness who did her best to assist the Tribunal. For example she was very clear in her evidence when asked whether Dr Khan told her not to inform her GP regarding private prescriptions at the time of events, immediately and credibly answering that he had not. In addition the Tribunal found her to be candid in, for instance, accepting that there were times when she had been able to go to her GP for advice and treatment. She qualified this by saying that she had not been able to visit her GP as frequently as Ms Duckworth had suggested was possible over the whole two year period because the stresses upon her varied. However, usually "it was not a normal situation".

27. The Tribunal accepted Patient A's evidence that she was suffering from considerable hardship in relation to both her own health and family commitments at the time of the events. XXX This placed significant strain on Patient A, who had to XXX and regularly care for XXX Patient B, alone. The Tribunal heard evidence from both Patient A and Dr Khan that Patient B suffers from multiple health conditions XXX and requires substantial and almost constant care and attention. XXX

The Tribunal's Findings

28. The Tribunal adopted the three step approach outlined by the Legally Qualified Chair in the Tribunal's Approach section above.

(1) What did Dr Khan do?

29. Dr Khan and Patient A gave evidence that he prescribed medication to Patients A, B and C in difficult circumstances without active knowledge of the guidance requiring the recording and reporting of such prescriptions. The Tribunal observed that Mr E, the GMC expert, stated in his report to the Tribunal that the treatment prescribed to each of the patients was clinically indicated. He observed that the patients wanted to be treated, that Dr Khan was adequately qualified to make the prescriptions, and that he was paying for the prescriptions himself. His opinion was that Dr Khan made appropriate assessments of each patient and sought to act in their best interests.

30. There is no evidence before the Tribunal that there is any question regarding the clinical indication for the prescribing nor any evidence of actual patient harm as a result of Dr Khan's actions, which appeared be borne out of genuine concern for Patients A, B and C.

(2) Why did Dr Khan do it?

31. The Tribunal noted and accepted that Dr Khan felt a significant familial obligation which weighed very heavily upon him, particularly in caring for XXX Patient B, XXX. Further, the Tribunal placed weight on the evidence of Patient A that she put pressure on Dr Khan to reduce the stress caused by her own and Patient B's health issues XXX. It heard that the medication prescribed for her (XXX, a pain killer) helped her better than pain killers she was able to obtain "over the counter" or which had been prescribed by her GP. Moreover, she said that the medication prescribed for Patient B (for instance XXX which assisted Patient B to sleep and which had first been prescribed for Patient B by a consultant in Canada) helped Patient A to care for Patient B who suffered from debilitating health conditions.

32. The Tribunal observed that the quantities of medication prescribed were consistent with the explanations provided by Dr Khan and Patient A. The Tribunal found it a realistic expectation that a patient would wish to 'stock up' on prescription medication (for instance XXX, which was not available in Pakistan) if they are going abroad for an extended period. Patient A gave evidence that she was frustrated with the pace of her NHS treatment and that she was often waiting a long time, including four-five months to see XXX. She gave evidence that this specialist would not prescribe her any medication and that she had asked Dr Khan to prescribe for her in the interim. Patient A additionally gave evidence that she had asked Dr F for medication because she was going away to Pakistan for six weeks, but Dr F would only prescribe two weeks' worth of medication.

33. With regards to Patient C, the Tribunal noted that Dr Khan prescribed on a single occasion in a situation which was characterised by a need to act urgently to address feverish symptoms.

Explanations for Dr Khan's actions

34. The Tribunal noted that Dr Khan presented the prescriptions himself on multiple occasions, usually at Boots Pharmacy and with full details to identify himself as the prescribing doctor on the prescription. He did not hesitate to advise the pharmacist that the prescriptions were for XXX when challenged. The Tribunal considered that these were not the actions of a doctor who was attempting to hide their activities. Moreover, the Tribunal found that Dr Khan had taken no active steps to conceal his actions and had been open and transparent when challenged by Mr D at Boots Pharmacy.

35. The Tribunal heard evidence from Dr Khan that, in the period 2014-2016, he was studying for his medical exams to practise in the UK, working at different locations in the North West of England and travelling to both Pakistan (where Patient B usually lived) and Canada (where XXX usually lived) to fulfil family obligations, in addition to attempting to manage his own family responsibilities. Dr Khan advised that he did not remember the details of the guidance, which he had read in 2014 as part of his revision for exams. As a result of not recalling this document, he accepted that his responsibility to inform a patient's GP of prescriptions he made was not present in his mind. The challenge by Mr D in December 2015 had not caused him to recall that guidance. The Tribunal notes that Mr D also told Dr Khan on that occasion that what he was doing not illegal and that Mr D subsequently issued medication to Dr Khan for Patient B on 23 January 2016 and again on 25 March 2016. The Tribunal is therefore not persuaded that Mr D's comments in December 2015, taken in the round, were likely to act as a sufficient reminder of the guidance.

36. The Tribunal heard, and accepted, that in Pakistan it was common practice for a doctor to privately prescribe to family members without the requirement to document and report this to the patient's GP, which is the practice in the UK. The Tribunal also noted that it was culturally expected by families that family members who are doctors will prescribe to them.

37. Further, the Tribunal acknowledged that at the time that Dr Khan worked in Emergency Medicine, prescriptions are automatically generated by hospitals and details sent to patients' GPs. Dr Khan was not personally required to inform the GP of every patient he prescribed to, as hospital systems would automatically facilitate this action.

38. The Tribunal accepted the evidence of Dr Khan that, due to the significant stress at the time, XXX providing for his whole family, and working in many different locations around the North West of England and in Wales, he was not thinking entirely clearly and that he did not consider that what he was doing was wrong.

39. The Tribunal found it significant that Dr Khan volunteered the information to the GMC that he inappropriately prescribed medication to Patient A that was intended for use by Patient B in that he knew that medications were not intended or clinically indicated for Patient A. The Tribunal noted that the GMC would not otherwise have known about this. It was of the view that such openness in reporting his inappropriate actions was not that of an individual with the propensity to resort to dishonesty as a default position.

40. The Tribunal also considered that, had Dr Khan's domestic and work situations been less extreme at this time, he may have thought more clearly and he may have followed better practice in regard to prescribing. However, it accepted the evidence of Dr Khan and Patient A, that this was not a normal situation and that his actions were consistent with his intention to aid his family.

41. The Tribunal is satisfied that Dr Khan gave an honest account in his evidence that, with so much turmoil in his life, he was distracted from following the guidance to the extent required. It accepted that Dr Khan believed that he could really help his family by prescribing to them, feeling a deep responsibility to do so, and possibly did so out of guilt in leaving Patient A to care for Patient B and deal with all other XXX responsibilities whilst coping with her own health conditions.

(3) Was what Dr Khan did honest or dishonest by the objective standards of ordinary people?

42. The Tribunal considered whether, objectively, an ordinary decent person would find Dr Khan's conduct as found by the Tribunal to be dishonest. The Tribunal accepted Dr Khan's evidence that he did not give consideration to advising Patient A, B or C's GPs of the prescriptions and was acting in an attempt to help his family in very difficult circumstances. The Tribunal therefore determined that, objectively, an ordinary decent person would not find such conduct to be dishonest.

43. The Tribunal has therefore found that Dr Khan's actions in paragraph 6 were not dishonest as alleged in paragraph 9.

The Tribunal's Overall Determination on the Facts

44. The Tribunal has determined the facts as follows:

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

1. You inappropriately prescribed medications for Patient A, on one or more occasions as set out in Schedule 1, in that Patient A was a family member. **Admitted and Found Proved**

2. In December 2015, you inappropriately presented a private prescription for Patient ~~A~~ B as set out in Schedule 2, in that Patient ~~A~~ B was a family member. **Admitted and Found Proved**

3. You inappropriately prescribed medications for Patient B, on one or more occasions as set out in Schedule 3, in that:

    a. Patient B was a family member; **Admitted and Found Proved**

    b. XXX was prescribed for longer than the recommended duration of 28 days. **Admitted and Found Proved**

4. You inappropriately prescribed medications for Patient C, as set out in Schedule 4 in that Patient C was a family member. **Admitted and Found Proved**

5. You inappropriately prescribed medications which were intended for use by Patient B on one or more occasions as set out in Schedule 5, in the name of Patient A when:

    a. you knew the prescriptions were not intended for use by Patient A; **Admitted and Found Proved**

    b. the medications prescribed were not clinically indicated for Patient A. **Admitted and Found Proved**

6. You failed to make a record and/or inform the patients' General Practitioners of the prescriptions referred to at paragraphs 1 to 4 above. **Admitted and Found Proved**

7. ~~On 25 March 2016, you presented a private prescription to Boots the Pharmacy, Lancaster and informed Mr D that the General Practitioner to Patient B was aware of the private prescriptions you had written for Patient B.~~ **Deleted following application under rule 17(2)g**

8. ~~Your comments as described at paragraph 7 were known by you to be untrue.~~ **Deleted following application under rule 17(2)g**

9. Your actions as described at paragraphs ~~4,~~ 5, 6 and ~~7~~ were dishonest. **Deleted in relation to paragraph 4**
Admitted in relation to paragraph 5, and Found Proved.
Found Not Proved in relation to paragraph 6
No case to answer in relation to paragraphs 7 and 8 following application under rule 17(2)g

Determination on Impairment – 09/07/2018

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

The Evidence

2. Dr Khan gave further oral evidence before the Tribunal at this stage.

3. The Tribunal also received in support of Dr Khan a bundle containing, but not limited to, a number of testimonials, Continuous Professional Development information and Dr Khan's most recent appraisal form, all of which it has read.

Submissions

4. The Tribunal has also had regard to the submissions made by Ms Duckworth on behalf of the GMC, and those made by Mr MacAdam on behalf of Dr Khan.

5. On behalf of the GMC, Ms Duckworth submitted that Dr Khan's fitness to practise is currently impaired by reason of his misconduct.

6. Ms Duckworth submitted that Dr Khan seriously departed from the standards set out in GMP (2013 edition) and that his dishonest conduct breached a fundamental tenet of the medical profession. She submitted that Dr Khan had admitted that his conduct, in writing private prescriptions for Patient A whilst actually intending to give the medicine to Patient B, was not only dishonest but bypassed the safeguards that GPs depend on and utilise in relation to formulating further treatment of patients.

7. She submitted that Patient B's own GP had previously refused to prescribe the quantities of medication later prescribed by Dr Khan and that therefore this carried the risk of addiction. She acknowledged that Patients A, B and C did not suffer any adverse outcomes, but that did not excuse the potentially serious implications of such inappropriate actions.

8. Ms Duckworth submitted that the inappropriate prescribing was both persistent and repeated and this represented a serious breach of GMP. She submitted that such obvious breaches of the guidance would be considered deplorable by members of the medical profession. She reminded the Tribunal that the GMC expert, Mr E, found in his report that, in his overall standard of care of Patient A and Patient B, Dr Khan fell seriously below the standards expected of a reasonably competent doctor.

9. She acknowledged that Dr Khan has a previously unblemished career. However, she submitted that if a finding of impairment were not found, it would undermine the public's confidence in the profession.

10. Ms Duckworth submitted that there is a risk to the public and that if these actions had not been brought to the attention of the GMC, they would have continued. She stressed that even when challenged by Mr D in December 2015 regarding his 'unethical' prescription practice, Dr Khan continued to prescribe to his family. She stated that the remediation efforts undertaken by Dr Khan were only prompted by the investigation into inappropriate conduct by the GMC.

11. Ms Duckworth acknowledged that Dr Khan has shown remorse, regret and remediation, but submitted that his insight into his actions and his dishonesty is not fully developed. She stated that this was clear from his oral evidence before the Tribunal. She submitted that Dr Khan did not demonstrate that he fully understood the gravity or the probity issues of his dishonesty.

12. Ms Duckworth concluded by submitting that, due to the lack of probity, the possible risk to patients, and the expert's findings on standard of care, confidence in the profession would be undermined if a finding of impairment were not made.

13. On behalf of Dr Khan, Mr MacAdam submitted Dr Khan's fitness to practise is not impaired.

14. He submitted that the GMC expert, Mr E, identified that the medicines prescribed were appropriate, there were proper assessments, Dr Khan was closely involved in the care of the patients and there was no harm caused to the patients. He reminded the Tribunal that Dr Khan gave evidence that he did not persist with writing private prescriptions since being notified of the GMC's investigation.

15. Mr MacAdam acknowledged that one paragraph of the Allegation had been admitted as dishonesty and that this was inherently serious misconduct as it fell far below the standard expected of a doctor and would be seen as deplorable by members of the medical profession. However, he urged the Tribunal to assess Dr Khan's dishonesty with caution, submitting that the Tribunal had already found that his actions were carried out during a period of extreme stress.

16. Mr MacAdam maintained that Dr Khan has gained considerable insight in to his actions, but he may not have fully articulated this to the Tribunal because of a possible language barrier.

17. He said that Dr Khan had done all he could to remediate his position, had attempted to educate himself, and had paid a particularly high personal price in that he feels he has shamed himself in the eyes of his family. Mr MacAdam submitted that a reasonably informed member of public, taking all these factors into account, may find Dr Khan's misconduct at the lower end of the spectrum. He maintained that Dr Khan now understands fully why patients need to be treated by an independent practitioner and the importance of record keeping at every stage in a patient's treatment. Mr MacAdam submitted that if a member of the public looked at the current situation, Dr Khan's conduct might not be seen as deplorable.

18. Mr MacAdam submitted that Dr Khan would never repeat his misconduct, not only having learned a valuable lesson, but having gained considerable insight from courses and by also ensuring that his family do not ask for prescriptions from him again. The situation in which Dr Khan now found himself is quite different from his previous working and family arrangements, in that Patient B cannot travel, he works close to home, Patient A knows not to ask him for medication, and all his relatives seek their healthcare needs from independent clinicians. Mr MacAdam submitted that this investigation had acted as a 'springboard' for Dr Khan to improve as a doctor and to recognise his failings. Moreover, there were no performance concerns in this case. He concluded by submitting that Dr Khan's fitness to practice is not currently impaired.

The Relevant Legal Principles

19. The Tribunal reminded itself that, as advised by the Legally Qualified Chair, at this stage of proceedings there is no burden or standard of proof and the decision on impairment is a matter for the Tribunal's professional judgement alone.

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

21. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct, which had to be conduct falling, not just short but far short of the standards expected of a doctor and then whether Dr Khan is currently impaired.

The Tribunal's Determination on Impairment

<u>Misconduct</u>

22. The Tribunal first considered whether Dr Khan's actions amount to misconduct. Misconduct can be found in circumstances where there have been serious departures from expected standards of conduct which the Tribunal has identified by reference to GMP.

23. With regard to Dr Khan's conduct, the Tribunal identified that the following paragraphs of GMP are relevant:

> *11. You must be familiar with guidelines and developments that affect your work.*
>
> *16. In providing clinical care you must:*
>
> *a. prescribe drugs or treatment, including repeat prescriptions, only when you have adequate knowledge of the*

patient's health and are satisfied that the drugs or treatment serve the patient's needs.

b. provide effective treatments based on the best available evidence.

c. take all possible steps to alleviate pain and distress whether or not a cure may be possible.

d. consult colleagues where appropriate.

e. respect the patient's right to seek a second opinion.

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

g. wherever possible, avoid providing medical care to yourself or anyone with whom you have a close personal relationship.

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

24. The Tribunal also identified that paragraphs 17 to 19 of the guidance were relevant in Dr Khan's case.

Paragraphs 1, 2, 3 & 6 of the Allegation

25. The Tribunal acknowledged that Mr E, the GMC expert, opined that Dr Khan's actions in prescribing to Patients A and B were below but not seriously below the standards expected of a reasonably competent doctor. His finding that Dr Khan's actions overall fell far below the standards expected was based on the fact that Dr Khan had been dishonest. The Tribunal noted that he concluded that the medication was clinically indicated, there was no harm to the patients and XXX was initially prescribed for Patient B by a Consultant and only continued by Dr Khan via repeat prescriptions. The Tribunal noted the concerns identified by the GMC that the quantities prescribed to Patients A and B were more than ordinarily prescribed. The Tribunal was not satisfied that this was not clinically indicated. It reminded itself that the quantities of medication prescribed correlated with expected absences of the patients from the UK. It considered that such prescribing would be reasonable to ensure a patient would not run out of medication when in need on an extended period away from the country. Consequently, by themselves, Dr Khan's actions in

relation to paragraphs 1, 2 and 3, did not, in the Tribunal's judgment, amount to a conduct falling seriously short of the standards expected.

26. The Tribunal was, however, seriously concerned with Dr Khan's repeated failures to make a record and/or inform the patients' GPs of the prescriptions for A and B. It was of the view that his actions precluded any independent oversight of these patients' care. The Tribunal was satisfied that this lack of information sharing and openness was a significant potential risk to patient safety. The Tribunal was also troubled that Dr Khan treating members of his family without reference to their GPs denied them the opportunity to fully describe symptoms which they might not have wanted a member of their family to know about. It had specific concerns regarding Dr Khan's prescribing of the drug XXX, which is a Schedule 4 controlled drug. It considered that it was essential to be open regarding prescribing of such a drug in order to provide a patient's treating GP with clear information to inform their future treatment.

27. Taking these concerns into account, the Tribunal determined that, taking paragraphs 1, 2 and 3 together with paragraph 6, Dr Khan's actions in both prescribing medications for Patients A and B, on repeated occasions, without informing their GPs or recording the prescriptions, represented a course of conduct which embodied repeated and serious departures from paragraphs 11 and 16 of GMP quoted above and from paragraphs 17 to 19 of the guidance. It was therefore satisfied that these actions constituted misconduct.

Paragraph 4

28. The Tribunal considered Dr Khan prescribing to Patient C. Patient C had a medical condition which required urgent treatment. The correct assessment was made with consent and the patient was treated accordingly. The Tribunal concluded that Dr Khan's actions in prescribing to Patient C, in these circumstances, although admitted as inappropriate, did not amount to serious misconduct. Moreover, his failure on this isolated occasion, to record the treatment or inform Patient C's GP did not amount to misconduct.

Paragraph 5

29. The Tribunal considered that dishonestly prescribing for Patient B in Patient A's name was an inherently dishonest act carried out with the aim of deceiving the pharmacist into providing medication. Although this may have been done with the best of intentions with respect to treating Patient B, it was a risk to patient safety and the Tribunal was satisfied that members of the medical profession would consider it to be deplorable behaviour. The Tribunal was therefore satisfied that such dishonest actions constituted misconduct.

Conclusion on Misconduct

30. In conclusion, the Tribunal determined that, with the exception of Dr Khan's actions with regard to treating Patient C (paragraph 4), his actions as found proved in paragraphs 1, 2, 3 and 6, taken together, and paragraph 5, amount to misconduct.

Impairment

31. Having found that the facts found proved amounted to misconduct, the Tribunal went on to consider whether, as a result of that misconduct, Dr Khan's fitness to practise is currently impaired.

32. It first considered whether Dr Khan is liable to repeat his behaviour and whether he has insight in to the seriousness of his misconduct and dishonesty.

33. The Tribunal formed the view that Dr Khan has shown some insight into the seriousness of his misconduct and understands the implications of what he has done for patients and for the profession. It has determined that the chances of Dr Khan repeating the prescribing to his family are low, that he has learned a bitter lesson and has taken steps to avoid such circumstances arising again. Patient A confirmed in her evidence that she no longer receives private prescriptions from Dr Khan, and Dr Khan confirmed that even when he was in Pakistan, he did not write any prescriptions for XXX. The Tribunal additionally determined that Dr Khan is unlikely to prescribe dishonestly again for the same reasons.

34. The Tribunal acknowledged that Dr Khan has taken responsibility for his actions and changed both his views and those of his family. It noted Dr Khan's efforts at remediation, the positive testimonials (which confirmed his candour about the GMC investigation) and that Dr Khan has provided evidence that he has taken positive steps to ensure this does not happen again. However the Tribunal has continuing concerns regarding Dr Khan's current level of insight in relation to the concept of dishonesty. Whilst Dr Khan eventually accepted that, when writing prescriptions for Patient B in Patient A's name, he lied and that this was a dishonest act, his primary insight lay in the impact his misconduct had upon himself and his family. He did not appear to have full insight into the effect his dishonest actions would have on the perception of the public and other members of the profession and the potential highly significant damage that could be done by dishonestly prescribing in the way found proved. Furthermore, the Tribunal determined that Dr Khan intentionally dishonestly prescribed in Patient A's name because he knew or suspected that he would not otherwise be able to obtain the medication for Patient B in the quantities required. This showed a particular disregard for the guidance and is both serious and significant. The Tribunal is therefore not confident that Dr Khan fully appreciates the gravity of his misconduct.

35. The Tribunal placed weight on Dr Khan's evidence regarding his understanding of his intent to deceive the pharmacist. When asked about how his actions in prescribing for Patient B in Patient A's name was dishonest, Dr Khan initially stated that, at the time, he did not think his actions were wrong. When he was reminded that he had admitted paragraph 5, and had accepted that he had been dishonest, Dr Khan framed his replies in terms of the impact on himself and his family, how guilty he felt about it, and how at the time he 'just wanted to get medication' for Patient B. It was only when he was asked in forthright terms by Mr MacAdam whether he had told a lie when prescribing in Patient A's name, and whether telling a lie was dishonest, did Dr Khan appear to appreciate his actions had been dishonest.

36. The Tribunal took account of the possibility that Dr Khan's answers to these questions may have been influenced by the fact that English is not his first language and had regard to paragraphs 47 – 49 of the Sanctions Guidance. The Tribunal noted that, although he may culturally have struggled to understand the concept of dishonesty as put to him, it took specific and persistent questioning from Mr MacAdam for Dr Khan to equate lying with dishonesty. The Tribunal considered that this demonstrated a lack of insight on Dr Khan's part and therefore that, notwithstanding his considerable remediation to date, Dr Khan is currently impaired.

37. The Tribunal was not persuaded that an ordinary member of the public would not expect it to find impairment in this case. The Tribunal considered that a finding of impairment was in any event necessary to protect, promote and maintain the health, safety and well-being of the public, promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the profession.

38. The Tribunal has therefore determined that Dr Khan's fitness to practice is impaired by reason of misconduct.

Determination on Sanction - 09/07/2018

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

Submissions

2. On behalf of the GMC, Ms Duckworth referred the Tribunal to paragraphs 20 and 21 of the Sanctions Guidance (February 2018) ('SG') that the Tribunal:

> '…should have regard to the principle of proportionality, weighing the interests of the public against those of the doctor'

and it should impose a sanction, even where this may lead to difficulties for a doctor, where it is:

> '…necessary to fulfil the statutory overarching objective to protect the public'

3. She also referred the Tribunal to paragraph 14 of the SG that:

> *'The main reason for imposing sanctions is to protect the public. This is the statutory overarching objective, which includes to:*
>
> *a protect and promote the health, safety and wellbeing of the public*
>
> *b promote and maintain public confidence in the medical profession*
>
> *c promote and maintain proper professional standards and conduct for the members of the profession.'*

4. Ms Duckworth submitted that this was not a case where subparagraph 14 (a) of the SG was something the Tribunal needed to consider. However, she submitted that subparagraphs 14 (b) and (c) were relevant in this case.

5. Ms Duckworth acknowledged that there are mitigating factors to consider in this case. She referred the Tribunal to the fact that Dr Khan had made admissions, apologised and shown regret for his actions, that he had co-operated with the investigations by the GMC, and that he has taken appropriate steps to remediate his behaviour. Ms Duckworth noted that the Tribunal, when determining impairment, concluded that Dr Khan has shown some insight, presents a low risk of repetition in his dishonesty and has learned a bitter lesson. She submitted that Dr Khan has taken clear steps to avoid repeating his actions of prescribing to family members, is a doctor of good character with no previous history of misconduct, and that work related stress and personal/family stresses were factors in his misconduct. She drew the Tribunal's attention to the efforts Dr Khan has made in remediation, to the testimonial evidence and the clear expression of regret.

6. She did, however, identify that the Tribunal has concerns regarding Dr Khan's level of insight in that he was more focused on himself and his family as opposed to appreciating the effect his conduct would have on the reputation of the profession.

7. Ms Duckworth submitted that, given the nature of the misconduct, it would be disproportionate and insufficient for the Tribunal to consider taking no action, as there are no exceptional circumstances in this case. She submitted that in cases of dishonesty, it is difficult to formulate conditions that are workable and measurable and that these would be inappropriate in this case because Dr Khan has already addressed his prescribing practices in relation to family members. Ms Duckworth submitted that in view of the seriousness of the misconduct, which involved dishonesty, the appropriate

sanction would be one of suspension. She submitted that this would be adequate and proportionate to reflect the seriousness of Dr Khan's misconduct. She submitted that whilst suspension is not intended to have a punitive effect, it would act as a deterrent to Dr Khan and the profession as a whole. A period of suspension would allow Dr Khan time to develop further insight and it would also send a clear message to the public and profession that his behaviour was unbefitting of a doctor. Finally, Ms Duckworth confirmed that the GMC was not seeking a sanction of erasure since it considered that Dr Khan's conduct was not fundamentally incompatible with continued registration.

8. On behalf of Dr Khan, Mr MacAdam submitted that the Tribunal has already identified the considerable remediation that Dr Khan has undergone in its determination on impairment. He reiterated that Dr Khan presents no risk to the public and the risk of repetition is low.

9. Mr MacAdam submitted that Dr Khan has made considerable progress and that there have been no concerns expressed by his current colleagues regarding his probity, skills or services to the general public.

10. He submitted that the appropriate sanction would be one of conditions, to allow Dr Khan the opportunity to further develop his insight and achieve full remediation, whilst being able to continue to provide an essential service. This would allow a good A & E doctor to continue making a valuable professional contribution, where he is trusted and respected by colleagues and patients. He submitted that if the Tribunal found that it was necessary to impose a period of suspension on Dr Khan's registration, he would ask for a short period to meet the overarching objective.

The Tribunal's Determination on Sanction

11. The Tribunal has had regard to the submissions of Ms Duckworth for the GMC and Mr MacAdam for Dr Khan, its findings at the impairment stage and the advice of the Legally Qualified Chair, which it has accepted.

12. The determination of the appropriate sanction is a matter for the Tribunal's own judgement. In reaching its decision, the Tribunal has also had regard to the SG and to each limb of the statutory overarching objective. The Tribunal considered all limbs of the objectives to be important but finds sub-paragraphs (b) and (c) of paragraphs 14 of SG are particularly relevant to this case.

13. The Tribunal reminded itself that the purpose of a sanction is not to be punitive, although it may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing the interest of Dr Khan with that of the public.

Mitigating and Aggravating Factors

14. The Tribunal gave careful consideration to the mitigating and aggravating factors present in Dr Khan's case.

Mitigating Factors

15. The Tribunal had regard to the following mitigating factors:

- Dr Khan admitted his misconduct and fully cooperated with the investigatory process;
- Dr Khan's actions were carried out with the best of intentions and the circumstances were limited to family members;
- Evidence that the risk of repetition is very low;
- The misconduct was confined to limited circumstances, with no previous history and no repetition of the misconduct;
- Dr Khan was experiencing high levels of stress in his family and working arrangements at the time of his misconduct;
- Dr Khan has taken steps to address the root causes of his stress and to remediate his misconduct; and
- Dr Khan notified the GMC of his dishonesty in prescribing for Patient B in Patient A's name and otherwise made no attempt to cover up his conduct.

Aggravating Factors

16. The Tribunal had regard to the following aggravating factors:

- The seriousness of the misconduct found, which includes dishonesty;
- Dr Khan's misconduct was maintained over an extended period; and
- Dr Khan displayed limited insight into the issue of dishonesty and the impact his misconduct had on the reputation of the profession.

The Tribunal's Decision

17. In deciding what sanction, if any, to impose, the Tribunal reminded itself that it must consider each of the sanctions available, starting with the least restrictive, in order to establish the most appropriate and proportionate sanction in this case.

No Action

18. The Tribunal first considered whether to conclude the case by taking no action. Taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal had regard to paragraphs 68-70 of the SG and determined that, in the light of the seriousness of Dr Khan's misconduct, taking no action would not be appropriate or proportionate. This would

neither promote and maintain confidence in the profession nor promote and maintain proper standards and conduct. It was of the view that there were no exceptional circumstances in this case which could justify taking no action.

Conditions

19. The Tribunal next considered whether an order of conditions on Dr Khan's registration would be appropriate. In doing so, it took account of paragraphs 81 and 82 of the SG. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

20. The Tribunal concluded that a period of conditional registration would not be appropriate in this case, because it would be difficult to identify conditions to address any specific concerns in this case, notwithstanding Mr MacAdam's ambitious submissions on this point. The Tribunal was minded that conditions would not deal with dishonesty as no appropriate conditions could be formulated that would monitor or measure whether dishonesty had been remediated. The Tribunal concluded that a sanction of conditions would also be inconsistent with the maintenance of proper professional standards and conduct and would not send an adequate message to the public and members of the profession.

Suspension

21. The Tribunal went on to consider whether a period of suspension would be an appropriate and proportionate sanction.

22. When considering whether suspension would be appropriate, the Tribunal took into account paragraphs 91, 92, 93, and 97(a) of the SG that:

> **91** *'Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.'*
>
> **92** *'Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).'*

> **93** *'Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions (see paragraphs 24–49).'*
>
> **97(a)**
> *a. A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.*

23. In relation to dishonesty and the length of suspension, the Tribunal took account of paragraphs 100(a), (b) & (c) and 120 that:

> '**100** *The following factors will be relevant when determining the length of suspension:*
>
> *a. the risk to patient safety/public protection'*
>
> *b. the seriousness of findings and any mitigating or aggravating factors.*
>
> *c. Ensuring the doctor has adequate time to remediate.'*
>
> **120** *'Good medical practice states that registered doctors must be honest and trustworthy, and must make sure that their conduct justifies their patients' trust in them and the public's trust in the profession.'*

24. The Tribunal determined that Dr Khan has taken positive steps to address his behaviour and has demonstrated insight to this Tribunal. The Tribunal was satisfied, having taken into account all the circumstances of the case, that the misconduct is not incompatible with continued registration. It was, however, misconduct for which recognition was needed in order to assure the public and the profession that his actions were serious and fell short of the standards expected of a medical practitioner.

25. Having already found that Dr Khan's behaviour was not incompatible with continued registration the Tribunal found that the sanction of erasure would be disproportionate in this case.

26. In determining the duration of Dr Khan's suspension the Tribunal took into account its earlier findings and the aggravating and mitigating factors. It concluded that a period of 3 months suspension would be sufficient to address the nature of his dishonest

actions in this case and the need to demonstrate to him, the profession and the public that such misconduct is unacceptable. It considered that a short period of suspension would adequately serve the public interest in maintaining public confidence and upholding proper professional standards in this unusual case. In reaching this conclusion, the Tribunal balanced the public interest against that of retaining an otherwise competent doctor whose work is valued.

27. The Tribunal determined to direct a review of Dr Khan's case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought. The Tribunal wished to clarify that, at the review hearing, the onus will be on Dr Khan to demonstrate how he has developed his insight into, and reflected upon, his dishonesty. He will also be able to provide any other information that he considers will assist the Tribunal.

28. The effect of this sanction is that, unless Dr Khan exercises his right to appeal, his registration will be subject to a period of 3 months suspension beginning 28 days from the date on which written notice of this decision is deemed to have been served upon him.

Determination on Immediate Order - 09/07/2018

1. Having determined to impose a period of suspension on Dr Khan's registration, the Tribunal has now considered whether to impose an immediate order of suspension on Dr Khan's registration in accordance with Section 38 of the Medical Act 1983, as amended.

Submissions

2. On behalf of the GMC, Ms Duckworth submitted that the GMC does not seek an immediate order given the particular circumstances in this case.

The Tribunal's Determination

3. The Tribunal has considered Section 38(1) of the Medical Act 1983, Rule 17(2)(o) of the General Medical Council (GMC) (Fitness to Practise) Rules Order of Council 2004 and paragraphs 172-178 of the SG.

4. The Tribunal determined its duty to protect the public interest, which includes the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour, has been achieved by the imposition of the period of suspension. Therefore, the Tribunal has determined not to impose an immediate order of suspension.

5. The effect of the foregoing direction is that, unless Dr Khan exercises his right of appeal, his registration will be suspended 28 days from the date on which written notice of this decision is deemed to have been served upon him.

6. There is no interim order to revoke.

7. That concludes this case.

Confirmed
Date 09 July 2018 Mr Robin Ince, Chair

ANNEX A – 03/07/2018

Rule 17(2)(g) Application

1. Mr MacAdam made a submission on behalf of Dr Khan of no case to answer, under Rule 17(2)(g) of the General Medical Council's (Fitness to Practise) Rules 2004 (the Rules). Rule 17(2)(g) states:

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

2. Mr MacAdam submitted that insufficient evidence has been adduced to find proved the facts at paragraphs 7, 8 and 9 in respect of paragraph 7. He addressed the Tribunal in relation to each of the paragraphs which stated:

> *7. On 25 March 2016, you presented a private prescription to Boots the Pharmacy, Lancaster and informed Mr D that the General Practitioner to Patient B was aware of the private prescriptions you had written for Patient B.*
>
> *8. Your comments as described at paragraph 7 were known by you to be untrue.*
>
> *9. Your actions as described at paragraphs … 7 were dishonest.*

3. Mr MacAdam submitted that the relevant principle at this stage in proceedings was derived from the case of *R v. Galbraith* [1981] 2 All ER 1039 (`*Galbraith*').

> "(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge, will of course, stop the case.
>
> (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence.
>
> (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.
>
> (b) Where however the prosecution evidence is such that its strength

> or weakness depends on the view to be taken of a witness' reliability, or other matters which are generally speaking within the province of the jury and where, on one possible view of the facts, there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury…"

4. In his written submission provided to the Tribunal Mr MacAdam stated as follows;

> *The [GMC], to prove heads of charge 7 and 8 and 9 as it pertains to 7 have relied upon the evidence of Mr D. His evidence contained in a witness statement, dated 1 February 2017 is the only evidence that the GMC rely upon to prove the above charges. Paragraph 29 of that statement states the following:*
>
> *"Dr Khan told me that Patient B's XXX GP, Dr G, was aware of Dr Khan writing prescriptions on Patient B's XXX behalf".*
>
> *This description of the words uttered by the Practitioner is quite specific and forms the basis of the disputed charge that the Practitioner faces.*
>
> *In evidence Mr D, when asked what exactly the Practitioner said at the time eventually stated, "Dr G knows about this". This was clarified further in cross-examination and in re-examination and the witness confirmed that to the best of his recollection he could not attribute any further words to the Practitioner regarding this matter. Self-evidently, the evidence of what the witness recalls the Practitioner stating does not support the GMC's case that the Practitioner stated that Dr G was aware of him prescribing for Patient B XXX.*

5. Mr MacAdam submitted that the evidence of Mr D does not disclose a case for the Practitioner to answer in respect of the above charges. There is therefore no evidence before the panel that would allow it to conclude that the Practitioner had "informed" Mr D that Dr G was aware of the private prescriptions that he had written. Accordingly, heads of charge 7, 8 and 9 as it pertains to 7 should be found not proved by the Tribunal.

6. Ms Duckworth in response submitted that the GMC were neutral in this matter and clarified that they neither supported nor opposed the application.

Legally Qualified Chair's Advice

7. The Tribunal has accepted the advice of the Legally Qualified Chair who referred it to the terms of rule 17(2)(g) of the Rules and to the principle derived from the case of *Galbraith*, listed above.

8. The Tribunal reminded itself that, at this stage, its purpose was not to make findings of fact but to determine whether sufficient evidence existed such that a Tribunal, correctly advised as to the law, could properly find the relevant paragraphs proved to the civil standard. The Tribunal considered Mr MacAdam's submissions and those of Ms Duckworth on behalf of the GMC. It took account of the evidence presented and has reached the following conclusions.

Tribunal Decision

9. The Tribunal acknowledged that this application relates that part of charge 7 as to whether Dr Khan specifically "informed" Mr D that Dr G was aware of the private prescriptions he had written for Patient B XXX. If this were not the case then paragraphs 8 and 9, in respect of 7, would also fall.

10. The Tribunal was mindful of the background evidence in that, in Mr D's email to the Superintendent Pharmacist dated 25 March 2016, the same day as the encounter with Dr Khan, no mention was made by Mr D of being informed by Dr Khan that Dr G was aware that he wrote private prescriptions for Patient B XXX. This suggestion only surfaced in the statement submitted by Mr D to Boots Pharmacy on 14 April 2016, almost 3 weeks later. Accordingly there appears to be inconsistency in Mr D's recollection from the start.

11. Furthermore, Patient B's medical notes show that Dr Khan spoke to Dr G on 24 March 2016 as a result of which she recorded that she had issued a prescription for Patient B for the drug XXX (which was to be collected on Patient B's behalf). Accordingly, Patient B's GP had authorised the use of that medication by Patient B the day before.

12. Moreover, during examination in chief, cross examination and re-examination, Mr D was given several opportunities to clarify his account of the conversation with Dr Khan. He was clear, by the end of this questioning, that his memory of what Dr Khan said was limited to "Dr G knows about this". The Tribunal also noted that at one stage of his oral evidence Mr D said that he had interpreted what Dr Khan had said as meaning that Dr G knew that Dr Khan had written private prescriptions for Patient B XXX.

13. The Tribunal considered what the phrase "Dr G knows about this" could possibly mean. It determined that the meaning of this phrase is not clear and it could be open to a number of interpretations. It could have the meaning attributed to it by Mr D but it equally could have meant that Dr Khan was referring to Dr G's approval of the request that XXX be prescribed for Patient B. It is, in any event, by itself unspecific and vague. Consequently, at best, the Tribunal considers that the evidence relied on by the GMC is finely balanced, which leads the Tribunal to the

inevitable conclusion that the GMC would be unable to discharge the burden of proof upon it in respect of charge 7.

CONCLUSIONS

14. In summary, the Tribunal is satisfied the evidence that has been adduced taken at its highest was not sufficient to allow a Tribunal, properly directed, to find proved paragraphs 7, 8 and 9, in relation to 7, of the Allegation. In consequence, the Tribunal has upheld Mr MacAdam's submission in relation to these paragraphs. And find that there is no case to answer in respect of them.

Schedule 1 - Patient A

Pharmacy	Date	Prescription
Boots Pharmacy	03/03/14	XXX
Boots Pharmacy	15/04/14	XXX
Boots Pharmacy	22/05/14	XXX
Boots Pharmacy	16/06/14	XXX
Boots Pharmacy	16/07/14	XXX
Boots Pharmacy	01/10/14	XXX
Boots Pharmacy	13/12/14	XXX
Boots Pharmacy	15/02/15	XXX
Boots Pharmacy	01/05/15	XXX
Boots Pharmacy	24/09/15	XXX
Dalton Square Pharmacy	01/12/15	XXX
Dalton Square Pharmacy	10/01/16	XXX
Dalton Square Pharmacy	26/02/16	XXX
Dalton Square Pharmacy	28/03/16	XXX

Schedule 2 - Patient ~~A~~ B

Pharmacy	Date	Prescription
Boots Pharmacy	December 2015	XXX
Boots Pharmacy	December 2015	XXX

Schedule 3 - Patient B

Pharmacy	Date	Prescription
Boots Pharmacy	07/09/14	XXX
Boots Pharmacy	12/04/15	XXX
Boots Pharmacy	21/04/15	XXX
Boots Pharmacy	30/04/15	XXX
Boots Pharmacy	08/07/15	XXX
Boots Pharmacy	08/07/15	XXX
Boots Pharmacy	23/01/16	XXX
Dalton Square Pharmacy	26/02/16	XXX
Boots Pharmacy	25/03/16	XXX
Dalton Square Pharmacy	26/02/16	XXX

Schedule 4 – Patient C

Pharmacy	Date	Prescription
Boots Pharmacy	15/12/2014	XXX

Schedule 5

Pharmacy	Date	Prescription
Boots Pharmacy	16/06/14	XXX
Boots Pharmacy	16/07/14	XXX
Boots Pharmacy	04/10/14	XXX
Boots Pharmacy	15/02/15	XXX
Boots Pharmacy	01/05/15	XXX