PUBLIC RECORD

Dates: 01/03/2021 - 17/03/2021

Medical Practitioner's name:	Dr David Robert MAWHINNEY
GMC reference number:	7406292
Primary medical qualification:	MB BCh BAO 2013 Queens University of Belfast

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment not found proved	Not Impaired

Summary of outcome

No action (warning not considered)

Tribunal:

Legally Qualified Chair	Mr Duncan Toole
Lay Tribunal Member:	Mrs Joy Hamilton
Medical Tribunal Member:	Dr Priya Iyer

Tribunal Clerk:	Mr Andrew Ormsby

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Kevin McCartney, Counsel, instructed by Tughans Solicitors
GMC Representative:	Mr Peter Horgan, Counsel

Attendance of Press / Public

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

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 - 17/03/2021

Background

1. Dr Mawhinney studied at Queen's University Belfast and qualified in 2013. He completed a Postgraduate Diploma in Mental Health from Queens University Belfast in 2016 and successfully sat Parts 1 and 2 of his Membership Exams for the Royal College of General Practitioners ('RCGP') which was completed in 2017 and 2018. He then undertook his two-year Foundation Training in various hospitals and surgeries throughout Northern Ireland. He carried out his ST1 year in Accident and Emergency at the Ulster Hospital and Psychiatry at Down Hospital. His ST2 foundation year was split between Paediatrics in the Ulster Hospital and General Practice at Bloomfield Surgery in Bangor. At the time of the alleged events leading to these proceedings, Dr Mawhinney was practising as a trainee GP in his ST3 year at the Connswater Practice ('the Practice').

2. The allegation that has led to Dr Mawhinney's hearing can be summarised that, during consultations in September 2017 and February 2018, he intentionally requested that Patient A (on two occasions) and Patient B (on one occasion), to provide a urine sample from behind the curtain in a consultation room, while he remained in the room and in close proximity to the curtain. It is further alleged that Dr Mawhinney did not follow the system in place for the collection and analysis of the urine sample. Further, having been informed by Dr C, that his actions in relation to Patient A were inappropriate and should never be repeated again and that it was inappropriate to request a urine sample from Patient B in the same manner.

3. The initial concerns were raised with the GMC on 9 October 2018 by the Health and Social Care Board ('HSCB'). The HSCB investigation arose from a referral from Dr C, a GP Senior Partner at the Practice.

The Outcome of Applications Made during the Facts Stage

4. The Tribunal granted the GMC's unopposed application to amend the allegations in order to provide clarification and certainty. The application was made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). The Tribunal's full decision on the application is included at Annex A.

5. The Tribunal also granted the GMC's unopposed application to adduce further documentary evidence. The application was made pursuant to Rule 34(1) of the Rules. The Tribunal's full decision on the application is included at Annex B.

The Allegation and the Doctor's Response

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

1. At all material times Patient B was vulnerable by reason of her age. Admitted and Found Proved

2. On the dates set out in Schedule 1, you consulted with Patients A or B ('the Patients') and you:

a. intentionally requested ~~and / or allowed~~ the Patients to provide a urine sample ('the Sample') in the consultation room behind a curtain;
Amended under Rule 17(6)
To be determined

b. gave the Patients a bowl / dish in which to provide the Sample;
To be determined

c. remained in the consultation room whilst the Patients were behind the curtain and ~~/ or~~, in the case of Patient A, attempting to provide the Sample;
Amended under Rule 17(6)
To be determined

d. were in close proximity to the curtain whilst the Patients were behind the curtain and ~~/ or~~, in the case of Patient A, attempting to provide the Sample;
Amended under Rule 17(6)
To be determined

e. did not follow the system in place for the collection and analysis of the Sample; To be determined

~~f. failed to communicate with the Patients with regards to the provision of the Sample~~. Amended under Rule 17(6)

3. You knew:

a. you had been advised by Dr C following your consultations with Patient A that your actions as set out at paragraph 2:

i. were inappropriate; To be determined

ii. should never be done again or words to that effect;
To be determined

b. as a result of paragraph 3a that it was inappropriate to request the Sample from Patient B as set out at paragraph 2.
To be determined

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

The Admitted Facts

6. At the outset of these proceedings, through his counsel, Mr McCartney, Dr Mawhinney made admissions to Allegation 1, 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 this paragraph as admitted and found proved.

The Facts to be Determined

7. In light of Dr Mawhinney's response to the Allegation made against him, the Tribunal is required to determine whether Dr Mawhinney intentionally requested Patients A and B to provide a urine sample in the consultation room behind a curtain; whether he gave the Patients a bowl or dish in which to provide the sample; whether he remained in the consultation room and in close proximity to the curtain when the Patients were behind the curtain (and attempting to provide a sample in the case of Patient A); and whether he followed the system in place for the collection and analysis of the said urine samples. The Tribunal is further required to consider whether Dr Mawhinney had been advised following his consultations with Patient A that his actions were inappropriate and never should be done again; and whether it was subsequently inappropriate to request a urine sample from Patient B in the manner set out in the Allegation.

Evidence

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

- Patient A, in person;
- Patient B, by video link;
- Dr C, GP Senior Partner and GP Trainer at the Practice, by video link;
- Witness D, mother of Patient B, by video link;
- Witness E, mother of Patient A, by video link; and
- Dr F, GP Partner at the Practice, by video link.

9. The Tribunal also received evidence on behalf of the GMC in the form of witness statements from the following witnesses:

- Patient A, dated 11 March 2019 and 13 February 2020;
- Patient A supplementary statement, dated 3 March 2021;
- Patient B, dated 13 May 2019;
- Dr C, dated 18 April 2019, 4 February 2020 and 17 August 2020;
- Dr C supplementary statements dated 17 February 2021 and 3 March 2021;
- Witness D, dated 24 February 2020;
- Witness E, dated 7 July 2020; and
- Dr F, dated 6 February 2020;

10. Dr Mawhinney provided his own witness statement dated 6 November 2020 and also gave oral evidence at the hearing.

11. The Tribunal also received and considered evidence on behalf of Dr Mawhinney in the form of a number of testimonials from professional colleagues and employers, as follows:

- Dr G, GP Partner and GP Trainer at Kerrsland Surgery, undated but confirmed by email 21 October 2020;
- Dr H, GP Partner at Drs Quinn & Brolly Scroggy Road Health Centre Limavady, dated 2 March 2021;
- Dr I, GP Partner and GP Trainer at Bloomfield Surgery Bangor, dated 12 November 2018 and confirmed by email 24 October 2020;
- Dr J, GP Partner and GP Trainer, Educational Supervisor for Dr Mawhinney during his ST1 year (2015-2016), dated 3 January 2021;
- Dr K, Clinical Director of Dalriada Urgent Care, dated 14 November 2018, confirmed 24 October 2021;
- Professor L, Professor Emeritus at University of Ulster,
  former Vice Chair of the RCGP's UK Council and a former Chair of the RCGP NI Council, undated;
- Dr M, GP Partner, Mountsandel Surgery Coleraine, dated 22 January 2021;
- Ms N, Treatment Room Sister at Limavady Health Centre, 16 February 2021;
- Ms O, Treatment Room Nurse at Scroggy Road Health Centre, dated 3 February 2021; and
- Ms P, Treatment Room Staff Nurse at Scroggy Road Health Centre, dated 3 February 2021.

Expert Witness Evidence

12. The Tribunal also received an expert report, dated 15 August 2019, on behalf of the GMC from an expert witness, Dr Q, Fellow of the Royal College of General Practitioners, Member of the Academy of Medical Educators and full time GP Partner.

Documentary Evidence

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

- Text message chain between Witness E and Dr C, dated 5 November 2017;
- Written complaint in the name of Patient B, (undated);
- Note of Practice Meeting, dated 24 August 2018;
- Statement from Dr Mawhinney to Health Board, undated;
- Note of interview between HSCB and Dr Mawhinney, 7 September 2018;
- Note of telephone meeting between Patient A and HSCB, dated 8 October 2018;
- Note of meeting between Patient B and HSCB, dated 18 October 2018;
- Summary of account given by Dr F to HSCB;
- Contemporaneous medical record of consultations with Patient A;
- Contemporaneous medical record of consultations with Patient B;
- Photographs of consultation rooms;
- Photographs of various receptacles;
- Online CPD certificates, various dates; and
- Maintaining Professional Ethics at the Clinic for Boundaries Studies certificate, dated 7 – 9 October 2019.

The Tribunal's Approach

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

15. When assessing the evidence, the Tribunal bore in mind the legal advice and including the comments of Mr Justice Warby in the case of Dutta v GMC [2020] EWHC 1974 (Admin). In particular, that the Tribunal should start by considering the objective facts as shown by the contemporaneous documents. Further the Tribunal should not make assessments of credibility based largely on the demeanour of a witness. Further, that the Tribunal should start with the objective facts as shown by the contemporaneous documents, independent of the witness, and using oral evidence as a means of subjecting these to "critical scrutiny".

16. Additionally the Tribunal considered the case of Khan v GMC [2021] EWHC 374. The Tribunal reminded itself that it should consider the specific allegations in turn rather than making a general assessment of credibility at the outset of its consideration of each witness.

17. The Tribunal had regard to the issue of cross-admissibility of evidence. Both parties addressed the Tribunal in submissions on the issue of 'improbability of coincidence'. The following approach was agreed by the parties and formed part of the legal advice provided to the panel:

(1) The Tribunal must consider each count separately.

(2) If a Patient has, or may have, concocted false accusations against the Dr, any such similarities would count for nothing, and the Tribunal should reject that Patient's evidence in which case cross admissibility would not arise.

(3) If there was no concoction but a Patient had or may have learned what the other/s had said or were going to say about the Dr, and had or may have been influenced by this, consciously or unconsciously, when making her own accusations, any such similarities would count for nothing, and the Tribunal should take this matter into account when deciding how far they accept the evidence of the Patient concerned.

(4) If the Tribunal are sure that there has been no such concoction/influence they should consider how likely it is that two patients would, independently of each other, make similar accusations and yet both be lying / mistaken. If the Tribunal thought this unlikely, they could, if they thought it right, treat the evidence of each of the Patients as mutually supportive.

(5) When deciding how much support ,if any, the evidence of one Patient gives to another, the Tribunal should take into account how similar their accusations are, since the Tribunal might take the view that the closer the similarities the more likely it is that the Patients were telling the truth.

(6) When considering the issue of cross admissibility, the Tribunal will have regard to the particular circumstances in which each allegation is said to have arisen. If the Tribunal conclude that either allegation may have arisen due to a misunderstanding then cross admissibility would not arise.

18. The Tribunal took in to account the fact that Dr Mawhinney is of good character, which was relevant to the Tribunal's considerations in the following ways. Firstly, the doctor has given evidence and, as with any person of good character, it is a positive feature which supports his credibility. This means it is a factor which the Tribunal took into account when deciding whether we believed his evidence. Secondly, the fact that he is of good character may make it is less likely that he has acted as is now alleged against him.

The Tribunal's Analysis of the Evidence and Findings

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

Patient A

18 September 2017

Paragraph 2 (a)

20. The Tribunal considered the allegation that Dr Mawhinney had intentionally requested that Patient A provide a urine sample in the consultation room behind a curtain during her consultation on 18 September 2017.

21. When considering Patient A's evidence regarding her first consultation with Dr Mawhinney on 18 September 2017, the Tribunal noted Patient A's witness statement dated 11 March 2019, her interview with the HSCB on 8 October 2018 and her oral evidence to the Tribunal.

22. The Tribunal took in to account the length of time that had elapsed before Patient A provided a formal detailed account and had regard to the following chronology:

- 18 September 2017 Patient A's first consultation;
- 26 September 2017 Patient A's second consultation;
- Shortly after the second consultation, first account provided to Witness E (Patient A's mother with whom she had a close relationship);
- 26 October 2017 Patient A attends the Practice for a consultation with Dr C;
- 5 November 2017 Witness E sends a text message to Dr C raising Patient A's query on her behalf;
- August 2018 Dr C contacts Patient A and her family to inform them of Patient B's complaint; and
- 8 October 2018 Patient A interview with HSCB.

23. The account given to the Health Board was over one year after the alleged incidents. This was as a result of the Practice not carrying out an investigation at the time, but was clearly not through any fault of Patient A. By the time Patient A provided her witness statement to the GMC, around 18 months had passed.

24. The notes of Patient A's HSCB telephone interview states that Dr Mawhinney asked her to *"Do it here"*. The Tribunal felt that the omission of this direct instruction or request from her witness statement was of significance, as this was the first time in her statement that Patient A was describing how she came to attempt to pass urine in the consultation room.

25. When describing the incident to the Health Board, Patient A made no mention of Dr Mawhinney asking her to *"lean against the bed"* or to *"try squatting"* which is explicitly quoted in Patient A's witness statement. It also noted that Patient A's witness statement claims that Dr Mawhinney continued to ask if she had provided a sample and used words like *"have you done it"* and *"have you managed to pee yet"*. Again, this was not mentioned in the interview to the Health Board.

26. When asked in cross-examination about the request to 'squat' and 'lean against the bed' during the first consultation, Patient A agreed that those words had been 'imprinted on her mind'. However, when asked why she had not mentioned this detail to the Health Board in October 2018, Patient A stated that this was because she was upset and that she was conducting the telephone interview from her work office.

27. When answering questions from the Tribunal, Patient A was asked about the period of time before Dr Mawhinney had suggested that she 'squat' and 'lean against the bed'. She was asked how she was attempting to pass urine before those words from Dr Mawhinney. Patient A said that she was already 'squatting'.

28. Patient A described how she had been able to see Dr Mawhinney's feet when she was 'squatting' in order to provide a sample. She gave oral evidence that she could not recall which way his feet were facing. When asked further about this part of her account, she accepted that she could not see through the curtain, as her head would have been close to the curtain when she was squatting down. It was of further note that Patient A did not mention to the Health Board that Dr Mawhinney was standing 1-2 feet away from the curtain and that she could see his feet.

29. In Patient A's witness statement, she said that she asked if she could go to the toilet in order to provide a urine sample and Dr Mawhinney agreed.

30. Witness E (Patient A's mother) was honest in saying that she could not recall the full details from four years ago. However, she accepted the contents of the text message that she sent on 5 November 2017.

31. On receiving the text message from Witness E, Dr C stated that he had not discussed the text message with Patient A's mother after receiving it. His evidence was that he checked Patient A's medical records the following morning and was able to ascertain that the complaint must have related to Dr Mawhinney. This evidence was in direct contradiction to the evidence of Patient A's mother, who said in evidence that Dr C had spoken with her on the telephone on the same evening as the text message was sent.

32. Dr C stated that he had contacted Patient A in the weeks prior to the Tribunal hearing, as he was giving evidence *'on her behalf'*. In cross-examination, Dr C stated that the purpose of the call was to *'clarify her story'* and to '*clarify what she had been asked to provide a sample in'*. Dr C accepted that this was *'naïve'* and *'clearly the wrong thing to do'*.

33. Dr C was also asked whether he had considered it a conflict of interest to handle a complaint from a close family friend, which related to a trainee GP for whom he was responsible. Dr C answered by saying *'absolutely not'*.

34. The Tribunal considered the account of Dr Mawhinney. Dr Mawhinney had provided an account to the Practice on 24 August 2018, provided a statement to the Health Board on 5

September 2018 and subsequently was interviewed in person by the Health Board on 7 September 2018.

35. The GMC had accepted that his account had been largely consistent from the outset. This was also the view of the Tribunal. Dr Mawhinney gave convincing oral evidence of the various reasons why he would not ask a patient to provide a sample in a consultation room. These reasons included that it was *'undignified'*, *'unhygienic'* and that he did not *'see any clinical reason why this would be requested by a doctor'*. He was clear that he had not asked Patient A, or any other Patient to provide a sample in a consultation room, nor had he even been asked by a Patient whether it was acceptable for them to provide a sample in such a way.

36. Dr Mawhinney accepted that as a trainee, he was under certain time pressures at different stages of his training period. However, he denied that time pressures had led him to make a request for the Patient to provide a sample in the consultation room. Dr Mawhinney denied that Patient A had provided a 'small sample' and indicated that if she had provided a sample of any size, he would have sent the sample off to the laboratory for testing and it would have been recorded in the clinical notes. The Tribunal heard that the computer system at the Practice indicates when the notes are accessed. From the clinical notes provided in evidence, it was clear that Dr Mawhinney made contemporaneous notes during the consultation and did not subsequently access them.

37. The Tribunal next concentrated on the Health Board investigation of October 2018. At the commencement of interviews with Patient A and Patient B, Dr R (who was the lead Health Board investigator) began by explaining that it was *'not appropriate for a Patient to be asked to pass urine in the consultation room'*. This comment was made to both complainants before Dr R had obtained an account from either Patient.

38. As the Health Board interviewed Dr Mawhinney before obtaining an account from Patient A, it is accepted that Dr Mawhinney believed there to be an allegation from Patient A solely in relation to the appointment on 18 September 2017. The Tribunal noted that the Health Board did not re-interview Dr Mawhinney once it became clear that the allegations related additionally to the appointment on 26 September 2017.

<u>The Tribunal's conclusions</u>

39. Due to the length of time since the alleged incident, the Tribunal was greatly assisted by the contemporaneous consultation notes. The notes made by Dr Mawhinney on 26 September 2017, state *'no urine sample left in as unable to provide on last visit'*. The Tribunal observed that these notes would have been made by Dr Mawhinney at a time when he would not have been aware of any complaint, allegation or unhappiness from the Patient. The note directly contradicts Patient A's evidence that she had provided a 'small sample' of urine on 18 September 2017.

40. The Tribunal carefully examined Patient A's witness statement to the GMC, particularly in relation to the first time that she states that she attempted to pass urine. The Tribunal noted that Patient A states that she was asked to provide a urine sample. She then goes on to say 'I tried for a short time behind the curtain'. Therefore, in the statement provided by Patient A, there was no direct or explicit instruction or request by Dr Mawhinney at that stage for her to provide a urine sample whilst behind the curtain in the consultation room.

41. The Tribunal considered that there was a lack of consistency between Patient A's interview with the HSCB and her witness statement.

42. The Tribunal was not persuaded by the explanation given by Patient A as to why she did not mention requests to 'squat' and 'lean against the bed' in the 18 September 2017 consultation, as she did go on during the same interview, to describe requests to 'squat' and 'lean against the bed' when describing the second consultation. Patient A had not mentioned this specific part of her allegation until her GMC statement on 11 March 2019, which was 18 months after the alleged index incident.

43. The Tribunal found it unlikely that the request to 'squat' would have been imprinted on the mind of Patient A if she had already tried to squat herself without any request to do so.

44. The Tribunal carefully considered the photographs of Dr F's consultation room (in which the consultation took place) that had been provided as part of the documentary evidence. In particular, during oral evidence Patient A had described wearing gym leggings during the consultation and pulling them down in order to squat in an attempt to provide a sample behind the curtain. In her statement to the HSCB, Patient A described wearing trousers. The Tribunal considered it unlikely that Patient A was squatting for *'what seemed like quite a while'*, given the very small amount of space available between the bed and the closed curtain.

45. The Tribunal did not find Dr C's evidence to be credible. From the little information contained in the text message received by Dr C on 5 November 2017, it would not have been possible for him to decipher which doctor the complaint related to, which consultation or whether the complaint was historic. Dr C also gave conflicting evidence about his relationship with Patient A. He stated that he would only see Patient A's father around four times per year and he had not seen Patient A since she attended a consultation with her mother in her 'early teens'. In contrast, Patient A told the Tribunal that Dr C was a very close family friend and that she would see him on a 'monthly' basis. Within Patient A's medical records, it was evident that Dr C had seen Patient A a number of times since her early teens, and most recently in 2016 and on 26 October 2017, only one month after the alleged incidents.

46. The Tribunal considered that these inconsistencies were relevant when considering the evidence as a whole for the following reasons. It was of concern to the Tribunal that there had clearly been discussion about this case and the evidence that Patient A was going

to give to the Tribunal. It was also of note that Dr C accepted in a supplementary witness statement, that he had contacted 'Patient A and her family' once the complaint was made by Patient B. It is not clear what conversations then took place, but the Tribunal had serious concerns about the clear conflict of interest that appeared to be present and the Tribunal considered that it was possible that the memory of Patient A had been influenced by words said to her or her family by Dr C about the compliant made by Patient B, at a time when Patient A still had not provided a formal account.

47. The Tribunal accepted Dr Mawhinney's account that asking a Patient to provide a sample in a consultation room would be 'undignified' and 'unhygienic'. The Tribunal found that the clinical notes were consistent with his account of events. The Tribunal also noted that Dr Mawhinney is also a person of good character.

48. The Tribunal carefully balanced the evidence of Patient A with that of Dr Mawhinney. The inconsistencies in Patient A's accounts given to the HSCB and in her witness statement were noted. As a consequence, the Tribunal could not be satisfied on the balance of probabilities that Dr Mawhinney had intentionally requested that Patient A provide a urine sample in the consultation room behind a curtain on 18 September 2017.

Patient A

26 September 2017

Paragraph 2 (a)

49. The Tribunal considered the allegation that Dr Mawhinney had intentionally requested that Patient A provide a urine sample in the consultation room behind a curtain on 26 September 2017.

50. The Tribunal considered Patient A's description of the appointment as set out in her witness statement, in her interview with the Health Board and in her oral evidence.

51. During cross-examination, Patient A accepted that whilst she couldn't not specifically recall in detail, her account was that the timing for the appointment would have been around 30 minutes. This included an examination, a request to provide a sample, around 7 minutes behind the curtain attempting to provide a sample, leaving the consultation room for around 15 minutes to sit in the waiting room to drink water, returning to the consultation room and being asked again to provide a sample in the room. She was asked whether she may have mixed up the first and second appointment and she answered clearly by saying 'no'.

52. In the HSCB interview in October 2018, Patient A said the following in relation to being asked to provide a sample behind the curtain on 26 September 2017:

> *'[Patient A] said that Dr M asked her "Do you want me to leave the room". Her response was "yes". Dr M did not leave the room'*

53. Dr Mawhinney had provided a broadly consistent account in relation to the 26 September 2017 consultation, despite not initially knowing that any allegations arose out of the appointment. Dr Mawhinney denied requesting that a sample be provided at all on 26 September 2017.

54. At some point between 18 – 26 September 2017, a discussion took place between Dr Mawhinney and Dr C. During this discussion, Dr C (Dr Mawhinney's GP trainer) had made it clear that Patient A was a close family friend of his and had discussed the treatment plan for Patient A.

Tribunal's conclusions

55. Due to the length of time since the alleged incident, the Tribunal was greatly assisted by the contemporaneous consultation notes. The notes made by Dr Mawhinney on 26 September 2017, state *'no urine sample left in as unable to provide on last visit'*. The Tribunal observed that these notes would have been made by Dr Mawhinney at a time when he would not have been aware of any complaint, allegation or unhappiness from the Patient. As observed above, the note directly contradicts Patient A's evidence that she had provided a 'small sample' of urine on 18 September 2017. The consultation note makes no reference to a urine sample being requested at all on during the consultation on 26 September 2017. Further, it does not appear that Patient A returned to leave a urine sample at the Practice after the second consultation.

56. The other piece of documentary evidence which assisted the Tribunal was the uncontested time record of the length of the consultation. This detail had been provided by the Practice to the Health Board as part of their investigation. It was accepted that the consultation on 26 September 2017 had lasted for 6 minutes. The Tribunal heard from Dr Mawhinney that the consultation time begins when the doctor opens the notes and ends when they have concluded the notes and the patient notes are closed.

57. The Tribunal considered that Patient A's recollection of the consultation on 26 September 2017 could not be correct, as it was in direct contradiction with the agreed documented evidence of the time record of the consultation, namely 6 minutes. It was also inconsistent with the contemporaneous notes of the consultation made by Dr Mawhinney on 26 September 2017.

58. The Tribunal found Patient A's account to the Health Board of Dr Mawhinney asking her if she wanted him to leave the room, to be of particular importance as it was something that would no doubt have been memorable. However, it was noted that Patient A's witness statement to the GMC makes no mention of this alleged verbal exchange. Further, Patient A did not provide this detail when giving oral evidence to the Tribunal. The Tribunal considered that if Dr Mawhinney had asked Patient A such a question and then remained in the room when Patient A had said that she would like him to leave, it was unlikely that this would have been omitted from her signed witness statement. This was especially the case as Patient A

had told the Tribunal in oral evidence that the GMC statement was provided when she had more time to provide a more detailed account in person. The Tribunal further noted the unlikelihood of a trainee GP permitting a patient to be left alone in a consultation room.

59. The Tribunal considered it highly unlikely that Dr Mawhinney would have intentionally requested that Patient A provide a sample behind a curtain on 26 September 2017, having been made aware of Dr C's close relationship with Patient A and her family.

60. The Tribunal noted one inconsistency between the statement he prepared for the Health Board in September 2018 and his witness statement prepared for these proceedings. In his statement for the Health Board, he stated *'I noted that she had not left in a urine sample and suggested that this be done today'.* When Dr Mawhinney was interviewed by the Health Board only a few days after the statement had been prepared, he was asked whether he had given the patient a treatment room request for a urine sample at the second consultation. He replied that he *'did not recall, but my interest was her liver. I did not feel that the urine test would have changed my management for that day. That is why it was not done'*. In his witness statement dated 6 November 2020, he stated *'I felt confident the urinalysis was no longer clinically necessary on this occasion, so I created a form for repeat blood tests only for the treatment room as seen in the notes'*. The Tribunal accepted Dr Mawhinney's explanation that by the time of the Health Board interview, he had reflected since writing his statement a few days earlier. Further, that he had since had the opportunity of more time to reflect and consider the consultation notes. The Tribunal also took in to account the fact that Dr Mawhinney was not aware of any allegations about the second appointment when either preparing his statement for the Health Board or when attending the interview with the Health Board.

61. Accordingly, paragraph 2 (a) in relation to Patient A was found not proved.

Paragraph 2 (b)

62. The Tribunal went on to consider the allegation that Dr Mawhinney had given Patient A a bowl or a dish in which to provide the urine sample.

63. Patient A described the 'container' which Dr Mawhinney gave as a polystyrene white *'cup'* in her interview with the HSCB. In her witness statement to the GMC Patient A described the container as looking *'like a polystyrene bowl which did not have a lid'*. Patient A stated that the same container was provided to her during the appointments on 18 September 2017 and 26 September 2017.

64. Patient A gave evidence confirming that she had provided urine samples in the past. The Tribunal heard that patients were often asked to provide a sample in the treatment room, where white polystyrene containers would be used.

65. There were photographs provided by Dr C of various receptacles, but this did not include a photograph of a polystyrene bowl or dish.

66. Witness E (Patient A's mother) who was the first person to be told of the alleged incident by Patient A, sent a text message to Dr C on 5 November 2017. The text message read '*…is it normal for one of your colleagues to have asked her to pee into a bottle behind the curtain in his surgery…*'. Although the message was not sent directly from Patient A, the text message was the closest contemporaneous material in time that existed following the disclosure of the allegations by Patient A.

67. The Tribunal noted that the consultation took place in Dr F's room. In oral evidence, Dr F stated that while polystyrene bowls could be used in the practice rooms when they ran out of 'tin containers', she had not seen a polystyrene bowl or dish in her consultation room for 'years'.

68. Dr Mawhinney's evidence was that he had never seen a polystyrene bowl or dish as described by Patient A. He described the inherent difficulties of providing a sample in anything other than a sample bottle, as it was difficult to carry out a 'dip-stick test'.

69. Dr Mawhinney explained the obvious difficulty with having to 'decant' from a larger bowl into a sample bottle and explained that he was clear that he had given Patient A a sample bottle on 18 September 2017. His evidence was that no urine sample was requested on 26 September 2017.

Tribunal's conclusions

70. The Tribunal observed that Patient A did not provide a formal account until October 2018, which was over a year after the alleged incidents.

71. Having concluded that Patient A's recollection of both consultations was limited, the Tribunal was more persuaded by the contemporaneous material that was provided in evidence. The text message from Patient A's mother specifically referenced being asked to *'pee into a bottle'*. The Tribunal noted that the receptacle mentioned in this text message was consistent with the evidence of Dr Mawhinney, that he had provided Patient A with a sample bottle on 18 September 2017.

72. Considering Dr Mawhinney's evidence on this matter, the Tribunal accepted the impracticality of using such a container as described as a container to hold a urine sample.

73. In relation to the consultation on 26 September 2017, the Tribunal had already concluded that Patient A's recollection of the consultation could not be correct, as the timed record provided by the practice confirmed that the appointment lasted for only 6 minutes. Therefore, the Tribunal concluded on the balance of probabilities, that a urine sample had not been requested at all on 26 September 2017. Therefore, Patient A had not been provided with a bowl or a dish on this date.

74. Accordingly, on the balance of probabilities paragraph 2 (b) in relation to Patient A on 18 September 2017 and 26 September 2017 was found not proved.

Paragraph 2 (c)

75. The Tribunal noted that both Mr Horgan, on behalf of the GMC, and Mr McCartney, on behalf of Dr Mawhinney, had agreed and confirmed their position, that if the Tribunal were to find that Dr Mawhinney had not intentionally requested a urine sample, then the allegation that Dr Mawhinney remained in the consultation room whilst Patient A was attempting to provide a urine sample could not be found to be proved.

76. Having already concluded that Dr Mawhinney had not intentionally requested that Patient A provide a urine sample in the consultation room on 18 September 2017 or 26 September 2017, accordingly, paragraph 2 (c) in relation to Patient A was found not proved.

Paragraph 2 (d)

77. The Tribunal noted that both Mr Horgan, on behalf of the GMC, and Mr McCartney, on behalf of Dr Mawhinney, had agreed and confirmed their position, that if the Tribunal were to find the Dr Mawhinney had not intentionally requested a urine sample, then the allegation that Dr Mawhinney was in close proximity to the curtain whilst Patient A was attempting to provide a urine sample could not be found to be proved.

78. Having concluded that Dr Mawhinney had not intentionally requested that Patient A provide a urine sample in the consultation room on 18 September 2017 or 26 September 2017, accordingly, paragraph 2 (d) in relation to Patient A was found not proved.

Paragraph 2 (e)

79. The Tribunal considered the allegation that Dr Mawhinney did not follow the system in place for the collection and analysis of the urine sample.

80. During the proceedings, Mr Horgan, on behalf of the GMC, clarified that the failure to follow the 'system' referred to the inappropriateness of an intentional request for a patient to provide a urine sample in a consultation room behind a curtain.

81. The Tribunal did note that in any event, there was no specific protocol or system in place at the Practice regarding the collection and analysis of urine samples. However, having considered the case as alleged by the GMC, as the Tribunal had concluded that Dr Mawhinney had not intentionally requested that Patient A provide a urine sample in the consultation room on 18 September 2017 or 26 September 2017, the Tribunal could not, on the balance of probabilities find that Dr Mawhinney had failed to follow any such system for the collection or analysis of the sample. Accordingly, paragraph 2 (e) in relation to Patient A was found not proved.

Patient B

13 February 2018

Paragraph 2 (a)

82. The Tribunal considered Patient B's witness statement regarding her 13 February 2018, her interview with the HSCB on 18 October 2018 and her oral evidence.

83. It was accepted that Patient B had not attempted to provide a sample on 13 February 2018. It was also an accepted fact that Patient B had returned to see Dr Mawhinney on 5 March 2018 in order to have a follow up appointment to receive the results of her blood test. No allegation arises out of the consultation on 5 March 2018.

84. Patient B did not report the matter to anybody until she told her mother around six months after the consultation. She explained in oral evidence to the Tribunal, that this was because her mother was making a further appointment with the Practice in July 2018 and that was the first time that she had returned to the Practice, since seeing Dr Mawhinney on 5 March 2018. The Tribunal did observe that in Patient B's medical records, it was evident that she had in fact attended the Practice for an appointment on 29 March 2018. On this occasion, she had seen a different doctor. When asked about this in cross-examination, Patient B said that she 'must have forgotten' that there was another appointment on 29 March 2018.

85. In Patient B's witness statement, when referring to the intentional request for her to provide a sample behind the curtain in the consultation room, she stated:

> *'At the time I didn't think that a doctor asking a patient to provide a urine sample in the room was unusual as it was my first appointment alone with a doctor and so I didn't think to immediately report it.'*

86. In Patient B's meeting with HSCB, a note was made stating that:

> *'The patient said that she knew that is was not appropriate to be asked to pass urine into a kidney dish in the room and she had felt uncomfortable with the request.'*

87. Patient B had therefore initially described Dr Mawhinney's alleged request as 'not appropriate'. She then told the GMC that she did not consider the request to be unusual, but in her oral evidence, said that the request was 'weird' and she had felt 'uncomfortable'.

88. Patient B was asked to clarify which room the consultation on 13 February 2018 had taken place in. She confirmed in oral evidence that it was Dr C's room and said that she was 90% sure of this. Photographs of the consultation rooms were shown to Patient B during her oral evidence. Patient B described in some detail about the examination on the couch and the presence of a set of small steps which were positioned underneath the centre of the

couch. She described how her legs were dangling off the side of the couch, but hovering over the steps. Of note, there were no similar steps underneath the couch in Dr F's room or the practice nurses room. Additionally, the layout of the room was opposite to that of Dr C's room.

89. The Tribunal heard evidence from Dr Mawhinney that he only had access to Dr C's room on Friday's and even on that day, he rarely used Dr C's room. In his witness statement dated 23 August 2020, Dr C confirmed this when he *stated 'he could only have used my room on Fridays as I do not work on that day – however I know he rarely used my room'*. Dr Mawhinney's consultation with Patient B took place on 13 February 2018 (a Tuesday).

90. Some six months after the incident is alleged to have occurred, Patient B mentioned it to her mother.

91. Patient B then raised the matter to Dr F at the end of a consultation on 10 August 2018. She told Dr F that she had been asked to '*go and pass urine behind the curtain*' in the consultation room. This was confirmed in a written complaint which was prepared around 22 August 2018. The Tribunal understood from Patient B that she had written the complaint letter herself. Patient B's mother later gave evidence that she had written the letter and may have also signed it, but the words had been 'dictated' by Patient B. Nevertheless, the written complaint also used the words '*Dr Mawhinney told me to go behind the screen in his room and do a urine sample on which he was very insistent on me doing*'. In her interview to the Health Board and in her statement to the GMC, Patient B describes being behind the curtain, having had an abdominal examination and Dr Mawhinney passing her a 'wee dish' around the curtain.

92. In her interview with the Health Board, Patient B describes Dr Mawhinney initially requesting the sample by asking her from his position outside the curtain '*can you do a urine sample*' before handing her a 'wee dish' around the edge of the curtain. Patient B said that she responded by saying '*I really can't go*'. The Tribunal noted that in the account provided to the Health Board, at this stage, there had been no intentional request for her to provide a sample behind the curtain. Patient B went on to say that Dr Mawhinney asked for a second time and on this occasion, he said '*it's ok, just do it there'*, to which Patient B replied '*honestly I really can't go'*.

93. In Patient B's witness statement, she states that Dr Mawhinney '*went to his desk and handed me a cardboard kidney dish and said that I could provide the sample, indicating that I could do so behind the curtain*'. When giving oral evidence, Patient B was asked about how he 'indicated'. She said that it was through words rather than actions and that she had been told to urinate behind the curtain.

94. Of further note, Patient B and her mother both informed the Health Board that she had never provided a sample before at the GP surgery. She also told the Health Board that she did not know there was a toilet just outside the practice room. In her oral evidence, Patient B described in detail how she had been previously asked in the surgery to provide a

sample in the toilet after being given a tin foil dish and a sample bottle. On these occasions, she said that she had been accompanied to the surgery by her mother. She could not remember how many times she had previously given a sample, but it was more than once. When asked in cross-examination why she had not asked to use the toilet (and followed normal procedure), she said that she was 'confused because the curtain was still closed around me'.

95. The Tribunal considered Dr Mawhinney's evidence of the 13 February 2018 consultation and his contemporaneous notes.

96. The Tribunal considered Dr Mawhinney's account in the Practice meeting; statement to the Health Board in September 2018; his interview with the Health Board in September 2018; his witness statement prepared as part of these proceedings; and his oral evidence to the Tribunal.

97. Dr Mawhinney's case was that the consultation had taken place in either Dr F's room or a Practice nurse's room and that he had given Patient B a sample bottle, assuming that she would go to the toilet to provide a sample. However, she had indicated that she didn't need to urinate. He accepted that he had asked her a second time, explaining the need to determine the cause of her lower back pain, but denied being 'insistent'. In his witness statement, he said *'I apologise if my request for a urine sample on 13/2/18 was misinterpreted. Although I gave the urine sample container in my room, my intention was for her to take it to the toilet as is the case for other patients in the practice'*.

98. At the HSCB meeting with Patient B on 18 October 2018, Dr R started the interview by stating that it is 'not appropriate' for a patient to be asked to pass urine in a consulting room and that it was right that the patient reported it. The Tribunal was of the view that Dr R should not have made such a comment before hearing a factual account of the alleged circumstances from Patient B.

Tribunal's conclusions

99. The Tribunal concluded that Patient B's consultation must have taken place in either Dr F's room or the Practice Nurse's room, both of which have a layout in stark contrast to that of Dr C's room. The Tribunal noted that Patient B had not provided a formal detailed account until her interview with the Health Board on 2 October 2018, which was around 8 months after the alleged incident. Since 13 February 2018, she had returned to the surgery on at least three occasions, including 5 March 2018 (to see Dr Mawhinney), 29 March 2018 (when she saw a different doctor) and on 10 August 2018 when she saw Dr F. The Tribunal found Patient B's recollection of consultation room on 13 February 2018 to be confused.

100. The Tribunal found elements of Patient B's recollection to be inconsistent and confused. She had provided different accounts about whether she had been asked to provide the sample before she was behind the curtain or when she was already behind the curtain. She had been unable to provide a consistent account about the request to provide the

sample and the words used by Dr Mawhinney. There were also inconsistencies in Patient B's recollection as to whether she had provided urine samples in the past.

101. The Tribunal considered the conflicting evidence about whether Patient B considered the alleged request of Dr Mawhinney to be 'inappropriate/weird/uncomfortable'. The Tribunal found the inconsistency in the accounts she had provided to be relevant. Patient B could have reported the matter to her mother at an earlier opportunity and also had an opportunity to report the matter to a different doctor on 29 March 2018.

102. The Tribunal found Dr Mawhinney's account to have been clear and consistent in relation to the 13 February 2018 consultation.

103. The Tribunal concluded that there was a possibility of a miscommunication between Dr Mawhinney and Patient B in relation to where Patient B should provide the urine sample.

104. Given the inconsistencies in Patient B's evidence, the Tribunal could not conclude on the balance of probabilities that Dr Mawhinney did intentionally request that Patient B provide a urine sample in the consultation room behind the curtain.

105. Accordingly, the Tribunal found that paragraph 2 (a) in relation to Patient B on 18 February 2018 was not proved.

Paragraph 2 (b)

106. The Tribunal noted that Patient B described the container given to her as a kidney dish. In oral evidence Patient B identified the receptacle to be a cardboard kidney dish. Kidney dishes were readily available in the Practice consulting rooms, as they are often used as containers, either for storage (e.g. cotton balls) or for vomit, as Dr F said in oral evidence.

107. When Patient B was interviewed by the Health Board, she described the receptacle as a 'wee dish'. She clarified this was an 'expression' rather than a description of the size of the dish, or that it was used for catching urine. The Health Board notes contain clarification 'bullet points'. These bullet points include the following, '*the dish as described by the patient was confirmed as a kidney dish of the type used for "sick"/vomit (i.e. card). A sample bottle was not given to the patient*'.

108. Dr Mawhinney's case was that he had provided Patient B with a sample bottle. Dr Mawhinney described the various reasons why he would not ask a patient to provide a sample in a consultation room. These reasons included that it was 'undignified', 'unhygienic' and that he did not 'see any clinical reason why this would be requested by a doctor'. He also discussed the inherent difficulties of providing a sample in anything other than a sample bottle and the impracticality of using a kidney dish as a container to hold a urine sample. Dr Mawhinney explained the obvious difficulty with having to 'decant' from a larger bowl into a sample bottle before sending the sample off to the laboratory.

109. As the notes of the Health Board meeting are not verbatim in relation to this aspect of the evidence, the Tribunal were not able to ascertain how the initial description of a 'wee dish' later became a 'kidney dish'.

110. The Tribunal considered that it was not likely that Dr Mawhinney would have given Patient B a cardboard kidney dish in order to provide a urine sample.

111. Accordingly, on the balance of probabilities, the Tribunal found that Paragraph 2 (b) relation to Patient B on 13 February 2018 was found not proved.

Paragraph 2 (c)

112. The Tribunal has already concluded that Dr Mawhinney did not intentionally request that Patient B provide a urine sample behind the curtain in the consultation room.

113. Mr Horgan had clarified that the allegation that Dr Mawhinney then remained in the consultation room whilst Patient B was behind the curtain, was based entirely on his earlier intentional request.

114. As the Tribunal has not found that Dr Mawhinney intentionally requested that Patient B provide a urine sample in the consultation room behind the curtain, paragraph 2 (c) in relation to Patient B on 13 February 2018 is found not proved.

Paragraph 2 (d)

115. The Tribunal has already concluded that Dr Mawhinney did not intentionally request that Patient B provide a urine sample behind the curtain in the consultation room.

116. Mr Horgan had clarified that the allegation that Dr Mawhinney was in close proximity to the curtain whilst Patient B was behind the curtain, was based entirely on his earlier intentional request.

117. As the Tribunal has not found that Dr Mawhinney intentionally requested that Patient B provide a urine sample in the consultation room behind the curtain, paragraph 2 (d) in relation to Patient B on 13 February 2018 is found not proved.

Paragraph 2 (e)

118. The Tribunal considered the allegation that Dr Mawhinney did not follow the system in place for the collection and analysis of the urine sample.

119. During the proceedings, Mr Horgan, on behalf of the GMC, clarified that the failure to follow the 'system' referred to the inappropriateness of an intentional request for a patient to provide a urine sample in a consultation room behind a curtain.

120. Having considered the case as alleged by the GMC, as the Tribunal had concluded that Dr Mawhinney had not intentionally requested that Patient B provide a urine sample in the consultation room on 13 February 2018, the Tribunal could not, on the balance of probabilities find that Dr Mawhinney had failed to follow any such system for the collection or analysis of the sample. Accordingly, paragraph 2 (e) in relation to Patient B was found not proved.

Paragraph 3 (a) (i) and (ii)

121. The Tribunal considered the evidence in relation to the discussion that took place between Dr Mawhinney and Dr C on 20 November 2017. Dr C did not carry out any form of investigation and there was no contemporaneous documentation in relation to the discussions that took place.

122. The notes taken at the Practice meeting of 24 August 2018 are clear that *'[Dr C] stated that in the first incident his explanation had been accepted and that there was most likely miscommunication'*. When giving oral evidence to the Tribunal, Dr C was asked whether the matter involving Patient A had been resolved as a miscommunication. He agreed and said *'absolutely'*. Dr C did go on to say that whilst he accepted the explanation given by Dr Mawhinney, he added that he was 'never totally happy that it had been explained'. In his witness statement and oral evidence, Dr C said that he told Dr Mawhinney never to do anything like this again (or words to that effect).

123. In his witness statement, Dr Mawhinney stated that on 20 November 2017, he had explained the details of the consultations with Patient A, he had denied asking her to provide a sample in the consultation room and he had apologised to Dr C that the patient had misunderstood. He went on to say that it was agreed that he did not want a misunderstanding of this nature to occur again in the future.

124. In her witness statement, Dr F stated, *'[Dr C] told me that he had spoken to Dr Mawhinney about it and Dr Mawhinney had explained there had been a breakdown in communication between him and the Patient. [Dr C] told me that he had told Dr Mawhinney that nothing like this should happen again and there should be no ambiguity in these situations'.*

125. Dr C had accepted the explanation that the alleged incident had arisen as a result of a miscommunication. As there is no contemporaneous note of this meeting and no note on Dr Mawhinney's e-portfolio, the Tribunal could not conclude that Dr Mawhinney had been told that his actions were inappropriate before Patient B's complaint or that his actions as set out at paragraph 2 should never happen again (or words to that effect).

126. Accordingly, on the balance of probabilities, the paragraph 3 (a) (i) and (ii) were found to be not proved.

Paragraph 3 (b)

127. As the allegation set out in paragraph 3 (b) was reliant upon paragraph 2 (in relation to Patient B) and paragraph 3 (a) being found proved, the allegation that it was inappropriate to request a urine sample from Patient B as set out in paragraph was found not proved.

The Tribunal's Overall Determination on the Facts

128. The Tribunal has determined the facts as follows:

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

1. At all material times Patient B was vulnerable by reason of her age. **Admitted and Found Proved**

2. On the dates set out in Schedule 1, you consulted with Patients A or B ('the Patients') and you:

a. intentionally requested ~~and / or allowed~~ the Patients to provide a urine sample ('the Sample') in the consultation room behind a curtain;
Amended under Rule 17(6)
Found Not Proved

b. gave the Patients a bowl / dish in which to provide the Sample;
Found Not Proved

c. remained in the consultation room whilst the Patients were behind the curtain and ~~/ or~~, in the case of Patient A, attempting to provide the Sample;
Amended under Rule 17(6)
Found Not Proved

d. were in close proximity to the curtain whilst the Patients were behind the curtain and ~~/ or~~, in the case of Patient A, attempting to provide the Sample;
Amended under Rule 17(6)
Found Not Proved

e. did not follow the system in place for the collection and analysis of the Sample; **Found Not Proved**

~~f. failed to communicate with the Patients with regards to the provision of the Sample~~. **Amended under Rule 17(6)**
Withdrawn

3. You knew:

a. you had been advised by Dr C following your consultations with Patient A that your actions as set out at paragraph 2:

i. were inappropriate; Found Not Proved

ii. should never be done again or words to that effect;
Found Not Proved

b. as a result of paragraph 3a that it was inappropriate to request the Sample from Patient B as set out at paragraph 2.
Found Not Proved

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct.' Found Not Proved

129. Having found paragraphs 2 and 3 of the Allegation not proved, the Tribunal concluded that paragraph 1 of the Allegation contained merely a statement of fact which was a matter not relevant to misconduct and/or impairment. Accordingly, the Tribunal did not go on to consider whether the doctor's fitness to practise was impaired.

130. XXX

131. That concludes this case.

Confirmed
Date 18 March 2021 Mr Duncan Toole, Chair

ANNEX A – 05/03/2021

Application to amend the Allegation

1. Mr Horgan, on behalf of the GMC made an application, under the General Medical Council (Fitness to Practise) Rules Order of Council 2004, ('the Rules') Rule 17(6), to amend paragraphs 2 and 3 of the Allegation

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

1. At all material times Patient B was vulnerable by reason of her age. Admitted and Found Proved

2. On the dates set out in Schedule 1, you consulted with Patients A or B ('the Patients') and you:

   a. requested and / or allowed the Patients to provide a urine sample ('the Sample') in the consultation room behind a curtain; To be determined

   b. gave the Patients a bowl / dish in which to provide the Sample; To be determined

   c. remained in the consultation room whilst the Patients were behind the curtain and / or attempting to provide the Sample; To be determined

   d. were in close proximity to the curtain whilst the Patients were behind the curtain and / or attempting to provide the Sample; To be determined

   e. did not follow the system in place for the collection and analysis of the Sample; To be determined

   f. failed to communicate with the Patients with regards to the provision of the Sample. To be determined

3. You knew:

   a. you had been advised by Dr C following your consultations with Patient A that your actions as set out at paragraph 2:

      i. were inappropriate; To be determined

      ii. should never be done again or words to that effect; To be determined

b. as a result of paragraph 3a that it was inappropriate to request the Sample from Patient B as set out at paragraph 2. To be determined

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

to:

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

1. At all material times Patient B was vulnerable by reason of her age.

2. On the dates set out in Schedule 1, you consulted with Patients A or B ('the Patients') and you:

a. intentionally requested the Patients to provide a urine sample ('the Sample') in the consultation room behind a curtain;

b. gave the Patients a bowl / dish in which to provide the Sample;

c. remained in the consultation room whilst the Patients were behind the curtain and, in the case of patient A, attempting to provide the Sample;

d. were in close proximity to the curtain whilst the Patients were behind the curtain and, in the case of Patient A, attempting to provide the Sample;

e. did not follow the system in place for the collection and analysis of the Sample;

3. You knew:

a. you had been advised by Dr C following your consultations with Patient A that your actions as set out at paragraph 2:

i. were inappropriate;
ii. should never be done again or words to that effect;

b. as a result of paragraph 3a that it was inappropriate to request the Sample from Patient B as set out at paragraph 2.

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

2. Mr Horgan submitted that the Allegation was in part worded incorrectly and his proposed amendments would provide certainty.

3. Mr McCartney did not oppose this application.

The Tribunal's decision

4. The Tribunal considered that the proposed amendments to the Allegation would not cause injustice to the GMC or Dr Mawhinney. The Tribunal therefore determined to grant to the application to amend the Allegation as proposed.

ANNEX B – 05/03/2021

Application in relation to the admission of evidence

1. Mr Horgan, on behalf of the GMC, sought to admit additional evidence in the form of two further documents and made an application on the admissibility of evidence pursuant to Rule 34(1) of the GMC (Fitness to Practise) Rules 2004 ('the Rules').

2. Mr Horgan stated that the two further documents consisted of Patient A's second and third supplemental witness statements and submitted that the documents would assist the Tribunal in its decision making.

3. Mr McCartney, on behalf of Dr Mawhinney, did not oppose the admission of the two further documents.

The Tribunal's Decision

4. The Tribunal considered this application in accordance with Rule 34 of the Rules, which states:

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

5. The Tribunal considered the admissibility of further evidence before it, as to whether it is firstly relevant, and secondly, if it is fair to admit it.

6. The Tribunal considered this further evidence to be relevant to the Allegation in this case.

7. The Tribunal considered that Patient A's second and third supplemental witness statements were material to the issues before it and potentially relevant. It further noted that Mr McCartney did not oppose the admission of the said documents.

8. The Tribunal had regard to the issues of relevance and fairness and any potential injustice to either party. The Tribunal noted that both parties had agreed to the production of this additional evidence to the Tribunal and it therefore concluded that no injustice would be caused to Dr Mawhinney.

9. The Tribunal acceded to Mr Horgan's application and determined that Patient A's second and third supplemental witness statements admissible as evidence in this case.

SCHEDULE 1

Date	Patient
18 September 2017	Patient A
26 September 2017	Patient A
13 February 2018	Patient B