

**Dates:** 11/02/2019 - 15/02/2019

**Medical Practitioner's name:** Miss Justine McINTYRE

**GMC reference number:** 7037071

**Primary medical qualification:** MB BS 2009 University of East Anglia

**Type of case**  
New - Misconduct

**Outcome on impairment**  
Impaired

**Summary of outcome**

Suspension, 6 months.  
Review hearing directed

**Tribunal:**

Legally Qualified Chair	Mrs Nessa Sharkett
Lay Tribunal Member:	Ms April Marland
Medical Tribunal Member:	Mr Gulzar Mufti
Tribunal Clerk:	Ms D Montgomery

**Attendance and Representation:**

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	n/a
GMC Representative:	Mr Nigel Grundy, 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.

## **Record of Determinations – Medical Practitioners Tribunal**

### **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 and Impairment - 14/02/2019**

#### **Background**

1. Dr McIntyre qualified in the United Kingdom (UK) in 2009 and, following graduation, relocated to New Zealand where she continued her medical training. At the time of the events which are the subject of this hearing, Dr McIntyre was practising in New Zealand as a Surgical Education and Training 2 Orthopaedic Registrar.
2. On 21 August 2017, Dr McIntyre made a written application to the General Medical Council (GMC) for full registration as she wished to practise in the UK during an extended visit to spend time with her family. As part of her written application, Dr McIntyre enclosed a copy of her Curriculum Vitae (CV) which included, under the heading Qualifications and Certificates, 'Postgraduate Diploma in Surgical Anatomy (PGDipSA), University of Otago, 2011' (Postgraduate Diploma).
3. The Tribunal was informed that all applications from doctors who qualified in the UK but completed their internship training in another country are referred to the GMC Registration Investigation Team to enable them to assess whether the doctor has acquired training and experience abroad which is equivalent to the UK Foundation Programme. Dr McIntyre's application was referred to the Registration Investigation Team on 22 August 2017 and when it was reviewed the GMC contacted Dr McIntyre to ask that she provide documentary evidence of her training and experience abroad. These documents included a consultant report covering her most recent medical post and evidence of her Continuing Professional Development. Dr McIntyre was also asked to provide a copy of her Postgraduate Diploma certificate as the diploma was included on her CV. The Tribunal was informed that, although the diploma could have bolstered Dr McIntyre's application for registration, it was not required as a condition of registration.
4. Dr McIntyre provided some of the requested documents on 7 September 2017, including a document which purported to be a copy of the Postgraduate Diploma certificate (the Certificate). Following receipt of all of the requested documents and completion of standard verification checks, Dr McIntyre's application was sent to an Assistant Registrar (AR) so that a decision could be made regarding her registration. On 9 November 2017, an AR decided that Dr McIntyre's application

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should be allowed to proceed. Dr McIntyre was invited to attend an identity check at the GMC's London office and this was booked for 24 January 2018.

5. On 15 January 2018, Dr McIntyre telephoned the GMC to ask whether she was able to provide an electronic copy of the Postgraduate Diploma. She was advised that if an electronic copy was provided the GMC would need to verify the document and would do so by emailing the University of Otago that same week. An email was sent to the University of Otago on 19 January 2018. On 21 January 2018, the GMC received a response from the University advising that Dr McIntyre had passed three of the four papers required for the Postgraduate Diploma and, as she had not completed all the requirements for the qualification, it had not been awarded. A decision was made by the GMC to proceed with Dr McIntyre's identity check and granting of registration as she met all the requirements, while further information was sought from the University of Otago. It was subsequently confirmed by the University that the Certificate submitted to the GMC by Dr McIntyre was not the same certificate that had been issued to her by the University.

6. On 15 February 2018 the GMC emailed Dr McIntyre to ask for her comments on the discrepancy between the documents. Dr McIntyre responded by email on 16 February 2018 and confirmed that she had amended the original certificate to imply that she had completed the diploma. The matter was then referred to the GMC's Fitness to Practise Directorate for further investigation.

### **The Outcome of an Application made during the Facts Stage**

7. At the outset of the hearing, the Tribunal granted the GMC's application, made pursuant to Rule 31 of the GMC (Fitness to Practise) Rules 2004 (the Rules), to proceed with the hearing in Dr McIntyre's absence. The Tribunal also determined, of its own volition, to adjourn the hearing for a short time to give Dr McIntyre an opportunity to participate in the hearing by submitting further evidence. The Tribunal's full decision is included at Annex A.

### **Factual Witness Evidence**

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

- Ms A, GMC Registration Adviser, in person.

9. 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:

- Ms B, Bequest Administrator, Department of Anatomy, University of Otago
- Mr C, GMC Complex Case Work Adviser.

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### Documentary Evidence

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

- Dr McIntyre's GMC Application Form, dated 21 August 2017
- Dr McIntyre's CV
- A copy of the Certificate provided by Dr McIntyre and a copy of the original certificate issued by the University of Otago
- Email correspondence between the GMC and the University of Otago
- Email correspondence between the GMC and Dr McIntyre
- Correspondence between Dr McIntyre's legal representative in New Zealand and the MPTS.

### The Admitted Facts

11. The Tribunal was provided with a copy of a letter, dated 24 January 2019, from Dr McIntyre's legal representative in New Zealand, Mr Matthew F McClelland, QC. Through her legal representative, Dr McIntyre admitted the entirety of the allegation, as set out below. The Tribunal accepted these admissions and, in accordance with Rule 17(2)(e) of the Rules, it announced the entirety of the Allegation as admitted and found proved.

### The Allegation and the Doctor's Response

12. The Allegation made against Dr McIntyre is as follows:

1. On 21 August 2017 you made a written application to the GMC for full registration enclosing your curriculum vitae ('the CV') in which you falsely stated that you had a Postgraduate Diploma in Surgical Anatomy (PGDipSA), University of Otago 2011. **Admitted and found proved**
2. On 7 September 2017 you provided the GMC with a Postgraduate Diploma Certificate in Surgical Anatomy purportedly from the University of Otago in which it stated that you had completed all four papers required for the Diploma. **Admitted and found proved**
3. On or before 7 September 2017 you amended the original Certificate dated 29 April 2014 ('the original Certificate') in which it was stated that you had completed three of the four papers required for the Diploma. **Admitted and found proved**
4. You knew you had not achieved the Diploma at the time of:

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- a. submitting the documents as set out in paragraphs 1 and 2: **Admitted and found proved**
  - b. amending the original Certificate. **Admitted and found proved**
5. Your actions described in paragraphs 1, 2 and 3 were dishonest by reason of paragraph 4. **Admitted and found proved**

### The Tribunal's Determination on Impairment

13. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts admitted and found proved, as set out above, Dr McIntyre's fitness to practise is impaired by reason of misconduct.

### The Evidence

14. The Tribunal has taken into account all the evidence before it, both oral and documentary.

### Submissions

15. On behalf of the GMC, Mr Grundy submitted that the facts in this case amount to serious misconduct and that Dr McIntyre's fitness to practise is impaired as a result. He referred the Tribunal to the GMC's guidance, Good medical practice (2013) (GMP) and, in particular, paragraphs 65, 66 and 71 which state:

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

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

71. You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.

a. You must take reasonable steps to check the information is correct.

b. You must not deliberately leave out relevant information.'

16. Mr Grundy submitted that Dr McIntyre chose to act dishonestly by submitting a CV to the GMC which falsely stated that she held a Postgraduate Diploma. He submitted that Dr McIntyre then compounded her dishonesty by submitting a forged

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Postgraduate Diploma certificate. Mr Grundy submitted that probity is at the heart of the medical profession and that such repeated dishonesty amounts to serious misconduct.

17. Mr Grundy accepted that Dr McIntyre has apologised for amending the certificate. However, he stated that her apology was only made when her dishonesty had been uncovered. He stated that Dr McIntyre has not explained why she had included the Postgraduate Diploma on her CV or why she subsequently decided to forge the Certificate. Mr Grundy submitted that, despite being given the opportunity to provide evidence of reflection or testimonials relating to her good character, Dr McIntyre has not done so.

18. Mr Grundy referred the Tribunal to the judgment in the case of *CHRE v NMC & Paula Grant* [2011] EWHC 927 (Admin), in which Mrs Justice Cox, at paragraph 71, adopted the following principle:

'71. ...it is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations...namely the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession.'

19. Mr Grundy submitted that these considerations are directly applicable to the circumstances of this case.

### **The Relevant Legal Principles**

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

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 was serious and, if so, whether the finding of serious misconduct could lead to a finding of impairment.

22. The Tribunal must determine whether Dr McIntyre's fitness to practise is impaired today, taking into account Dr McIntyre's conduct at the time of the events and any relevant factors since then, such as whether the matters are remediable, have been remedied and any likelihood of repetition.

### Misconduct

23. The Tribunal first considered whether the facts as found proved amounted to misconduct. In doing so, it had regard to the paragraphs of GMP to which it has been referred as set out above.

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24. Dr McIntyre has admitted that she submitted a CV in support of her application to the GMC for full registration which falsely stated that she had achieved a Postgraduate Diploma. She has also admitted that she subsequently provided the GMC with the Certificate which she had amended in order to imply that she had completed the Postgraduate Diploma. Dr McIntyre has admitted that her actions were dishonest.

25. The Tribunal was satisfied that Dr McIntyre's conduct, which was directly related to her professional practice, was a clear breach of the principles set out in GMP relating to probity. The Tribunal considered that Dr McIntyre's initial dishonesty in including the diploma on her CV was compounded by her decision to amend her original certificate rather than clarify that her CV was incorrect when asked to provide evidence of her Postgraduate Diploma.

26. Having considered all the evidence, the Tribunal has concluded that Dr McIntyre's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct.

### Impairment

27. The Tribunal, having found that the admitted facts amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr McIntyre's fitness to practise is currently impaired.

28. The Tribunal accepted that dishonesty is difficult to remediate. The Tribunal considered whether there was any evidence before it of insight or remediation.

29. The Tribunal noted that Dr McIntyre has demonstrated a degree of insight into her misconduct. It had regard to her email to the GMC, dated 16 February 2018, in which she admitted what she had done and offered a 'heartfelt apology' for her 'lapse in judgment and irresponsible action in changing the letter'. Dr McIntyre acknowledged that she had made the 'tremendously poor choice to change the "three of the four papers" to "all of the four papers" to imply that [she] had completed the diploma'. She explained that when she was asked to supply evidence of her Postgraduate Diploma she became 'very concerned that only managing to fulfil three out of four papers of papers of the diploma would impact the GMC's decision to grant [her] full registration'.

30. Dr McIntyre stated that she was ashamed of her behaviour and acknowledged that there was no excuse for it. She stated that she was 'absolutely devastated' after receiving the GMC's email and realising what a 'reckless and stupid decision' she had made. Dr McIntyre acknowledged that her actions harmed the integrity that the medical profession depends on and stated that she was 'willing to do anything to make amends'.

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31. The Tribunal noted that Dr McIntyre’s apology relates only to the fact that she amended the Certificate and there is no explanation for why she had originally included it on her CV. Although Dr McIntyre stated that she was willing to do anything to make amends, there is no evidence before the Tribunal to assure it that Dr McIntyre has undertaken remediation or reflected on the matter further to her initial response to the GMC in February 2018. In the circumstances, the Tribunal cannot be satisfied that Dr McIntyre’s misconduct would not be repeated.

32. The Tribunal has borne in mind the statutory overarching objective which is to protect the public. This includes: to protect and promote the health, safety and wellbeing of the public; to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for members of the profession. The Tribunal determined that the maintenance of public confidence in the medical profession, and the maintenance of proper professional standards and conduct for members of the profession, would be undermined if a finding of impairment was not made in this case.

33. Having considered all the circumstances, the Tribunal has determined that Dr McIntyre’s fitness to practise is impaired by reason of her misconduct.

### **Determination on Sanction - 15/02/2019**

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

### **The Evidence**

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

### **Submissions**

3. On behalf of the GMC, Mr Grundy submitted that the proper and appropriate sanction was one of suspension. He referred the Tribunal to the Sanctions Guidance (February 2018) (SG) and, in particular, paragraphs 91, 92 and 97, which state:

‘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.

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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...

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

a A serious breach of *Good medical practice*, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors....

f No evidence of repetition of similar behaviour since incident.'

4. Mr Grundy submitted that a period of suspension would reflect the seriousness of Dr McIntyre's misconduct.

5. Mr Grundy submitted that, given the seriousness of Dr McIntyre's misconduct, it would not be appropriate for the Tribunal to take no action or to impose conditions on her registration. Mr Grundy further submitted that it would be difficult to formulate conditions in a case involving dishonesty.

### The Tribunal's Determination on Sanction

6. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement. In reaching its decision, the Tribunal took account of the SG. It has borne in mind that although sanctions are not imposed to punish a doctor, they may have a punitive effect.

7. Throughout its deliberations, the Tribunal had regard to the principle of proportionality and weighed the interests of the public with Dr McIntyre's interests.

8. The Tribunal considered whether there were any aggravating or mitigating factors in Dr McIntyre's case. In respect of aggravating factors, the Tribunal identified the following:

- the fact that Dr McIntyre compounded her initial dishonesty by amending the certificate rather than clarify that her CV was incorrect when asked to provide evidence of her Postgraduate Diploma
- the fact that Dr McIntyre chose to be dishonest to her regulator in the context of an application for registration when the GMC is tasked with ensuring that

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doctors have the appropriate qualifications and experience to be granted registration. By doing so Dr McIntyre risked undermining the system of registration designed to protect patients

- the lack of evidence of remediation or further reflection on Dr McIntyre's part, despite her legal representative indicating that such evidence existed and despite Dr McIntyre being afforded opportunity to provide it to the Tribunal.

9. The Tribunal considered the following to be mitigating factors:

- the fact that Dr McIntyre readily admitted what she had done when challenged by the GMC, albeit only in relation to the amendment of the certificate which was what she was asked to comment on by the GMC
- the fact that Dr McIntyre demonstrated reflection and remorse in her response to the GMC
- the fact that Dr McIntyre made full admissions in advance of this hearing
- on the evidence before the Tribunal, this was a single episode of dishonesty in her career
- the fact that there is no evidence before the Tribunal to suggest that there are any issues with Dr McIntyre's practice
- the fact that Dr McIntyre may have been experiencing personal stressors at the time.

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

11. The Tribunal first considered whether it would be sufficient to conclude Dr McIntyre's case with no action. It determined that taking no action on Dr McIntyre's registration would be wholly inappropriate in a case involving dishonesty. The Tribunal was also satisfied that there were no exceptional circumstances in Dr McIntyre's case that would warrant it taking no action.

12. The Tribunal then considered whether it would be sufficient to impose conditions on Dr McIntyre's registration. It has borne in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. The Tribunal concluded that it would not be possible to formulate appropriate and workable conditions in a case involving dishonesty where it has identified that a doctor has limited insight.

13. The Tribunal next considered whether it would be sufficient to suspend Dr McIntyre's registration. It had regard to the paragraphs of SG to which it has been referred above.

14. The Tribunal had already stated that Dr McIntyre's conduct, which was directly related to her professional practice, was a clear breach of the principles relating to probity as set out in Good medical practice (2013) and fell so far short of

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the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct. The Tribunal considered whether Dr McIntyre’s misconduct is fundamentally incompatible with continued registration.

15. The Tribunal had regard to the mitigating factors in this case and it took into account the fact that the evidence before the Tribunal was such that this appeared to be an isolated episode of dishonesty in the context of Dr McIntyre’s medical career. Dr McIntyre also expressed reflection and remorse in her response to the GMC.

16. Having considered all the evidence, the Tribunal determined that the maintenance of public confidence in the medical profession and the maintenance of proper professional standards and conduct for the members of the profession would be addressed by a sanction of suspension. The Tribunal concluded that a period of suspension would mark the seriousness of Dr McIntyre’s misconduct and send the appropriate message to the profession, and the public, about what is regarded as behaviour unbecoming a registered medical practitioner.

17. The Tribunal determined that Dr McIntyre’s registration should be suspended for a period of six months. In determining the length of the suspension, the Tribunal considered that a period of six months would also allow Dr McIntyre sufficient time to reflect and remediate. It would also allow her time to gather the evidence that would enable her to demonstrate to a future Tribunal that her fitness to practise is no longer impaired.

18. The Tribunal determined to direct a review of Dr McIntyre’s case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought. The Tribunal wishes to clarify that, at the review hearing, the onus will be on Dr McIntyre to demonstrate that she has developed her insight and fully remediated her misconduct. The reviewing Tribunal may therefore be assisted by the following:

- evidence of Dr McIntyre’s insight and remediation
- a written reflective piece that demonstrates that Dr McIntyre understands how her misconduct came about, its impact on others and how she will ensure that there is no repetition
- evidence that Dr McIntyre has kept her skills and knowledge up to date during the period of suspension
- testimonial evidence from persons of good standing regarding Dr McIntyre’s conduct.

19. It is also open to Dr McIntyre to provide any other information that she considers might assist a reviewing Tribunal.

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### **Determination on Immediate Order - 15/02/2019**

1. Having determined to suspend Dr McIntyre's registration, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr McIntyre's registration should be subject to an immediate order.

#### **Submissions**

2. On behalf of the GMC, Mr Grundy stated that the GMC does not submit that an immediate order is necessary given that Dr McIntyre does not reside in the UK.

#### **The Tribunal's Determination**

3. The Tribunal had regard to the relevant paragraphs of the SG. The Tribunal noted that there are no patient safety issues in Dr McIntyre's case and she is not currently practising in the UK as she lives in New Zealand. The Tribunal considered that the public interest, specifically the maintenance of public confidence in the medical profession and the maintenance of proper professional standards and conduct for members of the profession, is addressed by its finding of impairment and the imposition of a period of suspension. It has therefore determined that this is not a case where its findings necessitate the imposition of an immediate order.

4. This means that Dr McIntyre's registration will be suspended 28 days from when notice of this decision is deemed to have been served upon her, unless she lodges an appeal. If Dr McIntyre does lodge an appeal she will remain free to practise unrestricted until the outcome of any appeal is known.

5. That concludes this case.

#### **Confirmed**

**Date** 15 February 2019

Mrs Nessa Sharkett, Chair

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**ANNEX A – 11/02/2019**

### **Determination on Service and Proceeding in absence and Adjournment**

#### **Service**

1. Dr McIntyre is neither present nor represented at this hearing.
2. The Tribunal has considered Mr Grundy's submission, on behalf of the General Medical Council (GMC), that notification has been properly served upon Dr McIntyre.
3. Mr Grundy provided the Tribunal with a copy of a Service bundle which included a copy of the GMC Notice of Allegation (NOA), dated 8 January 2019, sent to Dr McIntyre's registered address by post and email. The Tribunal has been provided with a copy of a delivery tracking receipt which confirms that the NOA was delivered and signed for by 'Justine M' on 14 January 2019. The Tribunal has also been provided with a copy of an email from Dr McIntyre, dated 10 January 2019, confirming receipt of NOA by email and that she was happy to be contacted by email.
4. Mr Grundy also provided the Tribunal with a copy of the Medical Practitioners Tribunal Service (MPTS) Notice of Hearing (NOH), dated 10 January 2019, sent to Dr McIntyre's registered address by Special Delivery. The Tribunal has been provided with a delivery tracking receipt stating 'Consignee not in'. The NOH was also sent to Dr McIntyre by an email, dated 11 January 2019.
5. Mr Grundy provided the Tribunal with a copy of a letter from Dr McIntyre's legal representative, Mr Matthew McClelland, QC, dated 24 January 2019 acknowledging that the hearing will begin on 11 February 2019. Mr Grundy submitted that Dr McIntyre is fully aware of today's hearing and invited the Tribunal to find that service has been effective.
6. The Tribunal noted that Dr McIntyre has confirmed receipt of service and there was clear indication from Mr McClelland that he and Dr McIntyre were both aware of the hearing commencing today.
7. Having considered the information in relation to service, the Tribunal was satisfied that Notice of this hearing had been served on Dr McIntyre in accordance with Rule 15 and Rule 40 of the GMC (Fitness to Practise) Rules 2004 (the Rules), and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.
8. The Tribunal determined that service has been effective.

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### **Proceeding in Absence / Application to Postpone**

9. The Tribunal then went on to consider whether it would be appropriate to proceed in Dr McIntyre's absence or whether in light of all the circumstances of this case, it would be appropriate and proportionate to postpone the hearing to a later date.

10. Mr Grundy invited the Tribunal to proceed in the absence of Dr McIntyre pursuant to Rule 31 of the Rules.

11. Mr Grundy said that Dr McIntyre has been aware of this hearing since 7 November 2018, and could have put information before this Tribunal if she wished to do so.

12. Mr Grundy provided the Tribunal with a copy of a letter from Dr McIntyre's legal representative, Mr Matthew McClelland, QC, dated 11 October 2018. Mr McClelland stated that Dr McIntyre did not envisage travelling to the UK for the hearing given her financial circumstances. However, Mr McClelland stated that Dr McIntyre intended to cooperate 'as fully as she can' with those involved in the hearing, but from New Zealand. Mr McClelland also stated that it was not Dr McIntyre's present intention to return to the UK to practise medicine.

13. Mr Grundy reminded the Tribunal that under Rule 29(2) of the Rules, Dr McIntyre is entitled to renew an application for postponement. It was Mr Grundy's submission that her application should be denied and that the Tribunal should proceed in the absence of Dr McIntyre under Rule 31 of the Rules. Mr Grundy noted that the application for postponement is a repeat of earlier applications requesting postponements pending a decision of the Medical Council of New Zealand (MCNZ).

14. The Tribunal was also provided with an MPTS Case Management decision on Dr McIntyre's postponement application.

15. Mr Grundy referred the Tribunal to the basis of the application which was contained in the letter of 24 January 2019 from Mr McClelland which stated that the "appropriate approach would be for the Medical Council/PCC disciplinary process to complete its course and for the Tribunal, having heard all the evidence and submissions from both parties, to impose what it considers to be the appropriate penalty taking into account such things as protection of the public, setting of professional standards, deterrence and Dr McIntyre's personal circumstances". Mr Grundy submitted that this was not the correct approach since Dr McIntyre had made a false statement and had provided amended documents to the GMC for registration in the UK.

16. Mr Grundy also submitted that the Tribunal should not postpone this hearing to await a decision of the MCNZ as it was unclear what the timeframe would be for

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action to be taken in New Zealand. He said that the latest information was that Dr McIntyre is due to attend an interview in March 2019. He submitted that it is not clear what process would then follow and whether or not matters would proceed to a hearing before its professional conduct committee or the health practitioners disciplinary tribunal.

17. Mr Grundy referred to the Case Manager's decision to refuse a postponement and reminded the Tribunal that nothing has been identified to suggest that proceedings in New Zealand need to conclude before the MPTS proceedings could go ahead.

18. Mr Grundy informed the Tribunal that there have been no further communications with Dr McIntyre or with Mr McClelland since the postponement request was refused by the MPTS Case Managers on 7 February 2019. He reminded the Tribunal that that document left it open to Dr McIntyre and Mr McClelland to provide written submissions, including applications to participate via remote means, or any further material "without delay".

19. Mr Grundy submitted that Dr McIntyre has elected not to attend the hearing or send in any documentation beyond that which is included in the bundle. He informed the Tribunal that the GMC has attempted to engage with her in respect of sending information and to possibly attend this hearing via videolink or otherwise.

20. Mr Grundy submitted that the timely disposal of hearings is in the public interest, especially with issues of probity and honesty potentially undermining public confidence in the medical profession.

21. In balancing the interests of Dr McIntyre against the public interest, Mr Grundy invited the Tribunal to find that it is in the public interest to proceed.

22. The Tribunal had regard to the submissions of Mr Grundy, the written submission of Mr McClelland and the refusal by a MPTS Case Manager to grant the most recent request to postpone the hearing. The Tribunal was conscious that its discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.

23. The Tribunal considered that Dr McIntyre has had sufficient notice of this hearing. Furthermore, Dr McIntyre has been aware of this hearing since November 2018 and has been given opportunity by both the GMC and MPTS to be involved in the hearing by attending in person, through written correspondence or methods of electronic communication.

24. The Tribunal does not accept that awaiting the outcome of any proceedings in New Zealand is necessary in order to fairly dispose of this matter. As it presently stands the proceedings in New Zealand remain at an investigatory stage and there is

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no certainty of whether any charges will be brought against Dr McIntyre and if so, when such proceedings might be concluded.

25. The Tribunal has taken account of Dr McIntyre's circumstances, in that she lives and works in New Zealand and that this may fetter her ability to attend this hearing in person. The Tribunal has balanced these factors against the need to meet the statutory overarching objective to maintain trust and confidence in the profession and uphold and maintain professional standards. In addition, whilst Dr McIntyre, through her legal representative, has stated that she currently has no intention to practise in the UK, she is nonetheless fully registered with the GMC and entitled to practise in the UK.

26. Having considered all of the information before it, the Tribunal was satisfied that in view of Dr McIntyre's voluntary absence and the seriousness of the issues raised in this case it was appropriate for the Tribunal to proceed under Rule 31 of the Rules.

### **Adjournment**

27. Of its own volition and in the interest of fairness to Dr McIntyre, the Tribunal next considered whether a short adjournment of proceedings would be appropriate in this case.

28. Mr Grundy reminded the Tribunal that two requests for postponement from Dr McIntyre have previously been refused, the most recent of which stated that any other information must be provided without delay. He also reminded the Tribunal that Dr McIntyre's legal representative was highly experienced. Mr Grundy submitted that since communication of the most recent refusal of an application to postpone, no further information has been supplied and no applications have been made to attend the hearing via videolink. Mr Grundy submitted that it is highly unlikely that the Tribunal will be furnished with any further information as a result of any adjournment.

29. The Tribunal determined that whilst Dr McIntyre had been advised to submit any further evidence without delay, a date and time for which submission of such evidence must be made was not identified. In the interests of fairness, the Tribunal considered that a short adjournment would give Dr McIntyre a further opportunity to participate in this hearing by submitting further evidence. The Tribunal is of the view that the GMC would not be prejudiced by allowing a short adjournment.

30. The Tribunal determined that two working days would be a sufficient timeframe to allow Dr McIntyre to produce further evidence in this case. It therefore determined that the hearing will recommence at 09:30 GMT on Wednesday 13 February 2019 (22:30 NZDT Wednesday 13 February 2019). Should Dr McIntyre wish to submit any further documents or any further evidence that she would like

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the Tribunal to consider, she must do so no later than 18:00 NZDT Wednesday 13 February 2019.

31. The parties should note that documents produced after 18:00 NZDT Wednesday 13 February 2019 may only be accepted with the permission of the Tribunal.