PUBLIC RECORD

Dates: 12/04/2021 - 20/04/2021

Medical Practitioner's name:	Mr David WILSON
GMC reference number:	3054284
Primary medical qualification:	MB BS 1985 University of London

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

Summary of outcome

Warning

Tribunal:

Legally Qualified Chair	Mr Ian Comfort
Lay Tribunal Member:	Mrs Valerie Blessington
Medical Tribunal Member:	Dr Paul Mitchell

Tribunal Clerk:	Mr Edward Kelly

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Anthony Haycroft, Counsel, instructed by RLB
GMC Representative:	Mr Chris Hamlet, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 15/04/2021

Background

1. Mr Wilson qualified in 1985. He has been on the GMC's Specialist Register for Plastic Surgery since May 1998 and has worked as a Consultant Burns and Plastic Surgeon for the past 21 years. Since 2007, Mr Wilson practised as a Consultant Burns & Plastic Surgeon at Birmingham Children's Hospital, which is part of Birmingham Women's and Children's NHS Foundation Trust ("the Trust"). Mr Wilson recently retired from clinical practice.

2. The allegation that has led to Mr Wilson's hearing can be summarised as follows. On 23 April 2018, Mr Wilson carried out a pre-operative consultation with a 16-year-old patient (Patient A), and his parents (Mrs B and Mr C), regarding a gynaecomastia procedure ('the Procedure') for Patient A. It is alleged that Mr Wilson failed to provide good medical care to Patient A and did not obtain adequate informed consent. Further, it is alleged that, on 14 August 2018, Mr Wilson performed the Procedure on Patient A in which he failed to provide good medical care and, on 16 August 2018, he reviewed Patient A and failed to provide good medical care to Patient A.

3. The surgery on Patient A did not go as planned and Patient A suffered an adverse outcome to the operation. Mrs B complained to the Trust and the matter was referred to the GMC for investigation.

The Outcome of Applications Made during the Facts Stage

4. On behalf of the GMC, Mr Hamlet made an application, pursuant to Rule 17(6) of the General Medical Council ('Fitness to Practise') Rules 2004 (as amended) ('the Rules'), for paragraph 7d of the Allegation to be removed from consideration. The Tribunal determined to grant this application. Its full decision can be found in Annex A.

The Allegation and the Doctor's Response

5. The Allegation made against Dr Wilson is as follows:

Pre-operative consultation

1. On 23 April 2018, 16-year-old Patient A, his mother Mrs B, and father Mr C attended a pre-operative consultation with you regarding a gynaecomastia procedure ('the Procedure'). Admitted and Found Proved

2. You failed to provide good medical care to Patient A on 23 April 2018 in that you did not:

    a. obtain informed consent from Patient A for the Procedure in that you failed to adequately explain:

        i. which surgical approach you intended to use to perform the Procedure; Admitted and Found Proved

        ii. the potential risks and complications of the Procedure to include one or more of the matters listed in Schedule 1; Admitted and Found Proved

    b. obtain informed consent from Mrs B for the Procedure in that you failed to adequately explain:

        i. which surgical approach you intended to use to perform the Procedure; Admitted and Found Proved

        ii. the potential risks and complications of the Procedure to include one or more of the matters listed in Schedule 1; Admitted and Found Proved

    c. obtain informed consent from Mr C for the Procedure in that you failed to adequately explain:

        i. which surgical approach you intended to use to perform the Procedure; Admitted and Found Proved

        ii. the potential risks and complications of the Procedure to include one or more of the matters listed in Schedule 1; Admitted and Found Proved

    d. adequately record:

i. your discussion with Patient A regarding the risks and complications of the Procedure to include one or more of those detailed in Schedule 1; Admitted and Found Proved

ii. your discussion with Mrs B regarding the risk and benefits of the Procedure to include one or more of those detailed in Schedule 1; Admitted and Found Proved

iii. your discussion with Mr C regarding the risk and benefits of the Procedure to include one or more of those detailed at Schedule 1; Admitted and Found Proved

iv. Patient A's grade of gynaecomastia; Admitted and Found Proved

v. the potential risks and complications of the Procedure as you failed to document one or more of those matters listed in Schedule 2. Admitted and Found Proved

3. On 23 April 2018, you:

a. filled in the consent form for the Procedure ('the Consent Form') writing one or more of the words listed in Schedule 3; Admitted and Found Proved

b. folded the Consent Form over, covering the page containing the words listed in Schedule 3; To Be Determined

c. handed the form to Mrs B to sign without saying what it was; To Be Determined

d. said to Mrs B 'if you can just sign here' or words to that effect. To Be Determined

4. You knew that one or more of the risks and complications referred to in Schedule 3 had not been discussed with Mrs B prior to her signing the consent form. To Be Determined

5. Your actions as described at paragraph 3 b. c. and d. were dishonest by reason of paragraph 4. To Be Determined

Day of the Procedure

6. On 14 August 2018, you performed the Procedure on Patient A. You failed to provide good medical care to Patient A in that you:

a. did not obtain informed consent from Patient A for the Procedure in that you:

i. failed to adequately explain to him how the Procedure was to be performed; **Admitted and Found Proved**

ii. failed to adequately explain to him one or more of the potential risks and complications of the Procedure as set out in Schedule 1; **Admitted and Found Proved**

b. did not obtain informed consent from Mrs B in that you:

i. failed to adequately explain to her how the Procedure was to be performed; **Admitted and Found Proved**

ii. failed to adequately explain to her one or more of the potential risks and complications of the Procedure as set in Schedule 1; **Admitted and Found Proved**

c. did not obtain informed consent from Mr C in that you:

i. failed to adequately explain to him how the Procedure was to be performed; **Admitted and Found Proved**

ii. failed to adequately explain to him one or more the potential risks and complications of the Procedure as set out in Schedule 1; **Admitted and Found Proved**

d. did not obtain informed consent for the resizing of Patient A's nipple from:

i. Patient A; **Admitted and Found Proved**

ii. Mrs B; **Admitted and Found Proved**

iii. Mr C; **Admitted and Found Proved**

e. attempted to examine Patient A's chest in public view, thereby causing him embarrassment at the potential failure to maintain his privacy and dignity; **Admitted and Found Proved**

f. did not adequately record:

i. any discussion with Patient A regarding the:

a. risks and benefits of the Procedure; **Admitted and Found Proved**

b. resizing of his nipple; **Admitted and Found Proved**

ii. any discussion with Mrs B regarding the:

a. risk and benefits of the Procedure; **Admitted and Found Proved**

b. resizing of Patient A's nipple; **Admitted and Found Proved**

iii. any discussion with Mr C regarding the:

a. risk and benefits of the Procedure; **Admitted and Found Proved**

b. resizing of Patient A's nipple; **Admitted and Found Proved**

iv. Patient A's grade of gynaecomastia; **Admitted and Found Proved**

v. how the Procedure was to be performed; **Admitted and Found Proved**

g. did not carry out the Procedure to the adequate standard as you used a V-Y fashion closure incorporating a vertical closure beneath the six o'clock margin resulting in:

i. more noticeable scars; **Admitted and Found Proved**

ii. noticeable asymmetry; **Admitted and Found Proved**

h. did not check for reasonable symmetry of the breasts at the end of the Procedure. **Admitted and Found Proved**

Post-operation

7. On 16 August 2018, you reviewed Patient A. You failed to provide good medical care to Patient A in that you did not:

a. remove Patient A's dressing to examine his nipple; **Admitted and Found Proved**

b. check the circulation to Patient A's nipple; **Admitted and Found Proved**

c. exclude the possibility of an underlying haematoma; **Admitted and Found Proved**

~~d. record any examination of Patient A's nipple~~. **Withdrawn under Rule 17(6) of the Rules**

8. Following the Procedure you met with Mrs B on 16 August 2018 and on 31 August 2018 to discuss Mrs B's complaint. You failed to:

a. adequately and appropriately explain to Mrs B:

i. the reasons why the complications experienced by Patient A had occurred; **Admitted and Found Proved**

ii. why the outcome of the surgery was so poor; **Admitted and Found Proved**

b. record any discussion with Mrs B in which you explained to her:

i. the reasons why the complications experienced by Patient A had occurred; **Admitted and Found Proved**

ii. why the outcome of the surgery was so poor. **Admitted and Found Proved**

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

The Admitted Facts

6. At the outset of these proceedings, through his counsel, Mr Haycroft, Mr Wilson made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

7. In light of Mr Wilson's response to the Allegation made against him, it remains for the Tribunal to determine the outstanding paragraphs of the Allegation.

Evidence

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

- Mrs B, by Skype for Business;
- Patient A, by Skype for Business;
- Mr C, by Skype for Business.

9. Mr Wilson provided his own witness statement and also gave oral evidence at the hearing by Skype for Business.

10. On behalf of Mr Wilson, witness statements from Dr D, Consultant Anaesthetist (26 February 2021) and from Ms E, Consultant in Burns and Plastic Surgery (also 26 February 2021), were provided.

Expert Witness Evidence

11. The Tribunal also received evidence from GMC expert witness Mr G, Consultant Plastic Surgeon. Mr G provided expert reports dated 14 July 2019 and 3 February 2020 and gave evidence by Skype for Business.

12. The Tribunal found Mr G to be a helpful and straightforward witness who gave consistent evidence and made concessions where appropriate.

Documentary Evidence

13. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to the consent form of the surgery (14 August 2018), transcript of the Trust complaint meeting (31 August 2018), email response to the complaint from Mr Wilson (4 October 2018), Patient A's medical records and correspondence between the Trust and Mr Wilson.

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. Mr Wilson 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. The Tribunal reminded itself that it must form its own judgement about the witness evidence heard before it, and the reliability of witnesses. It noted that it must decide whether to accept or reject such evidence, and where it is accepted, what weight to attach to it.

16. Where relevant to its decision-making process, the Tribunal had regard to the test for dishonesty set out in *Ivey v Genting Casinos (UK) Limited (t/a Crockfords Club) [2017] UKSC 67*. It states:

'When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'

17. The Tribunal accepted the advice of the Legally Qualified Chair who endorsed the case law proposed by parties including the case of Lord Nicholls in Re H (Minors) (Sexual Abuse: Standard of Proof [1996] AC 563, which states:

"When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury…. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation."

18. The Tribunal noted the submission that Mr Wilson is a man of good character and the relevant case law regarding this, namely Wisson v Health Professions Council [2013] EWHC 1036 Collins J:

"good character must always be likely to be relevant for the panel where there is a substantial issue of fact to be decided and where the credibility of the registrant in the evidence that he gives, is an issue and it can also go to whether it is likely that he did do what is alleged against him…even general good character evidence can be material where… there are issues of fact that have to be resolved in a hearing before the panel"

19. The Tribunal also bore in mind that it should assess and determine each paragraph and sub-paragraph of the Allegation separately. It noted that while it can draw inferences

from the evidence, it must not speculate as to any further evidence that has not come before it.

20. The Tribunal took account of the requirement to give sufficient and clear reasons for its determination.

The Tribunal's Analysis of the Evidence and Findings

21. The Tribunal has considered each subparagraph of the Allegation separately, has taken into account the submissions of Mr Hamlet and Mr Haycroft and has evaluated the oral and documentary evidence in order to make its findings on the facts.

Witness Evidence

22. The Tribunal found that, in relation to the consultation with Mr Wilson on 23 April 2018, Patient A tried to assist as far as his memory allowed. His oral evidence was consistent with his written statement where he stated that he had a limited memory of the detail of the consultation. The Tribunal took into account that Patient A did not remember much of the consultation, however he gave the impression that he was happy that Mr Wilson had agreed to the surgery and left the consultation feeling positive.

23. The Tribunal found that, in relation to the consultation with Mr Wilson on 23 April 2018, Mrs B tried to assist as far as her memory allowed. However, the Tribunal considered parts of her evidence lacked consistency and reliability. The Tribunal considered that Mrs B's memory and account of the consultation was strongly influenced by her emotional response to events leading up to the consultation and the outcome of the surgery.

24. The Tribunal found that, in relation to the consultation with Mr Wilson on 23 April 2018, Mr C tried to assist as far as his memory allowed. His oral evidence was consistent with his written statement where he stated that he had a limited memory of the detail of the consultation.

25. The Tribunal noted that the witness statements of Patient A, Mrs B and Mr C were signed in January 2020, some 19 months after the consultation with Mr Wilson. Their recollections at that time, as set out in their statements, differed from each other. It is to their credit that they recorded their own recollections. They all acknowledged that at this hearing, which has taken place more than a year after they made their statements, and almost three years after the consultation with Mr Wilson, their memories have faded.

26. The consultation on 23 April 2018 lasted around 10 minutes. The clear impression the Tribunal attained from their evidence is that Patient A and his parents were relieved that Mr Wilson was able to operate and that, after years of being 'over looked' Patient A was finally going to have the surgery they sought. Their memories focussed on the fact that Mr Wilson was able to operate on Patient A and not on other matters that were happening during the consultation.

27. Of particular concern to the Tribunal is Mrs B's recollection of the consent form. The Tribunal does not believe that Mrs B is deliberately attempting to mislead or deliberately construct a negative picture of the exchange; however, the Tribunal considers that, Mrs B's recollection of the event is unclear and has become tainted by the poor outcome for her son. Mrs B is adamant that she did not receive a consent form. She accepted, when questioned at the hearing that she must have had the form, because she accepted that it was her signature on the form.

28. The Tribunal found Mr Wilson to be an open and frank witness. He made it clear in his statement and oral evidence that he did not recall the consultation, in the context of a very busy surgery where he would have had up to 20 similar consultations in a typical day. He deduced that this was an unremarkable consultation and, while he did not remember the specific detail of what was discussed, he articulated the approach he would have adopted during such similar consultations, in terms of the description of the risks and the examination.

29. Mr Wilson made full and frank admissions that the consultation and operation were poor and that he did not obtain informed consent. The Tribunal considered that it was to his credit that Mr Wilson did not attempt to embellish or construct a memory of the index event based on what he assumed that he would had said or done. He admitted that he did not recall the consultation. He gave clear examples of his practice and the methodology that he adopted when in consultation with patients, in the context of a 35-year career as a surgeon.

Paragraph 3b

30. The Tribunal took into account that Mr Wilson, Patient A and Mr C do not remember the way the consent form was passed to Mrs B. Patient A and Mr C could not comment on whether the form was folded. Mr Wilson says that it would not be his practice to fold the form. The allegation therefore, arises from Mrs B's memory of the folding of the form

when it was handed to her. The Tribunal has already established that Mrs B's recollection of aspects of the consultation to be lacking in reliability.

31. The Tribunal noted that the actual structure and format of the consent form is far from ideal. The form is an A3 document folded in half to create a document comprising four A4 pages. The details of the risks set out in schedule 3 are written on page one of the form. The signature field and information about consent are on page two of the form. Page two is printed on the back of page one. In order to cover page one the form would have to be folded back against the central fold to, in effect, cover page one with page 4 of the form. The Tribunal had sight of the original consent form. It noted from the agreed facts and from its own observation that the form had not been folded back against its vertical axis.

32. On the balance of probabilities, the Tribunal determined that the GMC has not presented enough evidence to persuade it that what is alleged took place.

33. Therefore, the Tribunal found paragraph 3b of the Allegation to be not proved.

Paragraph 3c

34. The Tribunal took into account that Mr Wilson, Patient A and Mr C do not remember the way the consent form was passed to Mrs B. Patient A and Mr C could not comment on what was said or whether anything was said at all. Mr Wilson says that it would not be his practice to pass a consent form without saying what it was. The Allegation, therefore, arises solely from Mrs B's recollection of events. For reasons set out above, it has determined that Mrs B does not have a fully reliable memory of the consultation. In her oral evidence before the Tribunal she stated: *"it may have been a case of sign here"* and *"I do not recall signing it* [the consent form] *at all." "I am honestly not certain, we were just so relieved at this point."* This adds weight to Mrs B's incomplete or inconsistent memory of receiving the form.

35. Further, Mr Wilson did write down seven possible risks associated with the surgery. The Tribunal determined that it would be unlikely that any doctor would conduct a consultation, in relation to a surgical operation, make notes of risks on a consent form, and not discuss what he was writing or what the form was. Mr G gave evidence to the Tribunal that he considered it implausible that a doctor would fill in and hand out a form to be signed without giving an indication as to what it was.

36. Given Mrs B's inconsistency in evidence, in relation to the consent form, the Tribunal is not persuaded, on the balance of probabilities, that Mr Wilson presented Mrs B with a form without saying what it was.

37. Therefore, the Tribunal found paragraph 3c of the Allegation to be not proved.

Paragraph 3d

38. The Tribunal has determined that it is unlikely that Mr Wilson passed the consent form to Mrs B without stating what it was, for reasons set out in relation to paragraph 3c. Mr Wilson says that it would not be his practice to just hand a form and say you can just sign here or words to that effect. . The Tribunal took into account that Mrs B gave evidence before it stating that *"it **may** have been a case of saying sign here but I cannot recall"*. This is at odds with her statement where she is adamant of what was said. The Tribunal is concerned that Mrs B maintains that she is absolutely certain of what was said, in relation to the Allegation, when some of her assertions have proved to be incorrect.

39. Again, given Mrs B's inconsistency in evidence, in relation to the consent form, the Tribunal is not persuaded, on the balance of probabilities, that Mr Wilson said Mrs B to 'you can just sign here' or words to that effect.

40. Therefore, the Tribunal found paragraph 3d of the Allegation to be not proved.

Paragraph 4

41. The Tribunal took into account that Mr Wilson doesn't recall what he said in the consultation. It considered the accounts of Patient A, Mrs B and Mr C and found that there are a number of inconsistencies between their recollections of the consultation. Mrs B states that she recalls Mr Wilson referring to a scar. Mr C states that he recalled reference to bleeding and infection. Both Pt A and Mrs B recall reference to a drain. Mr C says he recalls Mr Wilson mentioning the general risks associated with surgery.

42. The Tribunal is not persuaded by the evidence before it, on the balance of probability, that Mr Wilson wrote down the risks associated with the surgery on the consent form, handed this to Mrs B to sign, stating that she understood the risks, but did not discuss these with her. The Tribunal found this unlikely and implausible.

43. The Tribunal took into account that Mr Wilson has been frank in accepting his clinical failings and absence of memory of the consultation. It also took into account his evidence where he states that it would be *"inconceivable and I would have no reason to do so"*. The Tribunal takes into account Mr Wilsons good character, in addition to his frank admissions and his long unblemished career and considers that it is more likely than not that he is telling the truth and he would not have knowingly or intentionally concealed anything from Mrs B, Patient A or Mr C.

44. Further, the Tribunal does not have any evidence for it to conclude that Mr Wilson's state of mind was such that he would have intentionally withheld information from Patient A, Mrs B and Mr C. The Tribunal does not have any reasonable evidence of motive or rationale for this to have occurred, in the context of a standard consultation for an experienced clinician. The burden is on the GMC to prove this and it has not sufficiently persuaded the Tribunal that Mr Wilson's would have departed significantly from his normal approach.

45. Therefore, the Tribunal found paragraph 4 of the Allegation to be not proved.

Paragraph 5

46. On the basis that the Tribunal determined paragraph 4 of the Allegation is not proved, paragraph 5 falls away.

47. Accordingly, the Tribunal found paragraph 5 of the Allegation to be not proved.

Summary

48. The Tribunal found that all outstanding paragraphs of the Allegation against Mr Wilson to be not proved.

The Tribunal's Overall Determination on the Facts

49. The Tribunal has determined the facts as follows:

Pre-operative consultation

1. On 23 April 2018, 16-year-old Patient A, his mother Mrs B, and father Mr C attended a pre-operative consultation with you regarding a gynaecomastia procedure ('the Procedure'). Admitted and Found Proved

2. You failed to provide good medical care to Patient A on 23 April 2018 in that you did not:

   a. obtain informed consent from Patient A for the Procedure in that you failed to adequately explain:

      i. which surgical approach you intended to use to perform the Procedure; Admitted and Found Proved

      ii. the potential risks and complications of the Procedure to include one or more of the matters listed in Schedule 1; Admitted and Found Proved

   b. obtain informed consent from Mrs B for the Procedure in that you failed to adequately explain:

      i. which surgical approach you intended to use to perform the Procedure; Admitted and Found Proved

      ii. the potential risks and complications of the Procedure to include one or more of the matters listed in Schedule 1; Admitted and Found Proved

   c. obtain informed consent from Mr C for the Procedure in that you failed to adequately explain:

      i. which surgical approach you intended to use to perform the Procedure; Admitted and Found Proved

      ii. the potential risks and complications of the Procedure to include one or more of the matters listed in Schedule 1; Admitted and Found Proved

   d. adequately record:

      i. your discussion with Patient A regarding the risks and complications of the Procedure to include one or more of those detailed in Schedule 1; Admitted and Found Proved

      ii. your discussion with Mrs B regarding the risk and benefits of the Procedure to include one or more of those detailed in Schedule 1; Admitted and Found Proved

iii. your discussion with Mr C regarding the risk and benefits of the Procedure to include one or more of those detailed at Schedule 1; **Admitted and Found Proved**

iv. Patient A's grade of gynaecomastia; **Admitted and Found Proved**

v. the potential risks and complications of the Procedure as you failed to document one or more of those matters listed in Schedule 2. **Admitted and Found Proved**

3. On 23 April 2018, you:

a. filled in the consent form for the Procedure ('the Consent Form') writing one or more of the words listed in Schedule 3; **Admitted and Found Proved**

b. folded the Consent Form over, covering the page containing the words listed in Schedule 3; **Not Proved**

c. handed the form to Mrs B to sign without saying what it was; **Not Proved**

d. said to Mrs B 'if you can just sign here' or words to that effect. **Not Proved**

4. You knew that one or more of the risks and complications referred to in Schedule 3 had not been discussed with Mrs B prior to her signing the consent form. **Not Proved**

5. Your actions as described at paragraph 3 b. c. and d. were dishonest by reason of paragraph 4. **Not Proved**

Day of the Procedure

6. On 14 August 2018, you performed the Procedure on Patient A. You failed to provide good medical care to Patient A in that you:

a. did not obtain informed consent from Patient A for the Procedure in that you:

i. failed to adequately explain to him how the Procedure was to be performed; **Admitted and Found Proved**

ii. failed to adequately explain to him one or more of the potential risks and complications of the Procedure as set out in Schedule 1; **Admitted and Found Proved**

b. did not obtain informed consent from Mrs B in that you:

i. failed to adequately explain to her how the Procedure was to be performed; **Admitted and Found Proved**

ii. failed to adequately explain to her one or more of the potential risks and complications of the Procedure as set in Schedule 1; **Admitted and Found Proved**

c. did not obtain informed consent from Mr C in that you:

i. failed to adequately explain to him how the Procedure was to be performed; **Admitted and Found Proved**

ii. failed to adequately explain to him one or more the potential risks and complications of the Procedure as set out in Schedule 1; **Admitted and Found Proved**

d. did not obtain informed consent for the resizing of Patient A's nipple from:

i. Patient A; **Admitted and Found Proved**

ii. Mrs B; **Admitted and Found Proved**

iii. Mr C; **Admitted and Found Proved**

e. attempted to examine Patient A's chest in public view, thereby causing him embarrassment at the potential failure to maintain his privacy and dignity; **Admitted and Found Proved**

f. did not adequately record:

i. any discussion with Patient A regarding the:

a. risks and benefits of the Procedure; **Admitted and Found Proved**

b. resizing of his nipple; **Admitted and Found Proved**

ii. any discussion with Mrs B regarding the:

a. risk and benefits of the Procedure; **Admitted and Found Proved**

b. resizing of Patient A's nipple; **Admitted and Found Proved**

iii. any discussion with Mr C regarding the:

a. risk and benefits of the Procedure; **Admitted and Found Proved**

b. resizing of Patient A's nipple; **Admitted and Found Proved**

iv. Patient A's grade of gynaecomastia; **Admitted and Found Proved**

v. how the Procedure was to be performed; Admitted and Found Proved

g. did not carry out the Procedure to the adequate standard as you used a V-Y fashion closure incorporating a vertical closure beneath the six o'clock margin resulting in:

i. more noticeable scars; Admitted and Found Proved

ii. noticeable asymmetry; Admitted and Found Proved

h. did not check for reasonable symmetry of the breasts at the end of the Procedure. Admitted and Found Proved

Post-operation

7. On 16 August 2018, you reviewed Patient A. You failed to provide good medical care to Patient A in that you did not:

a. remove Patient A's dressing to examine his nipple; Admitted and Found Proved

b. check the circulation to Patient A's nipple; Admitted and Found Proved

c. exclude the possibility of an underlying haematoma; Admitted and Found Proved

~~d.~~ ~~record any examination of Patient A's nipple~~. Withdrawn under Rule 17(6) of the Rules

8. Following the Procedure you met with Mrs B on 16 August 2018 and on 31 August 2018 to discuss Mrs B's complaint. You failed to:

a. adequately and appropriately explain to Mrs B:

i. the reasons why the complications experienced by Patient A had occurred; Admitted and Found Proved

ii. why the outcome of the surgery was so poor; Admitted and Found Proved

b. record any discussion with Mrs B in which you explained to her:

i. the reasons why the complications experienced by Patient A had occurred; Admitted and Found Proved

ii. why the outcome of the surgery was so poor. **Admitted and Found Proved**

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. **To Be Determined**

Determination on Impairment - 19/04/2021

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

The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, it received a further bundle from the GMC comprising a statement from Mr F, Mr Wilson's Responsible Officer (8 March 2021). The Tribunal also received a further bundle of documents from Mr Wilson comprising: a statement of his reflections (April 2021), appraisal forms from 2016 to 2018, patient and colleague feedback reports from 2019, evidence of training certificates obtained and a number of positive testimonials from medical professionals.

Submissions

<u>On behalf of the GMC</u>

3. Mr Hamlet submitted that the Tribunal's decision as to whether Mr Wilson's fitness to practise is impaired is a matter for its independent judgement. He referred the Tribunal to a number of cases and set out the legal principles relevant to misconduct and impairment.

4. Mr Hamlet submitted that Mr Wilson's fitness to practise is impaired by reason of his misconduct. He reminded the Tribunal of the two-stage process to be adopted. Firstly, whether the facts found proved amount to misconduct and secondly, whether Mr Wilson's fitness to practise is currently impaired by reason of his misconduct.

5. Mr Hamlet submitted that Mr Wilson's actions constituted misconduct that was serious and his fitness to practise is impaired by reason of this misconduct. He submitted that it is

helpfully conceded by those representing Mr Wilson that his actions do amount to misconduct.

6. Mr Hamlet submitted that the Tribunal should be satisfied that Mr Wilson's conduct represented misconduct that was sufficiently serious to fall short of the standards expected of a medical professional and that it should move on to consider impairment. He submitted that this is the conclusion reached by the GMC expert, Mr G, in his expert report and oral evidence in that there were a series of failures that fell seriously below the standards expected of a doctor.

7. Mr Hamlet said that he disagreed with Mr G on one matter in that he took the view that Mr Wilson's failure to carry out the gynaecomastia procedure to the adequate standard was clearly related to the failings in Mr Wilson's initial assessment, and the Tribunal should consider whether this was also a serious failure.

8. Mr Hamlet submitted that any approach to the issue of whether a doctor's fitness to practise should be regarded as impaired must take account of the protection of patients and maintenance of public confidence in the profession.

9. Further, Mr Hamlet submitted that an assessment of current impairment to fitness to practise will involve consideration of past misconduct and of any steps taken subsequently by the practitioner to remedy it. It is necessary to determine whether the misconduct is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.

10. Mr Hamlet drew the Tribunal's attention to the test for impairment set out by Dame Janet Smith in the Fifth Shipman Report, as adopted by the High Court in *CHRE v NMC and Paula Grant [2011] EWHC 927 (Admin).* He submitted that Mr Wilson's failings had put Patient A at risk of harm, brought the medical profession into disrepute and, in not gaining informed consent, had breached one of the fundamental tenets of the medical profession.

11. Mr Hamlet noted that there are positive features to Mr Wilson's case which the Tribunal should take into account including:
    - Mr Wilson's admissions to a number of paragraphs of the Allegation;
    - His genuine repeated apologies;

- His reflection on the matters, including recognition of the impact of his actions on Patient A, Patient A's family and the profession;
- The events were isolated and actions uncharacteristic of his past practice;
- The context of his retirement, meaning his conduct is unlikely to be repeated; however, he noted that Mr Wilson could, in principle, return to practise, even if he has retired.

12. Mr Hamlet submitted that Mr Wilson's failures were individually and collectively serious. Though the conduct should not be judged on the outcome of the procedure, in reality the poor outcome could be based on the serious failings. He submitted that as Mr Wilson is still unable to explain his actions, he has not fully addressed his failings, and therefore they have not been fully remedied, leading to a risk of repetition.

13. Further, he submitted, that trust in the profession would be undermined if a finding of impairment were not be made. Therefore, he submitted that the Tribunal should make a finding of impairment in order to uphold proper professional standards and to maintain confidence in the profession.

On behalf of Mr Wilson

14. Mr Haycroft concurred with Mr Hamlet's submissions regarding relevant case law and legal principles.

15. Mr Haycroft submitted that Mr Wilson has accepted from the outset that many of his actions fell seriously below those expected of him and that individually and collectively they amount to misconduct. However, Mr Wilson has sought to remediate his failings and a finding of impairment is not necessary.

16. Mr Haycroft submitted that the Tribunal should have regard to the following factors:
    - After the event, in July 2019, Mr Wilson decided with the agreement of the hospital to stop such procedures, especially as he conducted such a low volume of them;
    - Mr Wilson has clearly reflected properly, as shown by his full admissions to each and every clinical matter, and his appropriate apologies;
    - Mr Wilson has relinquished his licence to practise and has retired as of 31 December 2020;

- Mr Wilson's positive testimonials are evidence of his normal high standard of practice;
- Mr Wilson has accepted full responsibility for his actions and the MPT should stand back and look at this isolated case in the context of his career as a whole, being 35 years;
- There is no risk of repetition, by reason of Mr Wilson continuing to practise for over two years without further incident, and his voluntary actions of stopping such surgery;
- There is no countervailing public interest aspect now that the dishonesty allegations have been found not proven.

17. Mr Haycroft drew the Tribunals attention to the bundle of documentation detailing the considerable effort Mr Wilson had made, in order to reflect on the gravity of his conduct and the impact it had on Patient A, Patient A's family, his colleagues and the reputation of the profession.

18. He directed the Tribunal to the positive testimonials which attest to Mr Wilson's normal high standard of practice.

19. Mr Haycroft submitted that Mr Wilson had provided an abundance of evidence of his insight including his sincere remorse, his deep embarrassment of what happened, his openness with his colleagues including sharing his experiences and his actions since to improve his practice. He further submitted that this evidence of insight is reinforced by the fact that Mr Wilson voluntarily stopped doing all such surgical procedures removing any possible risk of such repetition. Mr Haycroft also noted that, due to personal reasons, Mr Wilson had retired from practice and, coupled with his considerable insight, there was no risk of repetition.

20. Mr Haycroft said that Mr Wilson is at a loss to explain why he performed so poorly in August 2018. However, it would be a simplistic approach to say there is a risk of repetition because he cannot explain his error. He submitted that the Tribunal should stand back and look at this isolated case in the context of his career as a whole.

21. Mr Haycroft submitted that, whilst it is accepted that Mr Wilson's actions represented misconduct that because of his insight, remediation, genuine remorse, extensive reflection and the absent risk of repetition, the Tribunal should conclude that Mr Wilson's fitness to practise is not currently impaired.

The Relevant Legal Principles

22. The Tribunal had regard to Mr Hamlet's submissions, endorsed by Mr Haycroft, and the Legally Qualified Chair, regarding the relevant case law and legal principles.

23. The Tribunal was mindful that its decision as to whether Mr Wilson's fitness to practise is impaired is a matter for its independent judgement.

24. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct, and then whether the finding of that misconduct which was serious could lead to a finding of impairment.

25. 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. The Tribunal must exercise its own judgement on the basis of the evidence.

26. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in *CHRE v NMC & Grant (2011) EWHC 927.* In particular, the Tribunal considered whether its findings of fact showed that Mr Wilson's fitness to practise is impaired in the sense that he:

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

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

    c. *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

    d. *has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

27. The Tribunal was conscious that the value of this test is threefold: it identifies the various types of activity which will arise for consideration in any case where fitness to practise is in issue; it requires an examination of both the past and the future; and it distils and

reflects, for ease of application, the principles of interpretation which appear in the authorities.

28. The Tribunal had regard to the case of *Meadow v GMC [2006] EWCA Civ 1390* which outlined that the purpose of fitness to practise proceedings is not to punish the practitioner for past misdoings but to protect the public against acts and omissions of those who are not fit to practise. Tribunals therefore should look forward and not back. However, in order to form a view as to the fitness of a person to practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past.

29. The Tribunal took account of the case of *Cohen v GMC [2008] EWHC 581 (Admin*) in that it must determine whether the doctor's fitness to practise is currently impaired by reason of misconduct, taking into account his conduct at the time of the events and any other relevant factors such as any development of insight, whether the matters are remediable or have been remedied and the likelihood of repetition.

30. In relation to misconduct, the Tribunal bore in mind the case of *Roylance v General Medical Council (No.2) [2000]1 AC 311 (UKPC), which* provides:

> *'Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [medical] practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word professional which links the misconduct to the profession [of medicine]. Secondly, the misconduct is qualified by the word serious. It is not any professional misconduct which would qualify. The professional misconduct must be serious.'*

31. The Tribunal also bore in mind the observations of Mr Justice Cox in the case of *Grant* that:

> *'in determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant Tribunal should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances'.*

32. The Tribunal considered the case of *GMC v Chaudhury 2017 EWHC 2561*, which reminds tribunals of the importance of the overarching objective, the tripartite public interest and the need for Tribunals to conduct a proper balancing exercise of all three elements of the public interest test, rather than to focus on just one aspect of the test.

The Tribunal's Determination on Impairment

Misconduct

33. In determining whether Mr Wilson's fitness to practise is currently impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amounted to misconduct. Misconduct can be found in circumstances where there have been serious departures from expected standards of conduct and behaviour, which can be identified by reference to Good Medical Practice 2013 ('GMP').

34. The Tribunal had regard to all the facts outlined in this case. It took into consideration the submissions from both parties, that Mr Wilson's actions amounted to misconduct that is serious. It also had regard to the expert report and addendum prepared by Mr G along with his oral evidence.

35. The parties agreed with Mr G's conclusion that:

> *"… due to the significant number of serious failures I conclude that the overall standard of care fell seriously below the standard expected of a reasonably competent Consultant Cosmetic Surgeon"*

36. Mr G considered that Mr Wilson's failure to carry out the gynaecomastia procedure to the adequate standard fell below the standard expected of a reasonably competent Consultant Plastic Surgeon. However, as this was an error of judgement in surgical practice he did not consider this to be a serious failure.

37. Mr Hamlet did not agree with Mr G's opinion on this matter. He submitted that as the poor outcome from the surgical procedure was clearly related to the failings in Mr Wilson's initial assessment it should also be considered a serious failure.

38. The Tribunal took into account Mr Hamlet's submissions but concluded that Mr G was an expert who had carefully considered all matters and provided a consistent and reliable

opinion for the Tribunal. In these circumstances, it was minded to accept Mr G's opinion on the seriousness of each of the proved facts.

39. In reaching its decision, the Tribunal had regard to the relevant paragraphs of GMP, including, but not limited to; paragraphs 15a, b and c, 17, 32, 33, 49a and 55c which provide:

> *"15. You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must:*
>
> *a. adequately assess the patient's conditions, taking account of their history (including the symptoms and psychological, spiritual, social and cultural factors), their views and values; where necessary, examine the patient.*
>
> *17. You must be satisfied that you have consent or other valid authority before you carry out any examination or investigation, provide treatment or involve patients or volunteers in teaching or research.*
>
> *32. You must give patients the information they want or need to know in a way they can understand. You should make sure that arrangements are made, wherever possible, to meet patients' language and communication needs.*
>
> *33. You must be considerate to those close to the patient and be sensitive and responsive in giving them information and support.*
>
> *49. You must work in partnership with patients, sharing with them the information they will need to make decisions about their care, including:*
>
> *a. their condition, its likely progression and the options for treatment, including associated risks and uncertainties*
>
> *55. You must be open and honest with patients if things go wrong. If a patient under your care has suffered harm or distress, you should:*
>
> *c. explain fully and promptly what has happened and the likely short-term and long-term effects."*

40. The Tribunal had regard to the paragraphs of GMP, which it identified as being relevant, and determined that they are all engaged in this case. Bearing in mind the acceptance of

misconduct from Mr Wilson, the opinion of the GMC expert and the departures from the standards set out in GMP, the Tribunal determined that there is misconduct, which is serious, in this case.

Impairment

41. Having determined that the facts admitted and found proved amounted to serious misconduct, the Tribunal went on to consider whether, as a result Mr Wilson's fitness to practise is currently impaired.

42. The Tribunal took into account all the factors in this case. Mr Wilson made full admissions and has fully engaged with the regulatory proceedings. He has shown insight and has made expressions of regret and remorse, as demonstrated in his witness statement, oral evidence and reflective statement. Mr Wilson made fulsome apologies to Patient A and his family in the course of the hearing. The Tribunal considered that Mr Wilson understands that his actions fell short of the standards expected of a doctor and was satisfied that Mr Wilson has reflected sufficiently on how his actions have impacted upon patient safety and public confidence in the profession and also on the impact on his colleagues and the Trust. Prior to retirement, Mr Wilson amended his practice in light of this incident and, with the agreement of the Trust, stopped undertaking any similar procedures. The Tribunal did not think that Mr Wilson could have done more to demonstrate remediation.

43. The Tribunal is not persuaded that Mr Wilson lacks insight because he maintains that he cannot account for what happened. Rather, the Tribunal consider that Mr Wilson clearly states that he acknowledges that taking consent was insufficient and gave some account of this in his statement. He stated that he accepted that he did not list all of the possible risks in the context of a 10 minute consultation. In relation to the day of the procedure, Mr Wilson did not offer excuses or try to speculate on reasons for his failures. He simply does not understand why it went so wrong. Taking into account all of the evidence, the Tribunal interprets that this is in relation to the failures in the operation. The Tribunal considers that Mr Wilson has insight into all of his other failures and their impacts and is deeply regretful and ashamed for the incomprehensible and, in his words, *"appalling"* outcome of the operation.

44. The Tribunal did not accept the assertion that there might still be a risk of repetition because Mr Wilson could return to work, if found not impaired. The Tribunal believe that

Mr Wilson's insight is complete and that he is highly unlikely to make the same mistakes again, even if he were to come out of retirement and begin practising again.

45. The Tribunal had regard to the positive testimonials provided on behalf of Mr Wilson. It noted that his colleagues who provided the testimonials did so with knowledge of the Allegation made against him. The Tribunal took the view that it is clear that Mr Wilson is a highly regarded doctor and that this incident was out of character.

46. The Tribunal is of the view that an informed member of the public, with knowledge of the case and the steps Mr Wilson has taken in order to address his failings, would not find it unreasonable if Mr Wilson was found to be currently fit to practise, in the context of a 35-year unblemished career, working in an intense, high pressure environment.

47. The Tribunal concluded that a finding of impairment is not necessary to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, or to promote and maintain proper professional standards and conduct for members of the profession.

48. The Tribunal concluded that Mr Wilson's fitness to practise is not impaired by reason of his misconduct, pursuant to Section 35C(2)(a) of The Medical Act 1983 as amended.

Determination on Warning - 20/04/2021

1. As the Tribunal determined that Mr Wilson's fitness to practise was not impaired, it considered whether, in accordance with s35D(3) of the 1983 Act, a warning was required.

Submissions

On behalf of the GMC

2. Mr Hamlet referred the Tribunal to the relevant paragraphs of the Guidance on Warnings (March 2021) ('GoW'), in particular paragraphs 10, 13, 14, 20 and 32, as set out below.

3. Mr Hamlet submitted that a warning is not necessary to protect the public, in the particular circumstances of this case. However, it is appropriate to issue a warning, due to the Tribunal's finding of a significant number of breaches of GMP, which were serious

misconduct, at the impairment stage of proceedings. He asserted that the findings represent serious departures from the standards expected of a doctor as set out in GMP.

4. Mr Hamlet submitted that a warning as a deterrent to Mr Wilson may not be necessary as he has demonstrated insight. However, the deterrent effect should extend beyond Mr Wilson to other members of the profession.

5. Mr Hamlet further submitted that the finding of misconduct alone is inadequate. He submitted that even taking into account all of the mitigating factors in this case these do not negate the requirement of a warning and it is in the public interest to mark the seriousness of the misconduct.

On behalf of Mr Wilson

6. Mr Haycroft submitted that all the mitigating features set out in paragraph 32 of the GoW are present here. However, he acknowledged that the threshold of the test, as to whether a warning may be appropriate, is met.

7. Mr Haycroft reminded the Tribunal that Mr Wilson's misconduct relates to a single patient and single matter and that a reasonably informed member of the public would not view the conduct as so egregious as to necessitate a warning.

8. Mr Haycroft submitted that the matters had already been aired in public and that the Tribunal's determination on facts and impairment is already readily available. A member of public would be satisfied that the finding of misconduct sufficiently marks the gravity of Mr Wilson's conduct, bearing in mind the insight and remediation. He submitted that it would be disproportionate to impose a warning.

The Tribunal's Approach

9. The Tribunal accepted the advice of the Legally Qualified Chair. It took into account the evidence adduced at the earlier stage in proceedings, it's findings at the impairment stage and the submissions of both Mr Hamlet and Mr Haycroft.

10. The decision whether to issue a warning is a matter for the Tribunal alone to determine, exercising its own professional judgement. In making its decision, the Tribunal had regard to the Guidance, and in particular to paragraphs 10, 13, 14, 16, 20, 25 and 32 which state:

"10. The power to issue warnings, together with other powers available to the GMC and to MPTS tribunals, is central to their role of protecting the public which includes protecting patients, maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour.

13. Although warnings do not restrict a doctor's practice, they should nonetheless be viewed as a serious response, appropriate for those concerns that fall just below the threshold for a finding of impaired fitness to practise.

14. Warnings should be viewed as a deterrent. They are intended to remind the doctor that their conduct or behaviour fell significantly below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise. Warnings may also have the effect of highlighting to the wider profession that certain conduct or behaviour is unacceptable.

16. A warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal...

20. The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.

a. There has been a clear and specific breach of Good medical practice or our supplementary guidance.

b. The particular conduct, behaviour or performance approaches, but falls short of, the threshold for the realistic prospect test or in a case before a tribunal, that the doctor's fitness to practise has not been found to be impaired.

c. A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise…

d. There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).

25. In deciding whether to issue a warning the decision maker should apply the principle of proportionality, weighing the interests of the public with those of the practitioner. It is important to bear in mind, of course, that warnings do not restrict the practitioner's practice and should only be considered once the decision maker is satisfied that the doctor's fitness to practise is not impaired.

32. If the decision makers are satisfied that the doctor's fitness to practise is not impaired or that the realistic prospect test is not met, they can take account of a range of factors to determine whether a warning is appropriate. These might include:

a. the level of insight into the failings

b. a genuine expression of regret/apology

c. previous good history

d. whether the incident was isolated or whether there has been any repetition

e. any indicators as to the likelihood of the concerns being repeated

f. any rehabilitative/corrective steps taken

g. relevant and appropriate references and testimonials."

11. The Tribunal applied the above guidance to the facts found proved.

12. Throughout its deliberations, the Tribunal had regard to the statutory overarching objective. In that regard, it bore in mind that its power to issue a warning is central to its role in protecting the public, which includes: protecting patients; maintaining public confidence in the profession; and declaring and upholding proper standards of conduct and behaviour.

The Tribunal's Determination on Warning

13. The Tribunal was satisfied that, given the nature of its findings in relation to Mr Wilson's misconduct, his behaviour fell significantly below the standards expected as set out in GMP, which warrants a formal response by the Tribunal.

14. The Tribunal reminded itself that its decision that Mr Wilson's fitness to practise was not currently impaired was influenced to a considerable degree by the existence of insight and remediation since the Allegation, as outlined in his oral evidence, witness statement, positive testimonials and reflection. Whilst the Tribunal accept that there is a very low risk of Mr Wilson repeating his misconduct, it determined that it was necessary to highlight to Mr Wilson, the public and the medical profession that his misconduct was serious and unacceptable. The public interests required action to be taken.

15. The Tribunal bore in mind that a warning may have an impact on Mr Wilson in that it would be in the public domain and might affect his reputation. However, in the interests of transparency and to ensure confidence in the profession and the system of regulation, the public has a right to know that Mr Wilson's conduct has been found to have fallen seriously short of the standards expected of a doctor. These departures from GMP in the area of consent and communication with a patient are fundamental to Mr Wilson's relationship with patients.

16. While the Tribunal acknowledged that there were significant mitigating factors, these had to be weighed against the gravity of the misconduct. The Tribunal determined that if it were to fail to impose a warning, this would undermine the public's confidence in the regulatory process. Whilst public confidence will not be undermined by a finding of no impairment of fitness to practise therefore leading to a sanction, it would be undermined by the lack of a formal, publicly available record of the concerns in this case. The Tribunal determined that it is fair and proportionate to mark the seriousness of its findings, identified in its impairment determination, of serious misconduct.

17. Therefore, the Tribunal determined to issue the following warning in accordance with Section 35D(3) of the Medical Act 1983 and Rule 17(2)(m) of the Rules:

Mr Wilson

18. Having determined to impose a warning on your registration, the Tribunal decided that a warning should be given to you in the following terms:

> "On 19 April 2021, a fitness to practise Tribunal found that your conduct amounted to serious misconduct. This pertained to your failings in 2018 involving the perioperative care of a patient and a lack of informed consent from the patient or his family.

This conduct does not meet with the standards required of a doctor. It risks bringing the profession into disrepute and jeopardises patient safety. It must not be repeated.

You must ensure that you comply with the requirements of Good Medical Practice (GMP) at all times. You should note that further breaches of GMP, even if single and isolated, may lead to a finding of impairment of fitness to practise.

The required standards are set out in Good Medical Practice which specifies that:

> *15. You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must adequately assess the patient's conditions, taking account of their history (including the symptoms and psychological, spiritual, social and cultural factors), their views and values; where necessary, examine the patient.*
>
> *17. You must be satisfied that you have consent or other valid authority before you carry out any examination or investigation, provide treatment or involve patients or volunteers in teaching or research.*

Whilst this failing, in view of the remediation you have undertaken, does not require any restriction on your registration today it is necessary in response to issue this formal warning.

The serious misconduct did not amount to impairment of your fitness to practise and therefore any subsequent action on your registration, it is necessary in response to issue this formal warning."

19. This warning will be published on the List of Registered Medical Practitioners (LRMP) in line with our publication and disclosure policy, which can be found at www.gmc-uk.org/disclosurepolicy.

20. There is no interim order on Mr Wilson's registration.

21. That concludes this case.

Confirmed
Date 20 April 2021 Mr Ian Comfort, Chair

ANNEX A – 12/04/2021

Application to amend the Allegation

Submissions

1. On behalf of the GMC, Mr Hamlet made an application, under Rule 17(6) of the General Medical Council's (Fitness to Practise) Rules 2004, as amended, ('the Rules'), to withdraw paragraph 7b of the Allegation. He submitted that the GMC recognise, as paragraph 7a of the Allegation is admitted, paragraph 7d cannot co-exist with 7a. Mr Hamlet submitted that the amendment can be made without unfairness to Mr Wilson and in the interest of justice.

2. The proposed amendment is as follows:

> 7. On 16 August 2018, you reviewed Patient A. You failed to provide good medical care to Patient A in that you did not:
>
> …
>
> ~~d. record any examination of Patient A's nipple.~~

3. On behalf of Mr Wilson, Mr Haycroft raised no objection to the application made by Mr Hamlet to withdraw the paragraph of the Allegation and accepted that it is in Mr Wilson's interests.

The Tribunal's Approach

4. The Tribunal noted paragraph 17(6) of the Rules which states:

> *'17(6) Where, at any time, it appears to the Medical Practitioners Tribunal that—*
>
> *(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and*
>
> *(b) the amendment can be made without injustice,*
>
> *it may, after hearing the parties, amend the allegation in appropriate terms.'*

5. The Tribunal and parties accepted the advice of the Legally Qualified Chair ('LQC'), who stated that the decision whether to grant or refuse the application from the GMC is for the Tribunal alone. It would need to balance the interests of, and fairness to, Mr Wilson with the public interest.

The Tribunal's Decision

6. The Tribunal took into account the submissions from both parties in making its decision, but exercised its own judgement. It considered that the withdrawal of the paragraph of the Allegation is unopposed and accepts the submission of the GMC that, taking into account the admission of paragraph 7a, paragraph 7d is not necessary.

7. The Tribunal concluded that it would be fair to Mr Wilson to make the amendment at this stage of the hearing and there would be no injustice. Therefore, it determined to grant the application from the GMC.

Schedule 1

1. Ischaemia to the nipple/areola complex.
2. Tissue loss.
3. Delayed healing.
4. Loss of sensation.
5. Wound dehiscence.
6. Poor scar formation.
7. Asymmetry of the position of the nipple/areola complex.

Schedule 2

1. Loss of sensation.
2. Remaining asymmetry.
3. Wound dehiscence.
4. Possible nipple necrosis.

Schedule 3

1. Scar.
2. Bleed.
3. Infection.
4. Haematoma.
5. Drain.
6. Histology.
7. Further surgery.