

## PUBLIC RECORD

Mr Nathadwarawala has lodged an appeal against decisions of this Tribunal. The order for suspension will not take effect while the appeal is considered.

Dates: 16/05/2023 - 30/05/2023

Medical Practitioner's name: Mr Mahendra NATHADWARAWALA  
GMC reference number: 4081922  
Primary medical qualification: MB BS 1984 M.S.University of Baroda

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Impaired

**Summary of outcome**

Suspension, 6 months  
Review hearing directed

**Tribunal:**

Legally Qualified Chair	Mrs Tehniat Watson
Lay Tribunal Member:	Mr John Elliott
Medical Tribunal Member:	Dr Janet Nicholls
Tribunal Clerk:	Ms Evelyn Kramer: 16 May 2023 Mr Nathan Gregory: 17 - 26 May 2023 Miss Jan Smith: 30 May 2023

**Attendance and Representation:**

Medical Practitioner:	Present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Ms Ceri Widdett, Counsel

**Attendance of Press / Public**

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

## Overarching Objective

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

## Determination on Facts - 23/05/2023

### Background

1. Mr Nathadwarawala qualified in 1984 at the University of Baroda. At the time of the events, Mr Nathadwarawala was practising as a locum Doctor in a consultant Role in the Emergency Department at West Hertfordshire NHS Trust. He was also a director and shareholder of Daivum Group Limited ('DGL').
2. The allegation that has led to Dr Nathadwarawala's hearing can be summarised as follows: Between 11 November 2016 and 24 March 2017, DRC Locums Limited ('DRC') mistakenly overpaid Daivum Group Limited (DGL) as remuneration for agency locum work undertaken by Mr Nathadwarawala. The sums mistakenly overpaid are referred to as 'the Overpayments' and amount to a total of £31,500. It is alleged that Mr Nathadwarawala, as a director and shareholder of DGL, failed to bring the Overpayments to DRC's attention or arrange for them to be returned in full. It is alleged that his conduct was dishonest.
3. The initial concerns were raised with the GMC by DRC at the end of 2018 when it is alleged that Mr Nathadwarawala had stopped making repayments towards the Overpayments as agreed and numerous attempts had been made by DRC to contact him. DRC passed the matter to their legal department at the end of 2018 and on the 9 December 2021 a formal fitness to practice referral was submitted to the GMC.

### The Outcome of Applications made during the Facts Stage

4. The Tribunal granted the GMC's application, made pursuant to Rule 34 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to adduce a document which was a printout of the registered address for Mr Nathadwarawala during 2016 to 2018 as held in GMC records. It was submitted that this was relevant to demonstrate that Mr Nathadwarawala's address at the time of the Overpayments was his home and correspondence address, also where the remittance advices showing the payments being made to Mr Nathadwarawala were sent. Mr Nathadwarawala did not object to this document being adduced. The Tribunal admitted the document as it considered it to be fair to both parties and also relevant to the proceedings.

### The Allegation

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

1. At the time of the events set out in paragraphs 2 - 4 you were a director and shareholder of Daivum Group Limited ('DGL').

**Admitted and found proved**

2. Between 11 November 2016 and 24 March 2017, DRC Locums Limited ('DRC') made the payments set out in Schedule 1 to DGL as remuneration for agency locum work you undertook for West Hertfordshire NHS Trust, and in making those payments, DRC mistakenly overpaid DGL as set out in Schedule 1 (collectively 'the Overpayments').

**Admitted and found proved**

3. You failed to:

a. bring one or more of the Overpayments to DRC's attention;

**To be determined**

b. arrange for the Overpayments to be returned in full to DRC.

**To be determined**

4. You knew that:

a. DGL had received the Overpayments;

**To be determined**

b. DGL was not entitled to keep the Overpayments;

**To be determined**

c. you should have:

i. brought the Overpayments to DRC's attention;

**To be determined**

ii. arranged for the Overpayments to be returned to DRC.

**To be determined**

5. Your conduct as described at paragraph 3 was dishonest by reason of paragraph 4.

**To be determined**

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

**To be determined**

### The Admitted Facts

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

### The Facts to be Determined

6. In light of Mr Nathadwarawala's response to the Allegation made against him, the Tribunal is required to determine the paragraphs and sub-paragraphs remaining.

### Witness Evidence

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

- Mr A, Operations and Finance manager of DRC, by video link;
- Mr B, Financial Director of DRC, by video link;

8. The Tribunal also received evidence on behalf of the GMC in the form of a witness statement from the following witness who was not called to give oral evidence:

- Ms C, Head of Group Quality and Compliance at DRC

9. Mr Nathadwarawala provided his own witness statement dated 19 April 2023, and also gave oral evidence at the hearing. In addition, the Tribunal received evidence from the following witnesses on Dr Nathadwarawala's behalf:

- Mr D, Finance Director of DGL by video link;

### Documentary Evidence

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

- Witness statement of Mr A dated 8 April 2022
- Witness statement of Mr B dated 18 November 2022
- Multiple correspondence between DRC and DGL
- Testimonial email from Mr E dated 19 April 2023
- Testimonial email from Mr F dated 22 April 2023
- Testimonial email from Mr G dated 11 May 2023
- BACS payments to Mr Nathadwarawala of various dates from 11 November 2016 to 24 March 2017

- Remittance Advices from DRC of payments to Mr Nathadwarawala from 11 November 2016 to 24 March 2017
- Signed declaration pertaining to terms and conditions of DRC dated 11 August 2016

### The Tribunal's Approach

11. 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 Nathadwarawala did 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.

12. The LQC gave legal advice to the Tribunal and reminded the Tribunal of the approach taken by Mr Justice Morris in *O v Secretary of State for Education* which was referred to in *Byrne v GMC [2021] EWHC 2237 (Admin)*:

*(1) There is only one civil standard of proof in all civil cases, and that is proof that the fact in issue more probably occurred than not.*

*(2) There is no heightened civil standard of proof in particular classes of case. In particular, it is not correct that the more serious the nature of the allegation made, the higher the standard of proof required.*

*(3) The inherent probability or improbability of an event is a matter which can be taken into account when weighing the probabilities and in deciding whether the event occurred. Where an event is inherently improbable, it may take better evidence to persuade the judge that it has happened. This goes to the quality of evidence.*

*(4) However it does not follow, as a rule of law, that the more serious the allegation, the less likely it is to have occurred. So, whilst the court may take account of inherent probabilities, there is no logical or necessary connection between seriousness and probability. Thus, it is not the case that "the more serious the allegation the more cogent the evidence need to prove it".*

13. If the Tribunal, having weighed all the evidence in relation to an allegation, considers the case is evenly balanced, then the GMC will not have discharged its burden and will not have proved its case.

14. In respect of the credibility of witnesses and how to approach evidence, the LQC advised:

*'First, the credibility of witnesses must take account of the unreliability of memory and should be considered and tested by reference to objective facts, and in particular as shown in contemporaneous documents. Where possible, factual findings should be based on objective facts as shown by contemporaneous documents', as per the case of Byrne v GMC [2021] EWHC 2237 (Admin) citing cases of Dutta, R (on the application of) v GMC [2020] EWHC 1974 (Admin), Gestmin v Credit Suisse (UK) Ltd & Anor [2013] EWHC 3560 (Comm).*

The Tribunal must consider all of the evidence before it, before making findings as to the credibility, bearing in mind that credibility can be divisible. It should also not rely exclusively on a witness' demeanour when giving evidence.

15. The LQC reminded the Tribunal that Mr Nathadwarawala is a person of good character in that there have been no previous findings of any wrongdoing in his 33 years of practice. His good character must be taken into account by the Tribunal when assessing his credibility and the likelihood of him having done what has been alleged. His good character is not a defence to the Allegation, it is simply one factor to take into account when considering all of the evidence in the round. The weight to assign Mr Nathadwarawala's good character is a matter for the Tribunal to determine.

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*, as confirmed in *Barton and Booth v R [2020] EWCA Crim 575*:

*'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 LQC also advised the Tribunal of the following:

- In considering the case for dishonesty, The Tribunal needs to consider all aspects of Mr Nathadwarawala's state of mind and give proper weight to those findings in limb 2, as per the case of *Maxfield Martin v SRA 2022 EWHC 307*.
- When considering dishonesty, Tribunal does not need to identify a benefit or a motive as per the case *Kefala v GMC 2020 EWHC 2480 Admin*.
- Conclusions and judgment from a civil court are admissible in Tribunal proceedings – however a Tribunal is not bound by previous findings – it must weigh those findings/ judgment including the basis upon which they were made, with all other facts and must not make unfair use of them. (*Towughanste v GMC 2021 EWHC 681*)
- In summary, it is for the Tribunal to determine which evidence assists in discharging its duties to make findings and the weight to be given to that evidence. The Tribunal should only draw an inference if you can safely exclude other possibilities. Decisions

must be based upon the evidence alone and not speculation. (*Sony v GMC (2015) EWAC 0364 Admin*)

- The Tribunal had been provided with three testimonial emails and 52 feedback questionnaires from Mr Nathadwarawala's colleagues which is hearsay evidence. Such evidence is admissible in these proceedings, but the Tribunal must consider the weight, if any, to assign such evidence. The Tribunal should consider this as one factor to take into account when considering all the evidence in the round. The weight to assign is a matter for the Tribunal.

### The Tribunal's Analysis of the Evidence and Findings

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

19. There were no preliminary matters raised by the parties. The Tribunal however asked GMC counsel to clarify the timeframe directed to the allegations of dishonest conduct as at paragraphs 3 and 4 of the Allegation. It was confirmed that the Allegation stood as drafted. The Tribunal also asked the GMC via counsel, to outline to definition of the word '*arrange*'. The following definition was submitted: 'organise and make plans for a future event'.

### Paragraph 3a

20. The Tribunal considered allegation 3a, relating to Mr Nathadwarawala having failed to bring one or more of the Overpayments to DRC's attention. The Tribunal was of the view that to make its determination on this allegation, that Mr Nathadwarawala *failed* to bring one or more of the overpayments to DRC's attention, it needed to consider whether there was a duty on him to do so once he found out about the Overpayments, and to establish when that was. It therefore considered paragraphs 4a, 4b, and 4ci, before determining paragraph 3a.

21. Mr Nathadwarawala had maintained that the Overpayments were brought to his attention by DRC and he did not bring it to their attention. He did not accept that he had failed in this regard.

22. In considering the evidence and in its evaluation, the Tribunal bore in mind Mr Nathadwarawala's good character which was relevant to both his credibility and propensity of having carried out the actions as alleged.

23. In considering allegation 3a, as to whether Mr Nathadwarawala *failed* to bring one or more of the overpayments to DRC's attention, it first looked at paragraph 4a:

### Paragraph 4a. You knew that DGL had received the Overpayments.

24. The Tribunal considered the written and oral evidence of Mr A. He stated in evidence that the remittance advices were documents which would show '*what will hit the bank account*'

in that it was the impending payment that would shortly be paid into the bank account. He stated that this was a document which was emailed directly to Mr Nathadwarawala's Hotmail email address and also sent by post to his home address. Mr Nathadwarawala's home address appeared on each remittance advice.

25. The Tribunal noted that there was no dispute in relation to the address on the remittance slip being Mr Nathadwarawala's home address and that he was living there XXX during November 2016 to March 2017.

26. The Tribunal considered Mr Nathadwarawala's evidence that he was not '*IT savvy*', he had been communicating with DRC on the phone more than email. He stated that there was '*no system*' in place for him to check how much he would be paid for his shift. Mr Nathadwarawala further stated that the company DGL was a family run business, he was one of four directors, the other directors being XXX, one of whom was the financial director: Mr D. Mr Nathadwarawala stated that Mr D oversaw finances alongside the accountant. He also confirmed that he did not pass on any information to the finance director, as to the number of hours he would have worked or the rate applicable to the various shifts worked by him. He accepted that he was the only one in the company who knew the details of his work hours and rates applicable. He also accepted that he would keep a record of the hours worked in a diary himself, but there were no checks that he applied to the incoming payments for his work, to check its accuracy.

27. Mr Nathadwarawala stated that he was earning a significant amount of money from his work – in the region of £125,000 per annum and had a combined income of £250,000 per annum XXX. These monies would come into the company DGL. His XXX also had businesses of buy to let properties and XXX was a management consultant and worked via this company also. He said he would not know what money would come into the company account and he was '*too busy as an A and E consultant*' and '*he would hardly get time to tally payslips as a locum doctor*'. He referred to the Overpayments having been made over a period of 7 months (as opposed to 4 and a half months) and said that it was not his priority to check what he would have been paid. Mr Nathadwarawala maintained that whilst working, he would not have any time to check emails in any event and these Overpayments would have been difficult for anyone in his company to spot as there were weekends when he got paid £8,000. He stated that '*to tally the hours is the least of the priority (sic) for a busy consultant*'

28. The Tribunal however noted an email from Mr Nathadwarawala dated 1 September 2017 to DRC which he had also copied to his Hotmail email address. This contained a detailed breakdown of the shifts he had completed from March 2017 – June 2017 with corresponding rates and payments that needed to be '*chased from XXX*'. The Tribunal took the view that this was not in keeping with Mr Nathadwarawala's assertions as above.

29. Mr Nathadwarawala further asserted that the error in DRC applying the wrong rate and the consequential Overpayments by the Trust was not noticed by the Trust nor noticed by DRC. He stated that he should not be penalised for not noticing it either.



30. The Tribunal noted that each remittance advice showed the rate applicable to Mr Nathadwarawala, a flat rate for being on-call for a night, which was known to him. Each remittance advice also showed a significant increase on what would be the correct amount for the night shift/s. For instance, the remittance advice of 11 November 2016 showed a payment of £7200 instead of the correct amount which would have been £900. Similarly, the remittance advice of 18 November 2016 showed a payment of £4800 instead of a correct amount of £600. Mr Nathadwarawala, in his oral evidence, accepted that if and when he saw these remittance slips, he would have instantly realised that there were Overpayments, his case was that he saw these after March/April 2017.

31. The Tribunal noted that the remittance advices also showed the hours worked by Mr Nathadwarawala if he had in fact been called upon for work during his time on-call that would attract a further £95 per hour.

32. In respect of whether he received the remittance advices sent by email and post, Mr Nathadwarawala stated that this is going back *'5-7 years and he cannot remember if he opened these'*. He also stated that his Hotmail email account was not accessible, as it had been hacked. He initially stated in oral evidence that this was around 2016-2017 but had also referred to not having use or access to this email account from 2015. Mr Nathadwarawala also stated that his friend, who was familiar with IT has set up his Hotmail account to forward all emails received, to his Gmail account. He accepted further that therefore he would have received all Hotmail emails to his Gmail account but stated that they sat in an inbox within his Gmail account, unopened.

33. The Tribunal noted however that Mr Nathadwarawala had signed the terms and conditions for joining DRC locums on 11 August 2016 and soon after, emails dated 27 September 2016, 3 October 2016 and 21 November 2016 from DRC locums thanking him for choosing to work with DRC locums and providing a list of booking confirmations and rates were sent to Mr Nathadwarawala's Hotmail email address.

34. Mr Nathadwarawala maintained that he first knew about the Overpayments in April 2017 when this was communicated to him by DRC. In response to Tribunal questions, Mr Nathadwarawala accepted that he would have received a call from Ms H on 31 March 2017 and he must have been on a break, but he did not know of the Overpayments then as she had not mentioned that and had just stated, *'we need to talk'*. However, Mr Nathadwarawala thereafter stated that in fact he could not remember that conversation at all. At a later point in his oral testimony, Mr Nathadwarawala stated that he was informed about the Overpayments in March 2017 by Ms H during the phone call. The Tribunal noted the initial email from Ms H dated 31 March 2017 at 13:09 which thanked Mr Nathadwarawala for his time *'a moment ago'*, included a table showing the Overpayments and further stated: *'as discussed, can you please cross reference this with your statements and come back to me ASAP.'* There was a further email from Ms H dated 5 April 2017 which stated. *'I have bene (sic) trying to contact you over the last few days without success. Have you managed to look into the below with your accountant? Could you please contact me asap so we can go through this in more detail.'* The tribunal

viewed Mr Nathadwarawala's evidence to be contradictory in this regard and he was not able to explain the inconsistencies within it when questioned.

35. The Tribunal further considered that Mr Nathadwarawala was the only person who knew what shifts he had worked/when on call and when he would have been called in for work during this time. He would be checking the remittance advices to ensure he was not underpaid. In doing that he would have realised that he had been significantly overpaid.

36. Mr Nathadwarawala had worked as a locum since 2008. He worked for various agencies carrying out a number of shifts with different rates applicable for night, day, emergency, on call, and when called out to work when on call. Having considered the evidence the Tribunal did not accept Mr Nathadwarawala's evidence that there was no system in place and that he was too busy to check or keep track of his pay on completing shifts in his role as a locum.

37. The remittance advices were sent to him by post and email – the same email address where he was being sent shift booking confirmations. The Tribunal was not persuaded by Mr Nathadwarawala's evidence that he did not have access to his Hotmail account from 2015 – March 2017 and that he did not open the emails with the remittance advices, nor could he remember receiving them in the post. The Tribunal was of the view that it was inconceivable that he did not have access to his Hotmail email at that time.

38. The Tribunal determined that it was more likely than not that Mr Nathadwarawala knew that DGL had received the Overpayments from November 2016 onwards to March 2017. In any event he knew of the Overpayments before Ms Wright's call to him on 31 March 2017.

39. It therefore found paragraph 4a proved, in that Mr Nathadwarawala failed to bring one or more of the Overpayments to the attention of DRC.

**Paragraph 4b. you knew that DGL was not entitled to keep the Overpayments.**

40. It was accepted by Mr Nathadwarawala that the Overpayments were due to his standard on-call nightly rate being incorrectly applied to the number of hours on his on-call shift. He accepted that he knew he was not entitled to keep the Overpayments, and said the only reason he did not bring them to the attention of DRC was because he did not know about them.

41. Accordingly, the Tribunal found paragraph 4b proved.

**Paragraph 4ci. You knew that you should have brought the Overpayments to DRC's attention**

42. The Tribunal considered this allegation and noted that Mr Nathadwarawala could only have brought the Overpayments to DRC's attention, once he became aware of them. It adopted its earlier finding that Mr Nathadwarawala did know about the Overpayments from November 2016 onwards as the remittance advices were sent to him. He therefore already knew about them when told by DRC on 31 March 2017. It also adopted its finding that Mr

Nathadwarawala knew he was not entitled to keep them. It also considered Mr Nathadwarawala's evidence that the only reason he was not able to bring them to the attention of DRC is because he did not know about them until brought to his attention. It followed therefore that Mr Nathadwarawala knew that he should have brought the Overpayments to DRC's attention, from when he came to know of them.

43. Accordingly, the Tribunal found paragraph 4ci. proved.

**Paragraph 3a. You failed to bring one or more of the Overpayments to DRC's attention**

44. The Tribunal considered Mr Nathadwarawala's position that he did not dispute that he did not bring one or more of the Overpayments to DRC's attention. His case was that he was not aware of the Overpayments until this was brought to his attention by DRC themselves and therefore, he did not *fail*. The Tribunal reminded itself that it had found proved that Mr Nathadwarawala knew that DGL had received the Overpayments prior to 31 March 2017, he knew he was not entitled to keep them and that he knew he should have brought the Overpayments to DRC's attention. It was therefore incumbent on Mr Nathadwarawala to bring one or more of the overpayments to DRC's attention and he does not dispute that he did not do this at any point.

45. It therefore determined that paragraph 3a was proved.

**Paragraphs 3b and 4cii.**

**Paragraph 3b. You failed to arrange for the Overpayment to be returned in full to DRC.**

46. In considering whether Mr Nathadwarawala failed to arrange for the Overpayments to be returned in full to DRC, the Tribunal first considered paragraph 4cii.

**Paragraph 4cii. You knew that, you should have, arranged for the Overpayments to be returned to DRC.**

47. The Tribunal continued to bear in mind Mr Nathadwarawala's good character in evaluating all the evidence before it. It also bore in mind the definition of the word '*arrange*' as provided by the GMC at the Tribunal's request. It was the ordinary English meaning to be applied – '*organise or make plans for a future event*'.

48. The Tribunal noted within the documents, Mr Nathadwarawala had signed terms and conditions of DRC on 11 August 2016. Clause 8.9 stated the following:

*'If DRC group is satisfied that it has made an incorrect or over-payment to the candidate, the candidate agrees to repay the amount incorrectly or over-paid within 10 business days of a demand by DRC Group and shall not be entitled to withhold from DRC Group any amount due to DRC group on the ground of any claim for damage or loss or alleged*

*breach of contract and shall not be entitled to make any deduction from the amount due’.*

49. Mr Nathadwarawala was clear that whilst he may have signed the terms, he had not read these and did not know about this term. The Tribunal was of the view that Mr Nathadwarawala was contractually obliged to fulfil these terms and conditions.

50. The Tribunal further considered Mr Nathadwarawala’s evidence, which was that he knew he should have made arrangements for the Overpayments to be returned to DRC and he did, when he came to know of the Overpayments. Mr Nathadwarawala said that *‘usually consultants don’t rush or go to agency offices, it is usually the other way around’*. He said that on his own initiative he personally visited DRC XXX to resolve the situation.

51. In terms of the arrangements he made, Mr Nathadwarawala stated:

*‘Upon learning about the Overpayments, I took immediate action to rectify the situation..... I personally visited DRC to explain our willingness to repay the overpayments in full. We agreed that 50% of income from all shifts undertaken with DRC would be directly paid to DRC. However, DRC could not secure any shifts for me, and despite this, I continued to repay DRC.’*

52. The Tribunal noted Mr A’s oral and written evidence in respect of a meeting held between Mr Nathadwarawala and DLC on 19 August 2017 *‘At this meeting, Dr Nathadwarawala accepted that he has been overpaid by DRC and that the overpayment had to be returned to DRC. We verbally agreed that Daivum Group, and Dr Nathadwarawala himself by virtue of being the director of Daivum Group, would pay £1,000 to DRC by 1 September 2017 and would continue further monthly payments of £1,000 to DRC by the 1st of each month until the remaining sum was paid off’.*

53. The Tribunal also noted an email from Mr A to Mr Nathadwarawala’s Hotmail email address dated 21 August 2017 which outlined the agreed arrangement for the Overpayment to be returned to DRC.

*‘Dear Dr Mahendra,*

*Thank you very much for your time on Saturday. It is much appreciated that you took (sic) were finally able to take time to come into the office in order to get the matter of the overpayment for shifts worked at West Herts resolved.*

*The following is a summary of what we discussed and agreed. If you believe that anything I have set out is not in accordance with our discussion, then please let me know as soon as possible.*

*Overpayment to Daivum Group Ltd - £31,500  
Total Timesheets on Hold - £4,770*

**Balance of Overpayment - £26,730**

*As discussed In order to repay the balance we are happy to agree to the following:*

*A payment of at least £1,000 per month by the 1<sup>st</sup>(sic) of every month starting 01.09.2017 to be made by yourself to DRC Locums, using the following details.*

...

*Further to this DRC will contact you in order to confirm your availability for work and for any future shifts you are booked out to work via DRC you agree that **in addition to the £1,000 per month outlined above**, that*

*1 For Non Direct Engaged bookings, i.e. DRC release payments directly to you, we retain 50% of any payments due and apply this to reduce the overpayment balance.*

*2 For Direct Engaged Bookings, i.e. Trust release payment directly to you, you will pay to DRC immediately on receipt of payment from the Trust 50% of any payments you receive.'*

54. Mr A, in oral evidence, confirmed the agreement in place as above. Additionally, he confirmed that in line with the agreement for 'Direct Engaged Bookings', Mr Nathadwarawala was to pay 50% of the monies he was to receive from his work in Milton Keynes in 2017.

55. Mr Nathadwarawala did not dispute the details of the arrangements made as set out above.

56. The Tribunal determined that it was clear from the evidence, that Mr Nathadwarawala knew that he should have arranged for the Overpayments to be returned to DRC. This was not disputed by Mr Nathadwarawala.

57. The Tribunal therefore found paragraph 4cii was therefore found proved.

58. The Tribunal next considered the evidence in respect of paragraph 3b:

**Paragraph 3b. You failed to arrange for the Overpayments to be returned in full to DRC**

59. Mr Nathadwarawala disputed this allegation, in that he had not failed to arrange for the Overpayments to be returned in full to DRC.

60. The Tribunal noted that Ms H had called Mr Nathadwarawala on 31 March 2017, and had followed the call with an email and thereafter sent him an email chasing a response on 5 April 2017:

*'Good afternoon Dr Nathadwarawala, I hope that you are well. I have bene (sic) trying to contact you over the last few days without success. Have you managed to look into the below with your accountant? Could you please contact me asap so we can go through this in more detail...  
I look forward to hearing from you soon.'*

61. Mr A's evidence is that as Ms H was not contacted by Mr Nathadwarawala, the matter was escalated to himself. He stated that *'throughout April 2017 I called Dr Nathadwarawala several times by telephone. I eventually managed to speak to him in or around late April 2017'*. It is accepted that Mr Nathadwarawala attended DRC offices on 28 April 2017 and Mr A states in his written statement that the attendance was:

*'to discuss the overpayment to him. He also wanted to discuss his claim that he should be treated as an 'outside IR35' worker, rather than an 'inside IR35' worker for future assignments following the change in IR35 regulation that happened in April 2017'. He further states that 'Dr Nathadwarawala stated that he was unable to return the overpayment of £31500 due to a lack of cash flow. He did not explain what he had done with that money that has been incorrectly paid to him in the weeks and months prior.*

*Between May and June 2017, I tried to speak with Dr Nathadwarawala by phone about the Overpayments multiple times a week, but I was unsuccessful in speaking with him. Having had no response from him, DRC sent a formal letter and statutory demand to Daivum Group dated 3 July 2017. The letter was sent by post and email on 4 July 2017.'*

62. Mr A further outlines in his statement that there was no response to the statutory demand letter and email and a further follow-up email was sent to Dr Nathadwarawala on 18 July 2017 by his colleague. He explains that it was further to a voicemail and two emails that Mr A *'finally spoke to him'*. *We agreed to meet at the DRC office the following day to discuss the return of his overpayment.'*

63. It was at the meeting on 19 August 2017 that the arrangements for the return of Overpayments were agreed.

64. In respect of not being contactable and the numerous efforts on part of DRC to contact him Mr Nathadwarawala stated that he travelled frequently to India, *'every six weeks'* and did not have access to emails during this time. He stated that he used another Sim card when in India, the number for which was also held by DRC. However, when asked to detail the dates/periods he was travelling in 2017, he only mentioned dates of travel from 2018.

65. Mr Nathadwarawala also stated that he is a busy consultant and does not have the time or breaks or opportunity to check emails or have access to his phone during the working day. He did accept however that he must have been on a break when Ms H managed to speak to him on the phone on 31 March 2017. In respect of knowledge of the Statutory Demand, Mr Nathadwarawala stated that he did not know about that at all, and this was *'news to him'*. The address that letter was sent to, was his accountant's address (also the registered address of

DGL Ltd) but in July 2017 his accountant had wound up his practice and left those premises. The Tribunal noted that the Statutory Demand had also been sent to Mr Nathadwarawala's email address, but he maintained that he did not have access to it.

66. The Tribunal considered the evidence in respect of the arrangement to repay the Overpayments made on 19 August 2017. It is accepted that Mr Nathadwarawala made the payments of £1000 a month from September 2017 to December 2017. The next two payments, for January and February 2018 were reduced to £500. Mr A's written evidence is that 'DRC received no explanation' for the reduced amounts and this was confirmed in his oral evidence – he stated that he had no recollection of the reduction being communicated to him. Mr Nathadwarawala's evidence was that *'in March 2018, I contacted DRC via telephone and spoke to Mr A to inform them that I had not been getting adequate shifts to continue repaying £1000 monthly and therefore reduced the monthly repayment to £500. Mr A acknowledged this change'*.

67. The Tribunal noted that by his own account, the communication from Mr Nathadwarawala to DRC regarding the reduction, was after the previous two payments had been reduced. Mr Nathadwarawala had unilaterally changed the terms of the agreement. The Tribunal also noted that this reduced payment of £500 was the last one made by Mr Nathadwarawala until February 2023. His justification was not getting adequate shifts from DLC.

68. Moreover Mr Nathadwarawala stated, *'unfortunately, not long after that conversation, I could not secure any shifts from DRC, as none were offered to me. I was not in a position to repay any amount due to my financial difficulties, which I also communicated to DRC.'*

69. The Tribunal asked Mr Nathadwarawala about the arrangement to repay the Overpayments that had been agreed previously and whether he viewed the repayments to be his responsibility and whether he thought it was incumbent upon him to meet the terms of the agreed arrangement. Mr Nathadwarawala was clear that whilst the mistake was not his, he agreed that it was his responsibility to pay back but he said he was hindered due to *'cash flow'* problems. He said that the change in government tax rules from April 2017 (IR35) had *'killed his company'* and were the cause for his financial problems. Mr Nathadwarawala also stated that the debt belonged to the company DGL but he had already used some of his own personal monies to pay back the Overpayments, even though there were no further shifts given to him by DRC.

70. Mr Nathadwarawala did confirm that he worked throughout the last few years, except periods of time when he travelled. He worked via other agencies and via direct engagements (not via DRC). He was not able to answer why he didn't continue with the agreement to pay back 50% of his income from the direct engaged bookings or continue with £1000 a month as agreed.

71. Mr Nathadwarawala was also asked if he had now received the monies owed for his work in 2017 at Milton Keynes, of which he had agreed to pay 50% to DRC. Mr



Nathadwarawala stated that he had, and this was applied as a credit by DRC. However, the Tribunal noted that he had previously referred to that credit having been applied by DRC in respect of monies it owed to XXX for shifts carried out XXX. The Tribunal noted from Mr A's statement that part of the agreement was *'DRC would retain and not pay to Daivum Group an amount of £4,770. This was the value of services DRC owed to Daivum Group for certain other assignments previously performed by XXX, another locum doctor who provided services for DRC through Daivum Group'*. The Tribunal thought that Mr Nathadwarawala's answer was unclear and evasive in this regard.

72. The Tribunal also asked Mr Nathadwarawala why he could not have paid the monies straight away, in April 2017, before the IR35 tax change had any impact, especially as his account had been that there were four streams of income going through the company and he XXX annual income was in the region of £250,000 per annum. He had also stated in oral evidence that there was a lot of work available for him XXX and their skills were very much in demand. He stated that he was sorry that so much time has been wasted for GMC and for himself when he could be doing *'other fruitful work'*, referring to his medical services.

73. In response, Mr Nathadwarawala referred to a £10,000 bill that was paid to HMRC around the time of April 2017 and said that he did not have much knowledge of the cash flow issues of the company at the time but to redirect this question to XXX, Mr D, who was the Financial Director of DGL. In explaining the impact of IR35 on him, he stated that his income had been in the region of £20,000 - £25,000 a month, and post IR35 from April 2017 it had reduced to £5,000 a month.

74. Mr D was asked this question by the Tribunal, in that why the monies could not have been paid straightaway. He referred to a habit of *'spending before you earn'* and *'being behind on a tax payment'*. He stated that *'it was never the case we had sufficient funds in the business'*. Mr D further stated that the *'main destroyer was unexpected tax, they were always firefighting.'* He also referred to a significant amount owed to HMRC at present.

75. The Tribunal asked Mr Nathadwarawala about his strategy to repay the outstanding Overpayments since making the reduced repayment of £500 in March 2018. He said that his strategy had been to pay back from working solely via DRC but that this was not accepted by DRC. The Tribunal asked what action Mr Nathadwarawala had taken since March 2018 to February 2023 to find an alternative way to pay back the outstanding overpayment. Mr Nathadwarawala accepted that he hadn't taken any action, he had stopped hearing from DRC and thought that the matter was *'on the back burner'* and *'had died down'*.

76. The Tribunal considered the written and oral evidence of Mr B, the financial director of DRC. In respect of the various unsuccessful attempts he made as Financial Director of DRC to make contact with Mr Nathadwarawala from March 2018 to the end of 2018 when he handed the matter to DRC'S legal department. Mr Nathadwarawala stated that the reason for this was his travel and not using a UK phone and also being busy with work during which he does not have access to phones or emails.



77. Mr Nathadwarawala stated that he did not know about the County Court Judgment until last week when he had received the bundle of papers for this hearing. This was at odds with Mr D's testimony that he had known about the County Court Judgment 'a couple of months ago'. The Tribunal noted the explanation for Mr Nathadwarawala not being aware of any of the correspondence in respect of the civil claim was that those were sent to the company's (DGL) registered address, but that property had been rented to a third party 'on a buy to let' by one of his sons and there was no correspondence that they would have received from there.

78. Mr Nathadwarawala was asked about his intention to pay back the outstanding amount and he stated that he has always had the full intention to do so. The Tribunal noted that Mr Nathadwarawala had also stated that the company (DGL) was in the process of being 'wound up' and what that meant for any debts would be as per what was decided by Companies' House.

79. The Tribunal took the view that Mr Nathadwarawala viewed the debt as one that belonged to his company DGL, from which he had distanced himself despite being a current Director and Shareholder and despite accepting that the Overpayment had occurred for on-call medical services he had provided, albeit whilst working from his limited company. The Tribunal was also of the view that Mr Nathadwarawala held DRC accountable for the initial mistake of applying the rate incorrectly and was critical of both DRC and the Trust for not having noticed the mistake for several months. The Tribunal took the view that whilst Mr Nathadwarawala stated that he realised his responsibility to pay back the Overpayments, this was inconsistent with his actions in not adhering to the full terms of the arrangement he had made, unilaterally having reduced the repayment amounts and had stopped the Standing Order for monthly payments, from March 2018 due to not having been given any further shifts by DRC. The Tribunal was of the view that Mr Nathadwarawala adopted a cavalier attitude in not having taken any proactive steps to make the repayments from March 2018 – February 2023.

80. The Tribunal did note that there had been an effort made on part of Mr Nathadwarawala to meet with the CEO of DRC in February 2023 in respect of the outstanding repayments. From the correspondence exchanged between DRC and Mr Nathadwarawala it is clear that a further offer was made for the outstanding Overpayments to be made by 13 March 2023 and DRC offered a reduced amount, not accounting for the interest accrued and legal costs in making the County Court claim. Mr Nathadwarawala did not make this payment to clear the outstanding debt due to '*financial difficulties*'. He offered to make £1000 payments a month going forward and made a payment of £1,000 in April 2023. This was not accepted by DRC who continued to seek a figure of £32,037.85. The Tribunal did note however that Mr Nathadwarawala had paid £1000 in May 2023.

81. Having considered the totality of the evidence, the Tribunal noted in particular that Mr Nathadwarawala had unilaterally changed the terms agreed on 19 August 2017. He had not clearly or sufficiently explained why he was not able to continue to pay £1000 a month or 50% of the earned income from his 'direct engaged bookings' as he continued to work for the last 5 years. The Tribunal was also not persuaded that he had adhered to the agreement to pay DRC 50% of the income from work carried out in Milton Keynes in 2017 which was also part of the

arrangement. Mr Nathadwarawala accepted that he thought the matter had '*died down*' and was on a '*back burner*' since March 2018. He confirmed that the company is currently being '*wound up*'. Mr D had told the Tribunal that HMRC were applying to have the firm compulsorily '*struck off*.' In light of such evidence, the Tribunal determined that Mr Nathadwarawala had failed to arrange for the Overpayments to be returned in full to DRC. It therefore found paragraph 3a proved.

**Paragraph 5 – your conduct as described at paragraph 3 was dishonest by reason of paragraph 4.**

82. The Tribunal then considered if Mr Nathadwarawala's conduct at 3a which was found proved, in that he had failed to bring one or more of the Overpayments to DRC's attention was dishonest.

83. The Tribunal had found that Mr Nathadwarawala had already known about the Overpayments after they had started to be made onwards from November 2016. It found that he knew about the Overpayments prior to 31 March 2017. The Tribunal had found that to be Mr Nathadwarawala's actual state of knowledge and belief, despite his assertion to the contrary. It did not accept and was not persuaded by his account that he did not know about the Overpayments prior to 31 March 2017.

84. The Tribunal then considered whether Mr Nathadwarawala's conduct was dishonest by the standards of ordinary decent people. It concluded that ordinary decent people would expect a doctor who has come to know about Overpayments made to him, to bring them to the attention of their locum agency and / or Trust and in not doing so, would consider that conduct to be dishonest.

85. Accordingly, the Tribunal found paragraph 5 as far as it related to Mr Nathadwarawala's conduct at paragraph 3a proved.

86. The Tribunal considered if Mr Nathadwarawala's conduct at 3b which was found proved, in failing to arrange for the Overpayments to be returned in full to DRC, was dishonest.

87. The Tribunal had already found that Mr Nathadwarawala knew that he should have arranged for the Overpayments to be returned to DRC, that was established as his actual state of knowledge and belief. Additionally, it also considered Mr Nathadwarawala's belief that he *had* made arrangements for the Overpayment to be returned to DRC in full, but those were hindered by his financial problems and 'cash flow' issues relating to DGL.

88. The Tribunal then considered whether ordinary decent people would expect a doctor's conduct, in failing to make arrangements for the Overpayments to be returned in full to DRC, with the beliefs that he had held outlined as above, to be dishonest.

89. It determined that in light of the circumstances of this case, Mr Nathadwarawala's conduct would be considered to be dishonest by the standards of ordinary decent people.

90. The Tribunal acknowledged that this would be contrary to Mr Nathadwarawala's views about his actions. It noted that there is no requirement that Mr Nathadwarawala must appreciate that his conduct by the standards of ordinary decent people is dishonest.

91. It therefore found paragraph 5 proved.

### The Tribunal's Overall Determination on the Facts

1. At the time of the events set out in paragraphs 2 - 4 you were a director and shareholder of Daivum Group Limited ('DGL').

**Admitted and found proved**

2. Between 11 November 2016 and 24 March 2017, DRC Locums Limited ('DRC') made the payments set out in Schedule 1 to DGL as remuneration for agency locum work you undertook for West Hertfordshire NHS Trust, and in making those payments, DRC mistakenly overpaid DGL as set out in Schedule 1 (collectively 'the Overpayments').

**Admitted and found proved**

3. You failed to:

a. bring one or more of the Overpayments to DRC's attention;

**Determined and found proved**

b. arrange for the Overpayments to be returned in full to DRC.

**Determined and found proved**

4. You knew that:

a. DGL had received the Overpayments;

**Determined and found proved**

b. DGL was not entitled to keep the Overpayments;

**Determined and found proved**

c. you should have:

i. brought the Overpayments to DRC's attention;

**Determined and found proved**

ii. arranged for the Overpayments to be returned to DRC.

**Determined and found proved**

5. Your conduct as described at paragraph 3 was dishonest by reason of paragraph 4.

**Determined and found proved**

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

**To be determined**

### **Determination on Impairment - 25/05/2023**

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Mr Nathadwarawala'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, the Tribunal received from the GMC a statement from Mr Nathadwarawala's Responsible Officer, Dr I, dated 5 January 2023.

### **Submissions**

#### On behalf of the GMC

3. Ms Widdett, Counsel submitted that Mr Nathadwarawala's fitness to practise is impaired by reason of misconduct. Ms Widdett referred the Tribunal to the relevant case law. She also referred the Tribunal to the relevant paragraphs of Good Medical Practice (2013 edition) (GMP).

4. Ms Widdett submitted that Mr Nathadwarawala's dishonesty was persistent, and that it occurred over a period of nearly six years. Ms Widdett submitted his conduct would be considered deplorable by other fellow practitioners and could be said to be serious misconduct.

5. Ms Widdett submitted that Mr Nathadwarawala had brought the profession into disrepute and had breached one of the fundamental tenants of the Medical Profession and had acted dishonestly.

6. Ms Widdett submitted that Mr Nathadwarawala's lack of insight is evident in his witness statement, where he said that it is a 'desperate attempt' by DRC to 'force' payment by any means.

7. Ms Widdett submitted that despite his witness statement stating that he was willing to repay the money over a period of time, it is now over six years since that money was due and it still has not been repaid. Ms Widdett also submitted that this is a family on a high income. Ms Widdett submitted that Mr Nathadwarawala does not accept he should have behaved differently and had not taken time to reflect or express regret for his actions.

8. Ms Widdett submitted that given the lack of insight, Mr Nathadwarawala poses a significant risk of repeating his behaviour. That there had been no CPD or probity courses. Ms Widdett submitted that Mr Nathadwarawala had not apologised nor expressed regret for his actions or shown that he understood the problem.

9. Ms Widdett submitted that taking all those matters in consideration, the absence of insight and remediation and that Mr Nathadwarawala had acted below the standards expected of him, Mr Nathadwarawala's fitness to practise is currently impaired by reason of misconduct.

#### Submissions from Mr Nathadwarawala

10. Mr Nathadwarawala submitted the following:

*'As we delve further into the second stage of these proceedings, it is essential to consider the actions of remediation that have taken place following the allegations made against me. To remediate the situation, I have shown a steadfast commitment towards repaying the outstanding balance. I have already repaid £10,000 in 2017 and I am currently making regular monthly payments of £1,000 to DRC. It is crucial to understand that these steps signify my earnest efforts to rectify the financial irregularities in question, illustrating that the assertion that no remediation steps have been taken on my part is fundamentally incorrect.*

*Additionally, it is vital to underline that I was not responsible for the financial operations of Daivum Group Limited Company. This responsibility was entrusted to Mr D, and the unfortunate events that transpired were beyond my control and oversight. I want to clarify that I have taken a proactive approach since then in addressing these issues.*

*In terms of the allegations presented in point 23 by the GMC, I must respectfully disagree. Numerous attempts have been made on my part to remediate this situation, and these efforts demonstrate a sincere desire to correct the unfortunate financial discrepancies that have occurred.*

*Despite the allegations, I have always prioritised the safety and wellbeing of my patients and maintained my commitment to serving the NHS. Furthermore, these events are unique and have never occurred in the past, nor have they been repeated outside the realms of this situation. Hence, there isn't sufficient evidence to suggest that the alleged misconduct is more likely than not to reoccur.*

*While it is undeniable that the financial irregularities have been unfortunate, they do not, and should not, overshadow my integrity as a medical practitioner or my commitment to the NHS and its patients. The situation that unfolded was due to complex circumstances and is in no way a reflection of my character or professionalism. In particular, the testimonials submitted describe my character as a 'hardworking, competent and safe' clinician, with the knowledge of the ongoing proceedings. Thus, it is my humble request that my ongoing commitment to patient safety not be undermined by a complex matter*

*that unjustly stigmatises my character, thereby hindering my ability to continue serving the public through the NHS.*

*These circumstances have been discussed extensively in my appraisals, which are carried out by my peers, and I have embraced this situation as an opportunity to learn and grow as a professional. I regret that this matter has escalated to this point, and I assure the Tribunal that measures have been implemented to prevent such an occurrence in the future, for example, ensuring that all and any remittance advice is reconciled personally. I am more than willing to undergo any further probity awareness training or CPD necessary. These have not yet been done as no suggestion of such has been made either by my appraisers or by the GMC.*

*In conclusion, I respect the Tribunal's aim to protect the public, maintain public confidence in the profession, and promote and maintain proper professional standards and conduct. I kindly request that the Tribunal considers the broader context, the remediation steps I have taken, the evidences supporting my character, and the unique circumstances surrounding this case'.*

## The Relevant Legal Principles

11. 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.

12. 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 that the misconduct was serious, and then whether the finding of that misconduct which was serious, could lead to a finding of impairment.

13. The Legally Qualified Chair (LQC) referred to the case of *Roylance v GMC (No 2) [2000] 1 AC 311*, in that:

*'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.'*

14. The LQC stated that the Tribunal should also have regard to the principle that any finding of misconduct as to fitness to practise should relate to serious misconduct, as described by Lord Justice Elias in *Remedy UK Ltd v GMC [2010] EWHC 124*, as *'sufficiently serious misconduct in the exercise of professional practice such that it can be properly described as misconduct going to fitness to practise'*.

15. The LQC outlined that there is no statutory definition of impairment and referred to guidance and questions to be considered in determining whether a doctor's fitness to practise

is impaired, provided by Dame Janet Smith in the Fifth Shipman Report, as referred to in the case of *CHRE v NMC and Grant [2011] EWHC 927 (Admin)*:

*'...the Tribunal should consider whether the findings of fact in respect of the doctor. ... show that his 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...*
- d. has in the past acted dishonestly / or is liable in to act dishonestly in the future.'*

16. The Tribunal must determine whether Mr Nathadwarawala's fitness to practise is impaired today, taking into account Mr Nathadwarawala's conduct at the time of the events and any relevant factors, such as insight, whether the matters are remediable, whether they have been remedied and any likelihood of repetition.

17. The LQC referred to the case of *Sayer v General Osteopathic Council 2021 EWHC 370 Admin*, and advised:

- When considering insight, the Tribunal should not equate maintenance of innocence with a lack of insight. A doctor who maintains his innocence may nevertheless show that he fully appreciates the gravity of offence alleged.
- Insight is concerned with future risk of repetition – to this extent it is to be distinguished from remorse for past misconduct.

18. As per the case of *Sawati v General Medical Council [2022] EWHC 283 (Admin)* the Tribunal should bear in mind that doctors are properly and fairly entitled to defend themselves. When considering whether it is fair to use a doctor's 'rejected defence' when considering insight and/or to aggravate any sanction imposed on them, a tribunal may find it helpful to think about four things:

- how far state of mind or dishonesty was a primary rather than second-order allegation to begin with (noting the dangers of charging traps in adding 'dishonestly' to a primary allegation to aggravate it disproportionately, colour any denial of the primary allegation with dishonesty or characterise denial of the dishonesty as itself dishonest or lacking insight) or not an allegation at all;
- what, if anything, the doctor was positively denying other than their own dishonesty or state of knowledge;
- how far 'lack of insight' is evidenced by anything other than the rejected defence; and
- the nature and quality of the defence, identifying clearly any respect in which it was itself a deception, a lie or a counter-allegation of others' dishonesty.

19. As per the case of *GMC v Armstrong 2021 EWHC 1658*, the LQC advised:

- Tribunals must have proper regard to the nature and extent of a practitioner’s dishonesty and engage with the weight of public interest factors tending to a finding of impairment in such cases.
- The impact on public confidence in cases involving dishonesty, in particular or a regulatory regime, is not diminished because the practitioner in question is unlikely to repeat their dishonesty.

20. The LQC stated that the Tribunal must consider the overall risk to public protection by considering the impact of its findings on all three elements of the overarching objective. The Tribunal must also determine whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of current impairment was not made.

### The Tribunal’s Determination on Impairment

#### Misconduct

21. The Tribunal first considered whether Mr Nathadwarawala’s actions amounted to misconduct.

22. This case is about Mr Nathadwarawala’s honesty and integrity – it is not about his clinical competence and abilities. The Tribunal acknowledged the testimonials submitted on his behalf which referred to him as a *‘hardworking, competent and safe clinician’*. This is also evidenced in the numerous colleague feedback questionnaires. Mr E, Consultant in Emergency Medicine and Associate Medical Director at West Herts Teaching Hospital NHS Trust who undertook Mr Nathadwarawala’s medical appraisals in March 2021 and April 2022, stated: *‘No issues in respect of probity or concerns other than the issue of overpayments, were identified in either of the appraisals that I undertook’*.

23. The Tribunal acknowledged that the £31,500 Overpayments were not obtained fraudulently i.e. by submissions of false invoices but rather paid to Mr Nathadwarawala by mistake.

24. The Tribunal reminded itself that two instances of dishonesty had been found proved in relation to Mr Nathadwarawala’s conduct, within one related matter:

- Mr Nathadwarawala knew that DGL had received the Overpayments; he knew that DGL were not entitled to keep the Overpayments; and he knew that he should have brought the Overpayments to DRC’s attention. Knowing this, he had failed to bring one or more of the Overpayments to DRC’s attention.



- The Tribunal had also found proved that Mr Nathadwarawala knew that he should have arranged for the Overpayments to be returned to DRC and failed to arrange for them to be returned to DRC in full.

25. The Overpayments were made from NHS funds, which on six occasions, had mistakenly been paid to DGL for medical services provided by Dr Nathadwarawala over a period of four months from 16 November 2016 to 24 March 2017. The Tribunal noted that DRC had reimbursed the Trust in full, but that DRC were still seeking repayment of the full amount from Mr Nathadwarawala.

26. The Tribunal was concerned about the length of time that had passed since the last Overpayment was made (24 March 2017). It noted that over six years later, the Overpayments were still outstanding. The Tribunal had also noted that Mr Nathadwarawala had been contractually obliged to repay the Overpayments within 10 days under the terms and conditions of his contract with DRC (signed on 11 August 2016). The Tribunal further considered that Mr Nathadwarawala had not complied with the agreement made on 19 August 2017, between him and DRC in respect of the repayment. He had unilaterally changed the terms of that agreement and he had not made any repayments between March 2018 and February 2023.

27. The Tribunal had regard to the following paragraphs of GMP: 1, 65, and 77 of GMP, as below:

*‘1. Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.*

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

*77. You must be honest in financial and commercial dealings with patients, employers, insurers and other organisations or individuals.’*

28. The Tribunal did consider that the proven dishonest conduct, lacked integrity and Mr Nathadwarawala lacked honesty in his financial dealings with DRC. His actions had breached the trust of the NHS Trust and DRC, an organisation with whom he had financial dealings. It took the view that the above listed paragraphs of GMP were engaged and Mr Nathadwarawala’s actions represented a serious departure from those principles. It determined that such misconduct was serious.

### **Impairment by reason of misconduct**

29. Having found misconduct, the Tribunal went on to consider whether, because of the misconduct, Mr Nathadwarawala’s fitness to practise is currently impaired. Throughout its deliberations, the Tribunal had regard to all three limbs of the statutory overarching objective, as set out above.

30. The Tribunal referred to the approach as referred to in the case of *Grant*, as quoted in full above. The Tribunal was of the view that limbs (b), (c) and (d) were engaged; Dr Nathadwarawala had brought the medical profession into disrepute, had acted dishonestly, and had breached a fundamental tenet of the profession.

31. The Tribunal was mindful that dishonesty was conduct which was not easily remediable. It was of the view that whilst difficult, remediation was not impossible in this case. The Tribunal was not however presented with any evidence of reflection or remediation.

32. The Tribunal further considered the submissions on behalf of the GMC:

*'Mr Nathadwarawala's.....lack of insight is evident in his witness statement where he says that it is a 'desperate attempt' by DRC to 'force' payments by any means and that he is 'deeply troubled by these accusations'. He does not seem to accept the reasonableness of DRC's actions'.*

33. The Tribunal also considered Mr Nathadwarawala's submissions at the impairment stage:

*'I am currently making regular payments....to DRC. It is crucial to understand that these steps signify my earnest efforts to rectify the financial regularities in question, illustrating that the assertion that no remediation steps have been taken on my part is fundamentally incorrect.*

*Additionally, it is vital to underline that I was not responsible for the financial operations of Daivum Group Limited Company. This responsibility was entrusted to Mr D, and the unfortunate events that transpired were beyond my control and oversight. I want to clarify that I have taken a proactive approach since then in addressing these issues'.*

*...Numerous attempts have been made on my part to remediate this situation, and these efforts demonstrate a sincere desire to correct the unfortunate financial discrepancies that have occurred.'*

34. The Tribunal was conscious that Mr Nathadwarawala had said in his oral evidence that I am an *'honest man'*, and that *'I want to prove that I am an honest man'* and referred to his family is an *'honest family'*. He had indicated his understanding of the seriousness and gravity of dishonest conduct in general. Mr Nathadwarawala acknowledged, *'The allegations faced are serious, but it is crucial to understand that being in a financially difficult situation does not equate to dishonesty.'*

35. However, the Tribunal was of the view that Mr Nathadwarawala had not understood how the link between his failure to bring the Overpayments to the attention of DRC and his failure to arrange for the Overpayments to be returned in full impacted on dishonesty. Throughout these proceedings, Mr Nathadwarawala had sought to distance himself from the initial error, and his company DGL. Instead, he had blamed others and had not demonstrated

acceptance of his personal responsibility to arrange or to prioritise repayment in full of the Overpayments. Mr Nathadwarawala had not appreciated or addressed that a different course of conduct could have been adopted by him in relation to making arrangements for the Overpayments to be returned in full to DRC. Consequently, the Tribunal found that Mr Nathadwarawala did lack insight into his conduct being dishonest.

36. The Tribunal noted that Mr Nathadwarawala was submitting that *‘to remediate the situation, I have shown a steadfast commitment towards repaying the outstanding balance.’* Mr Nathadwarawala also submitted that he is *‘more than willing to undergo any further probity awareness training or CPD necessary. These have not yet been done as no suggestion of such has been made either by my appraisers or by the GMC’.*

37. The Tribunal remained mindful that there had been an insufficient passage of time since the determination of the Facts stage where dishonesty was found proved, to allow for reflection and remediation by Mr Nathadwarawala.

38. It was of the view that whilst Mr Nathadwarawala did lack insight and there was insufficient remediation, Mr Nathadwarawala did have the capacity to develop insight and remediate, particularly in light of acceptance on his part as to the gravity and seriousness of dishonest conduct, particularly by a doctor.

39. In considering the risk of repetition, the Tribunal noted Mr Nathadwarawala’s submission that these events are *‘unique’*. The Tribunal reminded itself that there was no element of premeditation as the Overpayments were a result of a mistake. However, due to the lack of insight and insufficient reflection and remediation on Mr Nathadwarawala’s part, it took the view that there remained a risk of repetition at present.

40. The Tribunal then considered the Overarching Objective. In terms of the need to protect and promote the health, safety and wellbeing of the public, the Tribunal determined that Mr Nathadwarawala’s conduct did not engage this limb. The Tribunal found however that the other two limbs of the overarching objective were engaged in this case: namely the need to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for the members of the profession. The Tribunal concluded that, given the seriousness of the misconduct, public confidence in the profession would be undermined if a finding of impairment were not made in this case.

41. The Tribunal has therefore determined that Mr Nathadwarawala’s fitness to practise is currently impaired by reason of misconduct.

#### **Determination on Sanction - 30/05/2023**

1. Having determined that Mr Nathadwarawala’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 evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

## Submissions

3. On behalf of the GMC, Ms Widdett, submitted that the appropriate sanction in this case is a period of suspension. Ms Widdett referred the Tribunal to the relevant paragraphs of the Sanctions Guidance (November 2020 edition) ('the SG').

4. Ms Widdett submitted that Paragraph 97 of the SG may be appropriate in this case. Ms Widdett submitted that there has been a serious breach of GMP, and that there has been no evidence to indicate that remediation would be unsuccessful as well as no evidence of repetition.

5. Ms Widdett submitted that there are no exceptional circumstances in this case that would justify taking no action and that conditions would not be appropriate, proportionate, workable and measurable.

6. Ms Widdett submitted that the GMC accepts that Mr Nathadwarawala has not been advised or represented through these proceedings and has noted that he has shown a willingness throughout this hearing to remediate and reflect. Ms Widdett therefore submitted given these findings, suspension would be the appropriate and proportionate sanction in this case.

7. Mr Nathadwarawala submitted the following:

*'I appreciate the thoroughness of your ongoing evaluation. However, I would respectfully request the Tribunal to consider the breadth and depth of my professional experience while making its determination.*

*Over the course of my 33-year medical practice, I have been dedicated to maintaining the highest standards of care and professionalism. This unstinting dedication has been duly recognised and supported by multiple appraisals and revalidation processes over the years. My steadfast commitment to providing excellent patient care has remained unwavering, even in the face of these proceedings.*

*It is also pertinent to consider the impact of the pandemic on these proceedings. The unprecedented global crisis has undoubtedly stretched timelines and delayed processes. It is important to note that the duration of six years for this ongoing process has been significantly affected by the pandemic and does not reflect a lack of commitment or action on my part.*

*The current situation is complex and involves one financial discrepancy. However, this single issue is being disproportionately used to overshadow my lengthy and esteemed medical career. Therefore, it is my humble request that this Tribunal considers the broader perspective of my long-standing medical practice and the exceptional circumstances we all have had to navigate during these challenging times.*

*In conclusion, I am confident that a holistic evaluation of my professionalism, dedication, and consistent track record of high-standard medical practice will provide a balanced and fair assessment of my capabilities and conduct. Thank you for your understanding and thoughtful consideration of these additional factors.'*

8. Mr Nathadwarawala made further oral submissions. He stated that he had not hired any lawyer as he had no money to pay for that. He also had not received any support from the Medical Protection Society or another professional organisation such as the British Medical Association. He stated that he chose to take this 'uphill task' to represent himself without any legal advice and therefore not understanding the legality of the process has been his handicap.

### **Tribunal's Approach to Sanction**

9. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement. The Tribunal is required to consider the least restrictive sanction first before going on to consider more serious sanctions.

10. The LQC advised that in reaching its decision, the Tribunal should take account of the SG and must consider the overarching objective. It must bear in mind that the purpose of sanctions is not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect. The Tribunal had noted that limbs (b) and (c) of the overarching objective were engaged in this case.

11. Throughout its deliberations, the Tribunal had applied the principle of proportionality, balancing Mr Nathadwarawala's interests with the public interest. The public interest includes, amongst other things, the protection of patients, the maintenance of public confidence in the profession, and the declaring and upholding of proper standards of conduct and behaviour.

12. The Tribunal had already given a detailed determination on impairment, and it had taken those matters into account during its deliberations on sanction.

### **Aggravating and Mitigating Factors**

13. Before deciding what action, if any, to take in respect of Mr Nathadwarawala's registration, the Tribunal considered and balanced the aggravating and mitigating factors present in this case.

14. The Tribunal considered the following to be aggravating factors in this case. It noted that Mr Nathadwarawala's dishonest conduct related to public funds, and he had derived a financial

gain from the Overpayments. Six years had elapsed since the Overpayments, and they had not been repaid in full. Mr Nathadwarawala demonstrated a lack of insight in relation to his dishonesty.

15. The Tribunal considered the following to be mitigating factors in this case. It noted Mr Nathadwarawala was a man of previous good character, with an unblemished lengthy career. It noted his Responsible Officer's statement dated 5 January 2023 confirming that Mr Nathadwarawala's time working on the Trust Bank was without incident and no concerns were raised regarding his clinical practice. The Overpayments occurred due to a mistake and were not premeditated. Mr Nathadwarawala had repaid some of the funds. The Tribunal noted that Mr Nathadwarawala had engaged in the hearing process throughout, without legal representation. He had shown a capacity to develop insight and capacity to reflect and remediate. Mr Nathadwarawala's misconduct had not been repeated.

### **The Tribunal's Determination on Sanction**

16. Having considered possible aggravating and mitigating factors, the Tribunal reminded itself that it must consider each of the sanctions available, starting with the least restrictive, taking account of the current SG.

#### **No action**

17. In coming to its decision as to the appropriate sanction, if any, to impose in Mr Nathadwarawala's case, the Tribunal first considered whether to conclude the case by taking no action.

18. The Tribunal determined that, in view of the serious nature of the Tribunal's findings at the impairment stage, taking no action would not be sufficient nor proportionate. In addition, taking no action would not address the public interest in this case. There were also no exceptional circumstances to justify taking no action.

#### **Conditions**

19. The Tribunal next considered whether it would be sufficient to impose conditions on Mr Nathadwarawala's registration. The Tribunal is of the opinion that a period of conditional registration would not adequately reflect the serious nature of Mr Nathadwarawala misconduct; nor, in a case involving dishonesty, could conditions be devised that would protect the public interest and maintain public confidence in the medical profession. The Tribunal has, therefore, determined that it would not be sufficient to direct the imposition of conditions on Mr Nathadwarawala registration.

#### **Suspension**

20. The Tribunal then went on to consider whether suspending Mr Nathadwarawala registration would be appropriate and proportionate. The Tribunal considered paragraphs in the SG relevant to suspension including 91, 92, 93 and 97:

*'91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.*

*92. Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (i.e. for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).*

*93. Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated....'*

21. The Tribunal further considered the following factors, as set out at paragraph 97 of the SG and which indicate that suspension may be appropriate:

*'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.*
- b...*
- c...*
- d...*
- e. No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.*
- f. No evidence of repetition of similar behaviour since incident.*
- g. The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.'*

22. The Tribunal noted that this is a case of dishonesty where Mr Nathadwarawala failed to bring the Overpayments to DRC's attention and further failed to arrange to repay the Overpayments in full. The Tribunal had regard to its conclusions at the impairment stage. It reminded itself that:

*'...Mr Nathadwarawala did lack insight into his conduct being dishonest....  
The Tribunal remained mindful that there had been an insufficient passage of time since the determination of the Facts stage where dishonesty was found proved, to allow for reflection and remediation by Mr Nathadwarawala.  
It was of the view that whilst Mr Nathadwarawala did lack insight and there was insufficient remediation, Mr Nathadwarawala did have the capacity to develop insight and remediate, particularly in light of acceptance on his part as to the gravity and seriousness of dishonest conduct, particularly by a doctor.'*

23. The Tribunal further considered that there was no element of premeditation, the Overpayments were paid to Mr Nathadwarawala because of another's mistake. It also took the view that there was no evidence demonstrating remediation was unlikely to be successful. It also bore in mind that there was no evidence of repetition of similar behaviour since the index incidents.

### Consideration of Erasure

24. In view of Mr Nathadwarawala's conduct being dishonest, The Tribunal also considered whether erasure would be an appropriate sanction.

25. The Tribunal considered paragraphs 107 to 109 of the SG, particularly the following paragraphs:

*'108. Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.*

*109. Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive):*

*a. A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.*

*b. A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.*

*...*



*h. Dishonesty, especially where persistent and/or covered up (see guidance .....paragraphs 120-128).'*

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

26. The Tribunal had regard to the SG and the various aggravating and mitigating factors it had identified. The Tribunal was conscious of paragraph 120 of the SG which outlines that “[GMP] states that registered doctors must be honest and trustworthy, and must make sure that their conduct justifies their patients’ trust in them and the public’s trust in the profession”. It was also mindful of paragraph 128 of the SG, as quoted above, in respect of dishonesty. It took the view that whilst Mr Nathadwarawala’s conduct in failing to arrange for the Overpayments to be returned in full had been over a prolonged period, there had been some repayments in 2017 to 2018 and these had restarted in 2023. The Tribunal distinguished the circumstances in this case to one where there was active falsification or fraudulent behaviour. The Overpayments in this case were a result of an error.

27. In this particular case, and in considering the identified aggravating and mitigating factors, and Mr Nathadwarawala’s capacity to develop insight, reflect and remediate, the Tribunal was of the view that a reasonable and well-informed member of the public would not find Mr Nathadwarawala’s behaviour to be fundamentally incompatible with his continued registration as a doctor.

28. Having considered all of the above factors, the Tribunal concluded that erasure would be disproportionate given the particular facts of this case.

29. In all the circumstances, the Tribunal considered that suspension would have a deterrent effect and could appropriately mark the seriousness of the misconduct and satisfy the need to maintain public confidence in the profession and to uphold professional standards. It was satisfied that this case fell within the ambit of paragraphs 91 and 92 of the SG and the factors at paragraph 97 as above, were relevant in this case.

30. Mr Nathadwarawala’s misconduct was a serious breach of GMP but, in all the circumstances, the Tribunal did not consider the misconduct to be such that it was fundamentally incompatible with his continued registration. The Tribunal also reminded itself that there was no evidence of repetition of similar behaviour in the time that Mr Nathadwarawala has worked since the incidents. It was also mindful that Mr Nathadwarawala had fully engaged within these fitness to practise proceedings, without any support or representation. The Tribunal determined to impose a period of suspension on Mr Nathadwarawala’s registration. This would send out a clear message to the public, the medical profession and Mr Nathadwarawala that this type of behaviour was not acceptable.

### **Length of suspension**

31. The Tribunal had regard to paragraphs 99 to 102 of the SG and the table following paragraph 102 relating to relevant factors when determining the length of suspension, including

the seriousness of the findings, and any mitigating or aggravating factors and ensuring that the doctor has adequate time to remediate. Further, the Tribunal took account of paragraph 101 of the SG, that: *'The Tribunal's primary consideration should be public protection and the seriousness of the findings...'*

32. The Tribunal referred to its conclusions above and the following factors from the table within the SG:

- The extent to which the doctor departed from the principles of GMP.
- The extent of the doctor's significant or sustained acts of dishonesty or misconduct.
- The extent to which the doctor has failed to address serious concerns over a period of time.

33. The Tribunal considered that the length of suspension should recognise the seriousness of Mr Nathadwarawala's misconduct, allow for adequate time to remediate and be sufficient to maintain public confidence and uphold proper professional standards of behaviour. It had regard to its earlier considerations that there had been an insufficient passage of time since the determination of the Facts stage where dishonesty was found proved, to allow for reflection and remediation by Mr Nathadwarawala.

34. Having carefully balanced the factors, the Tribunal was of the view that six months was the appropriate and proportionate length of time that was necessary to mark Mr Nathadwarawala's misconduct in the specific circumstances of this case and to allow time for reflection and remediation.

## Review

35. The Tribunal considered whether it should direct a review shortly before the expiration of the period of suspension. The Tribunal had regard to paragraphs 163 and 164 of the SG which states:

*'163. It is important that no doctor is allowed to resume unrestricted practice following a period of conditional registration or suspension unless the tribunal considers that they are safe to do so.'*

*164. In some misconduct cases it may be self-evident that, following a short suspension, there will be no value in a review hearing. However, in most cases where a period of suspension is imposed, and in all cases where conditions have been imposed, the tribunal will need to be reassured that the doctor is fit to resume practice - either unrestricted or with conditions or further conditions. A review hearing is therefore likely to be necessary, so that the tribunal can consider whether the doctor has shown all of the following (by producing objective evidence):*

- a. they fully appreciate the gravity of the offence*

- b. *they have not reoffended*
- c. *they have maintained their skills and knowledge*
- d. *patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.'*

36. Having considered the above factors and its earlier reasoning on the length of suspension, the Tribunal determined to direct a review of Mr Nathadwarawala's case. A review hearing will convene shortly before the end of the six-month period of suspension.

37. The Tribunal wishes to clarify that at the review hearing, the onus will be on Mr Nathadwarawala to demonstrate how he has remediated his misconduct. It therefore will assist the reviewing Tribunal if Mr Nathadwarawala provides:

- A Reflective statement which concentrates on Mr Nathadwarawala's understanding of honesty and integrity (not his clinical skills and competence), and the cause/s of his dishonest conduct including strategies to identify potential triggers and prevent future misconduct.
- Evidence of insight into how his conduct impacted on public confidence and the medical profession.
- Evidence of how Mr Nathadwarawala has kept his clinical knowledge and skills up-to-date.
- Reflections on any relevant courses he has attended; and
- Evidence of any other CPD he has undertaken.

38. Mr Nathadwarawala will also be able to provide any other information that he considers will assist the Tribunal.

### **Determination on Immediate Order - 30/05/2023**

1. Having determined to suspend Mr Nathadwarawala's registration for six months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be suspended with immediate effect.

### **Submissions**

2. On behalf of the GMC, Ms Widdett submitted that the GMC does not seek an immediate order of suspension in this case. She told the Tribunal that there is no interim order in place on Mr Nathadwarawala's registration. Ms Widdett referred the Tribunal to paragraphs 172 and 173 of the SG which state:

*'172. The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best*

*interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*

*173. An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*

3. Mr Nathadwarawala submitted that he did not consider that an immediate order of suspension is necessary and if an immediate order was imposed today, it would have an adverse impact on his livelihood and his financial commitments.

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

4. In reaching its decision the Tribunal had regard to paragraphs 172, 173 and 178 of the SG, as referred to above.

5. The Tribunal had regard to the seriousness of the misconduct it has found but has determined not to impose an immediate order of suspension on Mr Nathadwarawala's registration. It has concluded that an immediate order is unnecessary in this case as there are no patient safety concerns. Furthermore, an immediate order is also not warranted in the public interest.

6. The Tribunal is of the view that the suspension of Mr Nathadwarawala's registration for a period of 6 months is sufficient to satisfy the public interest. Indeed, the Tribunal considered that it would not be inappropriate for Mr Nathadwarawala to continue in unrestricted practice before the substantive order takes effect.

7. Accordingly, the Tribunal has determined that an immediate order of suspension is not necessary.

8. That concludes this case.