PUBLIC RECORD

Dates: 03/05/2022 - 12/05/2022

Medical Practitioner's name:	Mrs Manjula ARORA
GMC reference number:	5166992
Primary medical qualification:	MB BS 1986 University of Delhi

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

Summary of outcome

Suspension, 1 month.

Tribunal:

Legally Qualified Chair	Mr Peter Scofield
Medical Tribunal Member:	Dr Tony Gu, Dr Nagarajah Thevamanoharan

Legal Assessor:	Miss Samantha Gray (03 – 06 May 2022) Miss Ogheneruona Iguyovwe (09 – 10 May 2022) Mr Patrick Cox (11 – 12 May 2022)
Tribunal Clerk:	Mr Andrew Ormsby

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Alan Jenkins, Counsel, instructed by the Medical Defence Union
GMC Representative:	Mr Carl Hargan, 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 - 10/05/2022

Background

1. Dr Arora qualified in 1988 at the Lady Harding Medical College, New Delhi, India. She moved to the UK in late 1993 or early 1994, and subsequently worked as a locum out-of-hours GP in Devon. In 2010 Dr Arora relocated to Manchester and joined Mastercall Healthcare (Mastercall) as a sessional independent contractor GP.

2. Mastercall provides a range of services to patients registered with GP practices in the Stockport and Trafford areas, and its clinicians carry out consultations with patients over the telephone or in person, either at one of Mastercall's treatment centres or in the patient's home depending on their respective medical needs. In November 2019 Mastercall began a contractual association with the North West Ambulance Service (NWAS), known as the Clinical Assessment Service (CAS). That service involved NWAS paramedics referring patients awaiting ambulances to Mastercall clinicians. Those clinicians might then speak to the patients to assess their needs, and might, for example, advise them to make their own way to hospital or to see their own GP. They might also upgrade the priority given to the patient by advising NWAS to recategorize the urgency of the ambulance response.

3. It is alleged that on 29 December 2019, whilst working a shift for Mastercall, Dr Arora telephoned NWAS on one or more occasion and arranged for Mastercall's NWAS Clinical Assessment Service to be switched off without seeking agreement from a Mastercall Shift Lead, Ms A.

4. It is further alleged that on 30 December 2019 Dr Arora telephoned the IT department at Mastercall and stated that Dr B, Medical Director and former CEO at

Mastercall, had sent her an email telling her they would give her a laptop the next time one was available, and that he had promised her a laptop. It is alleged that when she made these statements to the IT department she knew that the Dr B had not sent her the email referred to in her conversation with the IT department, nor had he promised her a laptop. It is alleged that Dr Arora's statements made to the IT department during the telephone call were dishonest.

5. The initial concerns were raised with the GMC on 21 February 2020 by Dr B.

The Outcome of Applications Made during the Facts Stage

6. Mr Hargan, Counsel, on behalf of the GMC, applied, pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), for a reference to 'Dr A' in the stem of paragraph 3 of the Allegation to be amended to 'Dr B', in order to correct an error. Mr Jenkins, Counsel, on behalf of Dr Arora, made no objection. The Tribunal granted the application.

7. Mr Hargan also applied, under Rule 34 (13), to allow a witness, Ms A, to give evidence via video link XXX. Mr Jenkins made no objection. The Tribunal granted the application.

8. Mr Hargan then applied, under Rule 34 (1), to admit a further document into evidence, namely the Mastercall Standard Operating Procedure' (SOP), dated November 2019. This was to replace a document, adduced in the hearing bundle, which post-dated the events relating to paragraph 1 of the Allegation. Mr Jenkins made no objection. The Tribunal determined that it was fair to do so, and that its introduction did not cause prejudice to either party, and therefore granted the application.

9. At the close of the GMC's case Mr Jenkins made an application pursuant to Rule 17(2)(g) of the Rules in respect of paragraph 4 of the Allegation, which alleged dishonesty in relation to paragraphs 2 and 3. He invited the Tribunal to determine that the GMC had adduced insufficient evidence upon which it could properly find that paragraph proved. Mr Hargan, on behalf of the GMC, opposed this application. The Tribunal refused the application. Its full decision on the application is included at Annex A.

The Allegation and the Doctor's Response

10. The Allegation made against Dr Arora is as follows:

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

1. On 29 December 2019, whilst working a shift for Mastercall Healthcare ('Mastercall') you telephoned North West Ambulance Service ('NWAS') on one or more occasion and arranged for Mastercall's NWAS Clinical Assessment Service to be switched off without seeking agreement from Ms A. To be determined

2. On 30 December 2019 you telephoned the IT department at Mastercall and stated that Dr B:

    a. sent you an email telling you they would give you a laptop the next time one is available, or words to that effect;
    To be determined

    b. promised you a laptop, or words to that effect.
    To be determined

3. When you made the statements referred to at paragraph 2 you knew that ~~Dr A~~ Dr B had not: Amended under Rule 17(6)
To be determined

    a. sent you the email you referred to in the conversation described at paragraph 2a; To be determined

    b. promised you a laptop, or words to that effect.
    To be determined

4. Your conduct at paragraph 2 was dishonest by reason of paragraph 3.
To be determined

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

Witness Evidence

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

- Dr B, Medical Director at Mastercall Healthcare, in person and a witness statement dated 26 November 2020;
- Mr C, Digital Services Manager and formerly IT Support Analyst at Mastercall Healthcare, in person and a witness statement dated 13 September 2021;
- Ms A, Shift Lead at Mastercall Healthcare, in person and witness statements dated 18 January 2021 and 4 May 2022.

12. Dr Arora provided her own witness statement, dated 25 December 2021, and also gave oral evidence at the hearing. In addition, the Tribunal received testimonial evidence on Dr Arora's behalf from the following:

- Dr D, registered medical professional at Mastercall, dated 29 April 2021; and
- Dr E, registered medical professional at Mastercall, dated 20 April 2021.

Documentary Evidence

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

- GMC referral from Dr B, dated 21 February 2020;
- Emails between Dr B, Ms F, Ms G and Ms A, dated 29 and 30 December 2019;
- Emails between Dr B and Dr Arora, dated 24 December 2019, 31 December 2019, 20 January 2020, 22 January 2020 and 18 February 2020;
- Letters from Mastercall to Dr Arora, dated 22 January 2020 and 11 February 2020;
- Notes of Mastercall meeting with Dr Arora, dated 20 February 2020;
- Transcripts of telephone calls made by Dr Arora to NWAS on 29 December 2019; and
- Transcript of a telephone call made by Dr Arora to Mastercall IT department, dated 30 December 2019.

The Tribunal also heard the audio recordings of the three telephone calls referred to above.

The Tribunal's Approach

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

15. The Tribunal was mindful that it should not assess a witness's credibility exclusively on their demeanour when giving evidence, but that their veracity should be tested by reference to objective facts, in particular by reference to the documents in the case.

16. In determining the allegation that Dr Arora was dishonest during the course of her telephone call on 30 December 2019 the Tribunal reminded itself that it should apply the test set out in the matter of *Ivey v Genting Casinos (UK) Limited [2017] UKSC 67*. Firstly, it must ascertain (subjectively) the state of her knowledge or belief as to the facts. The reasonableness of the belief is a matter of evidence going to whether she genuinely held the belief, but it is not a requirement that the belief must be reasonable. Secondly, the tribunal must then consider whether the conduct was dishonest by the (objective) standards of ordinary decent people. There is no requirement that Dr Arora must appreciate that what she had done was, by those standards, dishonest.

17. The Tribunal had regard to the fact that Dr Arora's fitness to practise has not previously been found to have been impaired and that she has no criminal convictions. She is a person of good character. Her good character is relevant in two ways. Firstly, she has given evidence, and her good character is a positive feature which the Tribunal should take into account when considering whether or not it accepts what she said. Secondly, the Tribunal should consider whether her good character makes it less likely that she acted as alleged. It is a matter for the Tribunal to consider what weight should be given to the doctor's good character, and the extent to which it assists in reaching its determination. Good character, of itself, does not amount to a defence.

The Tribunal's Analysis of the Evidence and Findings

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

Paragraph 1

19. The Tribunal considered the allegation that on 29 December 2019, whilst working a shift for Mastercall, Dr Arora telephoned NWAS on one or more occasion and arranged for Mastercall's NWAS Clinical Assessment Service to be switched off without seeking agreement from Ms A.

20. Mr Hargan, in his submission, referred the Tribunal to the evidence of Ms A. Whist she stated that she was unsure whether or not clinicians were informed that they did not have the authority to '*switch off*' the NWAS service, she added that it should be "*glaringly obvious that you would not ring NWAS directly to pause the service, and it would be an unwritten rule that Mastercall clinicians would not contact NWAS to switch off the service without seeking consent from a Shift Lead*."

21. Ms A also quoted, in her statement, from the 'Mastercall Standard Operating Procedure' (SOP), dated November 2019, as follows:

> "*in the event that the clinicians on rota cannot handle the volume of demand from NWAS the Service Lead on duty may first seek resilience, and then contact the Contact NWAS Clinical CAS coordinator on 0151 448 7877 to discuss the situation and jointly review the risks. If a joint decision to suspend the service is made, the service will be closed after 15 minutes to allow sufficient time for the Shift Duty Manager to make all Clinical Hub staff aware. Once flow has returned to a manageable rate the Service 17 Lead on duty should inform the NWAS dispatcher to recommence dispatch to the CAS*."

22. Mr Hargan submitted that the SOP was important, and invited the Tribunal to consider how "*realistic*" it was that Dr Arora had not read it, in the context of 'Good medical practice' which made it clear that medical practitioners should keep up to date on guidance relating to their work. He suggested that Dr Arora's denial that she had read the SOP was because she realised that, if she accepted having read it, she would be admitting that she had breached its terms. Mr Hargan also reminded the Tribunal of Dr B's evidence that no other doctor had ever asked for the service to be switched off, either before or after 29 December 2019.

23. In her oral evidence to the Tribunal Dr Arora said, "*I did not know that clinicians did not have that authority. Nobody had clarified that to myself. Nobody had ever stated that doctors can't speak to a CAS Shift Lead*". She also said, "*I was not given training. I did not have the SOP*". Dr Arora referred to the fact that there were two Shift Leads on duty, one at Mastercall and the CAS Lead at NWAS. She said, *"if I ever approached the Mastercall Shift Lead they would say 'why don't you call the NWAS Lead?'"*.

24. Mr Jenkins reminded the Tribunal that Mastercall had started to deal with a re-triaging system with NWAS for the first time in November 2019, and that Dr B himself had said "*it was hard to get your head around*". He submitted that there was no distribution list for the SOP, as there was for the later document which post-dated the incidents on 29 December 2019. He said that the GMC's case that Dr Arora must have seen the SOP was "*ludicrous*".

25. In relation to the SOP, the Tribunal reminded itself that it was for the GMC to prove that she had seen that document, and that she had, therefore, knowingly breached the paragraph set out by Ms A. It was not for Dr Arora to prove that she had not. In the absence of any evidence to prove that it was more likely than not that she had seen it, the Tribunal accepted Dr Arora's evidence that she had not received any specific training in relation to the CAS and that she had not seen the SOP.

26. The Tribunal next considered the dispute between the parties about the interpretation of the words "*switched off*" in paragraph 1 of the Allegation. Mr Hargan submitted that any differentiation between the word 'stopped' and the word 'suspend' was a "*red herring*". In either case, he said, the system was not working. He submitted that Dr Arora had lied in denying that she 'stopped' the service, because she knew she was wrong to have done so.

27. Mr Jenkins submitted that Dr Arora had not asked for the service to be switched off, and that in each of the two telephone calls she was asking for a "*pause*". He contended that there was a difference in terminology, and submitted that Dr B had referred to "*semantics*".

28. The Tribunal, however, had regard to the entirety of Dr B's evidence in that regard, and not just to his use of the word "*semantics*". During his evidence in chief Dr B was asked about his view of the phrase 'temporarily suspend'. He replied, "*I think that we could get bogged down in semantics, but when the ability to transfer patients is stopped it's stopped, whether it's temporary or permanent*". In response to a question in cross-examination he said, "*I don't see there's a fundamental difference between suspending and stopping*".

29. The Tribunal accepted Dr B's evidence on that point, and noted his observation that, "*it's a bit like a junior doctor deciding there were too many patients in A & E and locking the doors of the hospital. It's unacceptable*." It therefore concluded that the term "*switched off*" was not misplaced or inappropriate within paragraph 1 of the Allegation, since it reflected the fact that the CAS service was stopped, even if temporarily, as a consequence of the telephone calls to NWAS made by Dr Arora.

30. Having reached that conclusion, the Tribunal than went on to consider the evidence provided by the transcripts of those telephone calls, and the exact words it had seen in those transcripts and heard in the audio recordings.

31. It noted, in the first telephone call, the following exchange:

DR A: *Hi. I just wanted to say that there are too many cases coming up and we are not able to clear the load yet.*
REC: *Okay.*
DR A: *So can we taper it down a bit, clear it off and then get some more in -*
REC: *Sure, do you want to just suspend then, we'll just leave it what it is, and then now we'll suspend, how long do you want to suspend for, doctor?*
DR A: *Shall we do it for an hour, hopefully should clear up within the hour, and then …*
REC: *One hour, okey dokey,*
DR A: *Okay.*

32. It noted, in the second telephone call, the following exchange:

DR A: *Hi* [Ms I]*, it's Dr Arora here, I just wanted to check if at all they can slow down the influx because I think the shift leader was trying to get some doctors from BartonDoc* [sic] *or GoToDoc to help in other ways.*
REC: *Ah right, okay.*
DR A: *There are eight, nine patients still pending, can we clear those and then maybe …*
REC: *Right, so do you just want to suspend for a while?*
DR A: *For a while, yeah, just a while.*

33. The Tribunal had regard to the fact that, in both cases, Dr Arora did not, herself, ask for the service to be suspended, at least not using that specific term. In the first telephone call she said "*can we taper it down a bit, clear it off and then get some more in*". In the second telephone call she asked to "*slow down the influx*". In both telephone calls it was the other party, Ms H and Ms I respectively, who first used the word "*suspend*".

34. Had paragraph 1 of the Allegation ended after the words "*arranged for Mastercall's NWAS Clinical Assessment Service to be switched off*" it would have been necessary for the Tribunal to have given greater consideration to the question of whether or not the exact

words used by Dr Arora meant that the paragraph was proved. However, it did not end there. It continued with the words "*without seeking agreement from Ms A.*"

35. In her oral evidence Ms A said, "*I did a 1 – 11 that day. From my recollection it had been switched off in the morning*." By reference to the times mentioned in both telephone calls it was probable that the first was made at approximately 10.30 hrs and that the second was made at approximately 12.50 hrs. Both were made, the Tribunal concluded, before Ms A began her shift. That would be consistent with her recollection.

36. The Tribunal noted Ms A's email, sent at 15.43 hrs on the same day, 29 December 2019:

> "*I'm sure that Ms K has already spoke to* [Ms F]*, but just to make you aware that Dr Arora has twice called NWAS today to turn off CAS. We were only made aware when the Clinician from NWAS called to say he was escalating it to the CCG. Ms K has spoken to Dr Arora and advised that she must not turn CAS off. Further to this, Dr Arora has come over to me on a number of occasions to tell me that CAS was unmanageable and that I needed to turn it off. In my opinion, it was not. She was questioning where the other clinician was as we had a GTD Dr helping us out. Yesterday she came to me 3 times to ask if* [Dr J] *needed help as she had been on the same call for a while. It seems to be completely lost on her that she is wasting time coming to discuss this with me, when she could be triaging calls!*"

37. The Tribunal was unable to infer precisely when Dr Arora went to Ms A to say that the service was unmanageable and needed to be turned off, although it was possible that those conversations occurred the same afternoon, that is after the morning telephone calls rather than before. However, the Tribunal did draw the inference the doctor had some awareness that she should raise operational matters with the Mastercall shift lead.

38. Whatever the case, the Tribunal had to determine the GMC's case as it is set out in the Allegation. In paragraph 1 it is specifically alleged that Dr Arora arranged for the service to be switched off "*without seeking agreement from Ms A*". Ms A's evidence was clear and unambiguous. Her shift, on that day, did not begin until 13.00 hrs, after the two telephone calls to NWAS were made by Dr Arora. It would not have been possible for the doctor to have sought agreement from Ms A. On that basis alone, the Tribunal concluded, paragraph 1 of the Allegation could not be made out.

39. Accordingly, the Tribunal determined that paragraph 1 of the Allegation was not proved.

Paragraph 2

40. On 24 December 2019 Dr B sent an email to Dr Arora which included the following:

> "*We don't have any laptops at present, but I will note your interest when the next roll out happens.*
> *Technology is advancing, we may soon be able to allow clinicians to use their own computers, watch this space*."

41. On 30 December 2019 Dr Arora spoke by telephone to Mr C, then the IT Support Analyst at Mastercall. During that conversation she said:

> "*DR A: Oh right, because he* [Dr B] *didn't have a laptop and he sent me an email that the next time it's available he'll give it to me, so you have laptops and I thought it's best that I take one because I don't want too many people to be involved, just him and you directly, because it's my … it's* [Dr B] *who has promised it*."

42. The Tribunal heard the passage quoted above in the audio recording, and read the transcript of the conversation in which it is set out. It also noted Dr Arora's acceptance, during cross examination, that she had told Mr C that Dr B had sent her an email telling her that he would give her a laptop the next time one was available, and that he had promised her a laptop.

43. Accordingly, the Tribunal found both paragraphs 2a and 2b proved.

Paragraph 3

44. Mr Hargan submitted that what Dr Arora was trying to do was "*obvious*"; that she was trying to get a computer. He reminded the Tribunal that Mr C had thought Dr B had authorised one and that he could therefore give her one, and referred to the same witness's evidence that no other clinician had ever approached him in the way that Dr Arora had done.

45. Mr Jenkins referred to Dr B's email and asked the Tribunal what, in its view, Dr Arora understood from that email. He submitted that she interpreted it as a "*thumbs up*". Her

position, he said, was that if she had been told she was not going to get a laptop "*we wouldn't be here*".

46. The Tribunal had regard to Dr Arora's statement, in which she said, "*I accept that I perhaps interpreted* [Dr B's] *words 'note your interest' as something more definite than he actually meant, and I said to* [Mr C] *that he had said I could have one next time one was available*". In her oral evidence she said, "*I can only state that I took it that he would give me one*".

47. The Tribunal concluded that the words "*I will note your interest*", whilst not being a firm indication that Dr Arora would be given a laptop, were capable of interpretation as being a positive response to her request. On balance, it decided, reasonable people considering the effect of those words would feel that it was likely that, in due course, she would receive a company laptop. It had regard to Mr Hargan's submission that the second sentence in the email, about clinicians using their own computers in the future, made it clear that she was not likely to receive a laptop. However, it did not accept that part of his submission, and gave little weight to the second part of the email.

48. The Tribunal reminded itself of Dr B's evidence that Dr Arora was not "*at the top of the list*", that he meant his communication on 24 December 2019 to be a "*holding email*", and that he "*didn't want to give negative messages on Christmas Eve and before the busiest time of the year*". He did not, however, say that Dr Arora could not have a laptop. As set out above, the Tribunal concluded that it was more likely than not that Dr Arora did interpret Dr B's email as a positive response, and that she had a genuinely held belief that, as and when a laptop became available, she would receive one.

49. Accordingly, the Tribunal determined that paragraph 3a of the Allegation was not proved.

50. The Tribunal then went on to consider paragraph 3b. It first considered whether or not there was any equivalence between Dr Arora's general understanding that Dr B would give her a laptop when one was available and her particular use of the words "*it's* [Dr B] *who has promised it*". The Tribunal concluded that there was a difference in degree, and that the word "*promised*" connoted a more specific and more definitive statement.

51. Mr Hargan, in his submission, invited the Tribunal to conclude that Dr Arora's language was "*clear and unambiguous*". Mr Jenkins, in his submission, accepted that Dr Arora "*was not saying she doesn't understand 'promise'*"

52. The Tribunal had regard to the fact that English was not Dr Arora's first language. Indeed, it noted what she said in her witness statement about her understanding of Dr B's words, "*I will note your interest*". She said, "*This misinterpretation by me was possibly due to the fact that English is not my first language*."

53. Mr Hargan went to great pains to deal with this point in his submission. He said that since coming to the UK in 1993 or 1994 there had never been any suggestion of the doctor having any difficulty with English. He described her as an intelligent and articulate witness whose command of English was very good. He went on to say that Dr Arora was "*very easily able to answer questions in cross-examination*", that she was "*able to formulate arguments very well*", that she could "*adapt her evidence as she went along*", that she was "*able to anticipate questions*" and that she was also able to "*refer back to earlier questions*". The Tribunal accepted that part of Mr Hargan's submission in its entirety. It also reminded itself that Mr Jenkins, as set out in paragraph 51, above, accepted that the doctor was not putting the case that she did not understand the word 'promise'.

54. Indeed, the Tribunal noted that, whilst her witness statement did deal with her understanding of Dr B's reference to "*I will note your interest*", it was entirely silent on her own use of the words, "*it's* [Dr B] *who has promised it*".

55. In her oral evidence, during evidence in chief, Dr Arora said, "*I think the word 'promised' was not appropriate, maybe not the word I should have used, but I thought he wanted to give it to me*".

56. In cross-examination, when asked if she accepted that Dr B "*did not promise you a laptop, yes or no?*" she replied "*It's the connotation that I had taken from it*". She went on to say, "*I said he has promised it because I took it that he intends to give me one*". However, when it was put to her that, "*You know what a promise is*" she referred to Dr B's oral evidence and his use of the word "*semantics*". When pressed further, she declined to answer Mr Hargan's questions. He put it to her that there was a "*huge leap*" between the phrase "*note your interest*" and a promise, and she debated the words "*huge leap*" rather than answer the question. Mr Hargan the rephrased the question, and suggested that a promise was "*a world away*" from Dr B's words. Again, Dr Arora chose to debate the meaning of "*a*

world away" rather than explain her understanding of a 'promise'. At the end of that line of questioning Dr Arora refused to say any more about what, in her understanding, was the meaning of 'promise', and repeatedly said "*It's up to you*" or suggested that Mr Hargan should interpret her use of the word in any way he thought fit.

57. The Tribunal concluded that, in marked contrast to the rest of her oral evidence, Dr Arora was evasive when dealing with her words to Mr C, "*it's* [Dr B] *who has promised it*" and with paragraph 3b of the Allegation.

58. On the balance of probabilities, the Tribunal determined that, at the time Dr Arora used those words, she knew that Dr B had made no such promise, even if she interpreted his email generally as being a positive response to her request for a laptop.

59. Accordingly, the Tribunal found paragraph 3b of the Allegation proved.

Paragraph 4

60. As a consequence of its findings in relation to paragraph 3a of the Allegation, it follows that paragraph 4 is not proved in respect of paragraphs 2a and 3a.

61. The Tribunal went on to consider paragraph 4 as it relates to paragraphs 2b and 3b. It has already determined that Dr Arora did state to Mr C that Dr B promised her a laptop (paragraph 2b), and it has already determined that, at the time she made that statement, she knew that he had made no such promise (paragraph 3b).

62. In determining this part of the Allegation the Tribunal looked at the entirety of the evidence in relation to the doctor's conversation with Mr C, not only to that part of it quoted at paragraph 41, above.

63. Mr Hargan, in his submission, contended that it was only after Dr Arora had been told by Mr C that Dr B was on leave that she said what she did.
However, the Tribunal noted that it was Dr Arora who first mentioned Dr B by name, and that she did so in the anticipation of Mr C being able to speak to him:

> "*DR A: Right, okay, I think* [Dr B] *might be in as well* ['tomorrow', that is 31 December 2019].
> *IT: Right, okay.*

DR A: Yeah, will you be able to speak to him directly, we talked about the laptop."

64. The Tribunal concluded that Dr Arora had the intention, from the outset, that Dr B would be spoken to by Mr C, and that he would be able to say whether or not she should receive a laptop.

65. Whilst Dr B had said, in his email of 24 December 2019, that "*We don't have any laptops at present*", the Tribunal had regard to Dr Arora's unchallenged evidence that she had what she thought was a subsequent conversation with Ms F, Head of Operations at Mastercall, in which she had been told that the IT department did have laptops, and that she should approach that department.

66. It was more likely than not, the Tribunal concluded, that Dr Arora had spoken to Mr C on 30 December 2019 in the light of that new information, and that it was not an attempt to go behind Dr B's back, nor to mislead the IT department.

67. Furthermore, the Tribunal accepted Mr Jenkins' submission that Dr Arora had never told Mr C that Dr B had 'authorised' her receipt of a laptop. That position was confirmed by her later email to Dr B, in which she said, on 18 February 2020:

> "*Dear* [Dr B] *I was told there were ample laptops returned and available for home triage. I had not stated you have authorised a laptop/computer for me*."

68. In summary, the Tribunal determined that Dr Arora did not have a dishonest intent when speaking to Mr C on 30 December 2019, and that she did not set out to attempt to mislead him during the course of that conversation. She always had the intention, the Tribunal concluded, that Dr B would have the final say as to whether or not she would receive a laptop.

69. Nonetheless, as the Tribunal has already determined, Dr Arora did tell Mr C that Dr B had 'promised' her a laptop, knowing that he had not, in fact, made that promise.

70. In deciding whether or not Dr Arora was dishonest the Tribunal had regard to her good character, and to the testimonials it had received on her behalf. It accepted, in general terms, that she was not a dishonest person.

71. With specific reference to her use of the word 'promised', the Tribunal concluded that it was more likely than not that Dr Arora exaggerated the position in order to reinforce her request for a laptop. As she herself accepted, it was not appropriate to use that word, and she should not have said what she did.

72. In that context, however, the Tribunal had regard to the test set out in *Ivey v Genting Casinos*. It has already determined that, subjectively, Dr Arora knew she had not been promised a laptop by Dr B. It went on to consider the objective element of that test, and concluded that ordinary, decent people would consider her use of the word 'promised' as dishonest.

73. The Tribunal, again, concluded that Dr Arora had not set out to be dishonest, and that she had not set out to mislead Mr C. Rather, she had exaggerated the position in her use of one inappropriate word. Nevertheless, it determined that, in the specific use of that one word, on that one occasion, she had been dishonest.

74. Accordingly, the Tribunal found paragraph 4 of the Allegation proved, in relation to paragraphs 2b and 3b.

The Tribunal's Overall Determination on the Facts

75. The Tribunal has determined the facts as follows:

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

1. On 29 December 2019, whilst working a shift for Mastercall Healthcare ('Mastercall') you telephoned North West Ambulance Service ('NWAS') on one or more occasion and arranged for Mastercall's NWAS Clinical Assessment Service to be switched off without seeking agreement from Ms A. **Not proved**

2. On 30 December 2019 you telephoned the IT department at Mastercall and stated that Dr B:

    a. sent you an email telling you they would give you a laptop the next time one is available, or words to that effect;
    Determined and found proved

    b. promised you a laptop, or words to that effect.

Determined and found proved

3. When you made the statements referred to at paragraph 2 you knew that ~~Dr A~~ Dr B had not: Amended under Rule 17(6)
Not proved

a. sent you the email you referred to in the conversation described at paragraph 2a; Not proved

b. promised you a laptop, or words to that effect.
Determined and found proved

4. Your conduct at paragraph 2 was dishonest by reason of paragraph 3.
Not proved in relation to 2a and 3a
Determined and found proved in relation to 2b and 3b

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

Determination on Impairment - 11/05/2022

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts found proved, Dr Arora'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.

Submissions

Submissions on behalf of the GMC

3. On behalf of the GMC, Mr Hargan submitted that Dr Arora's fitness to practise was currently impaired by reason of misconduct.

4. Mr Hargan referred to relevant case law and submitted that Dr Arora had brought the medical profession into disrepute, that she had breached a fundamental tenet of the profession, that her integrity could not be relied upon and that a finding of impairment was necessary in order to maintain public confidence in the profession.

5. Mr Hargan submitted that, whilst a finding of dishonesty need not always result in a finding of impairment, it would be unusual for a Tribunal not to make such a finding.

6. Mr Hargan further submitted that Dr Arora had shown a lack of insight into her dishonesty and asked that the Tribunal note her oral evidence at the facts stage, which evidenced such lack of insight.

7. Mr Hargan concluded by stating that he was content that the Tribunal refer to such paragraphs of *Good medical practice* (2013) (GMP) as it considered to be appropriate.

Submissions on behalf of Dr Arora

8. On behalf of Dr Arora, Mr Jenkins acknowledged that doctors should be honest and trustworthy, but submitted that the Tribunal had made it clear, in its decision on the facts, that Dr Arora had not set out hoping to gain anything that she would not have gained anyway. He said it was not an *"operative deception"* and that any dishonesty was the result of a slight exaggeration.

9. Mr Jenkins questioned whether or not Dr Arora had breached a fundamental tenet of the profession, and submitted that she had not brought the reputation of the profession into disrepute.

10. Mr Jenkins submitted that, for the GMC, dishonesty is an 'all or nothing' matter, and suggested that this approach was not always appropriate.

11. Mr Jenkins challenged Mr Hargan's submission that Dr Arora had no insight, and referred the Tribunal to its own determination at paragraph 55, in which it referred to the doctor's oral evidence:

> "*I think the word 'promised' was not appropriate, maybe not the word I should have used, but I thought he wanted to give it to me*"

12. Mr Jenkins submitted that, whilst Dr Arora had perhaps *'over-egged'* her claim that Dr B had promised her a laptop, the Tribunal could conclude that this did not amount to serious misconduct.

13. Mr Jenkins therefore invited the Tribunal to find that Dr Arora's fitness to practise was not impaired, as of today.

The Tribunal's Approach

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

15. In approaching its decision, the Tribunal was mindful of the two-stage process to be adopted. Firstly, whether the facts found proved amounted to misconduct which was serious. Secondly whether a finding of serious misconduct should lead to a finding of current impairment of fitness to practise.

16. The Tribunal had regard to the case of *Roylance v General Medical Council* [2000] 1 AC 311, which set out 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'.*

17. With regard to impairment, the Tribunal had regard to the case of *CHRE v NMC and Grant* [2011] EWHC 927 in which Dame Janet Smith's observations in the *Fifth Report of the Shipman Inquiry* were endorsed. Dame Janet Smith suggested that questions of impairment could be considered in the light of the following considerations:

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*
>
> *a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

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

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

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

The Tribunal's Determination on Impairment

Misconduct

18. The Tribunal has already determined that Dr Arora's use of the word *'promised',* knowing that no such promise was made, constituted dishonesty. It concluded that this was in breach of three paragraphs of GMP.

'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.'

'68 You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.'

19. The Tribunal noted the use of the word 'must' in paragraphs 65 and 68, and reminded itself that in GMP 'you must' is used for an overriding duty or principle.

20. Whilst the Tribunal had regard to its finding that Dr Arora's dishonesty was confined to the use of a single word on a single occasion, it determined that a breach of an overriding duty or principle, particularly in relation to dishonesty, did constitute misconduct which was serious.

Impairment

21. Having determined that Dr Arora's dishonesty, albeit in the context of an exaggeration, did amount to misconduct which was serious, the Tribunal went on to consider whether or not her fitness to practise was currently impaired.

22. The Tribunal considered that any finding of dishonesty was difficult to remediate. Since Dr Arora has not, as yet, acknowledged that her reference to a promise, when no such promise had been made, did amount to dishonesty, she has not yet taken steps towards remediation. However, having found that Dr Arora was not, generally, a dishonest person the Tribunal did not consider it likely that there would be any repetition.

23. The Tribunal did recognise that Dr Arora had some insight into her misconduct. She has acknowledged that her use of the word *'promised'* was inappropriate, and that she should not have said that. It did not, however, find that her insight was fully developed, and reminded itself of her evasiveness when giving evidence in that context.

24. Both Mr Hargan and Mr Jenkins agreed that Dr Arora had not caused any risk to patients, and the Tribunal was also in agreement with that point. However, dishonesty, whether or not in the context of a single exaggeration, does, in the Tribunal's view, bring the medical profession into disrepute. Honesty is also regarded as a fundamental tenet of the medical profession.

25. The Tribunal had regard to the overarching objective set out in the Medical Act 1983:

- 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.

26. As both Mr Hargan and Mr Jenkin agreed, limbs two and three were relevant to this case. The Tribunal has a responsibility to promote and maintain public confidence in the medical profession, and to promote and maintain proper standards of conduct for members of the profession.

27. In carrying out that responsibility the Tribunal concluded that a finding of impaired fitness to practise was necessary in this case, and that the public interest would not be maintained if such a finding were not made.

28. Accordingly, the Tribunal determined that Dr Arora's fitness to practise was impaired by reason of her misconduct.

Determination on Sanction - 12/05/2022

1. Having determined that Dr Arora'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

Submissions on behalf of the GMC

3. On behalf of the GMC, Mr Hargan submitted that patients must be able to trust doctors and that the appropriate sanction in this case was suspension. He referred the Tribunal to the relevant paragraphs of the *Sanctions Guidance* (2020) (SG) in relation to the sanctions available.

4. Mr Hargan submitted that there were mitigating features in this case and acknowledged that Dr Arora was a person of good character; had some insight and that no previous disciplinary measures had been taken against her. He stated that in those circumstances removal from the register was not necessary and that her misconduct was not incompatible with continued registration. However, he asserted that a signal had to be sent out to in order to maintain public confidence in the profession and that the doctor's interest had to be balanced with the public interest.

5. Mr Hargan submitted that dishonesty was an aggravating feature in this case. He went on to refer the Tribunal to its own findings at the impairment stage; namely, that the doctor's insight was not fully developed.

6. Mr Hargan submitted that no action was not appropriate in this case as there were no exceptional circumstances. Further, he stated that it would not be possible to impose conditions that were workable or measurable as the case involved dishonesty. He concluded by asserting that suspension was the most appropriate way to deal with this case and would send the necessary signal to the public and profession that dishonesty was not acceptable.

Submissions on behalf of Dr Arora

7. Mr Jenkins, on behalf of Dr Arora, invited the Tribunal to take no action, stating that her misconduct was a wholly isolated incident against a background of an impeccable career and that there was no suggestion that she had done anything of a similar nature either before or since the incident.

8. Mr Jenkins submitted that it was difficult to think of a less serious act of dishonesty and stated that the doctor's misconduct had arisen from the use of just one word. He suggested that the dishonesty involved was not an *"operative deception",* but was at the very bottom of the scale of dishonesty. That, he said, must surely put this misconduct in the exceptional category.

9. Mr Jenkins emphasised that Dr Arora was not a dishonest person, but had merely said a single dishonest thing, and did not pose a risk to the public. Further, he stated that she had not set out to gain any advantage by her dishonesty and that there was no consequent disadvantage to anyone or to any organisation.

10. Mr Jenkins said that Dr Arora already had a finding of impairment against her registration which would mark the misconduct, and questioned whether *'things needed to be taken further'* by the imposition of a sanction.

11. Mr Jenkins submitted that if the Tribunal decided not to take no action, then a short period of suspension would be appropriate in this case and asserted that a longer period of suspension would not be justified and would result in financial difficulties and de-skilling for the doctor.

12. Mr Jenkins did allude to personal difficulties that Dr Arora may have been going through around the time of the incident but stated that the doctor was a private person who did not want any such difficulties discussed in the public domain.

13. Mr Jenkins concluded by submitting that, if the Tribunal decided that the overarching objective obliged it to take action, then it should impose the shortest period of suspension. However, he questioned whether, in order to maintain standards, it was really necessary for doctors, and those who aspire to be doctors, to see that registrants who say one word inappropriately would be suspended.

The Tribunal's Determination on Sanction

14. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement. There is no burden or standard of proof at this stage. It recognised that every case will necessarily turn on its own facts.

15. In reaching its decision, the Tribunal gave careful consideration to the SG. It has borne in mind that the purpose of a sanction is not to be punitive although it may have a punitive effect.

16. The Tribunal has borne in mind that in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive.

17. Throughout its deliberations, the Tribunal has taken into account the overarching objective, and applied the principle of proportionality, balancing Dr Arora's interests with the public interest.

18. The Tribunal has taken into account its earlier determinations on the facts and on impairment, the SG and GMP, the submissions of Mr Hargan on behalf of the GMC, and the submissions of Mr Jenkins on behalf of Dr Arora.

Mitigating and Aggravating Factors

19. The Tribunal first considered the mitigating factors:

- Dr Arora has not previously been found to have impaired fitness to practise;

- The Tribunal has noted the evidence of both Dr Arora herself and of Dr B, with reference to personal and professional matters which she experienced at the time of her misconduct. Dr Arora declined to elaborate on these issues. In the absence of any further evidence the Tribunal did accept that there was a degree of mitigation, but could only attach limited weight to personal and professional matters as a mitigating factor;
- There has been a lapse of time, amounting to approximately two and half years, since the incident, during which no further issues have occurred; and
- The Tribunal received two testimonials from former colleagues at Mastercall, and it noted, in particular, Dr D's statement that *"she has strong moral principles"*.

20. The Tribunal then considered any aggravating factors in relation to Dr Arora's case:

- The Tribunal noted paragraph 56 a of the SG:

  '56 Tribunals are also likely to take more serious action where certain conduct arises in a doctor's personal life, …:

  a issues relating to probity – ie being honest and trustworthy and acting with integrity…'

  However, as dishonesty was, itself, the misconduct which the Tribunal found proved, it did not consider that this sub-paragraph should, in fairness, amount to a further aggravating factor.

No Action

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

22. The Tribunal first considered whether to conclude the case by taking no action.

23. The Tribunal noted Mr Jenkins' submission that the facts of this case were exceptional. In that context, he submitted that none of the factors set out in paragraph 120 – 128 of the SG, 'Considering dishonesty', were applicable in this case. The Tribunal accepted Mr Jenkins' points on those paragraphs of the SG, but concluded that this did not, in itself, mean that there were exceptional circumstances.

24. The Tribunal determined that to take no action would be inappropriate. It did not consider that there were any exceptional circumstances that would justify such a course. It determined that it would not be sufficient, proportionate nor in the public interest to conclude the case by taking no action.

Conditions

25. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Arora's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. It had regard to paragraph 81 of the SG:

> *'81 Conditions might be most appropriate in cases:*
>
> *a involving the doctor's health*
>
> *b Involving issues around the doctor's performance*
>
> *c where there is evidence of shortcomings in a specific area or areas of the doctor's practice*
>
> *d where a doctor lacks the necessary knowledge of English to practise medicine without direct supervision.'*

26. The Tribunal noted that none of these examples applied to this case. It also noted that both Mr Hargan and Mr Jenkins submitted that conditions were inappropriate following a finding of dishonesty.

27. In the circumstances the Tribunal determined that a period of conditional registration would not be sufficient to promote and maintain proper standards of conduct for members of the medical profession, and that it would be inappropriate given the nature of Dr Arora's misconduct.

Suspension

28. The Tribunal then went on to consider whether imposing a period of suspension on Dr Arora's registration would be appropriate and proportionate.

29. The Tribunal took account of the following paragraphs of the SG:

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

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

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

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

…

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

30. The Tribunal determined that a period of suspension would be sufficient to uphold the overarching objective.

31. In considering the length of the period of suspension the Tribunal attached significant weight to the fact that Dr Arora's misconduct was a single incident in relation to the use of a single word, with no evidence of any other similar episodes of dishonesty before or after the

event. Further, it considered that her misconduct on the relevant occasion was out of keeping with her general good character. The Tribunal took into account the mitigating factors it had identified and concluded that suspension for one month would be sufficient to mark the seriousness of her misconduct.

32. The Tribunal concluded that this period would send an appropriate message to the medical profession and to the wider public that Dr Arora's misconduct, albeit relating to a single fleeting moment of dishonesty and not a planned deception, was not acceptable and that a short period of suspension would adequately reflect the seriousness of her behaviour.

33. Suspension for one month represented an appropriate balance between upholding the overarching objective and providing an opportunity for Dr Arora to return to practice, recognising that her misconduct was momentary and out of character.

34. The Tribunal determined that a reasonable and fully informed member of the public, aware of all of the facts of the case, would regard a one-month suspension as a sufficient marker of the gravity of her misconduct.

35. The Tribunal further determined that it was not necessary to direct a review of Dr Arora's case as it considered that the risk of repetition was unlikely.

Determination on Immediate Order - 12/05/2022

1. Having determined that a one-month suspension was the appropriate sanction, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Arora's registration should be subject to an immediate order.

Submissions

Submissions on behalf of the GMC

2. Mr Hargan submitted that the GMC did not seek an immediate order.

Submissions on behalf of Dr Arora

3. Mr Jenkins submitted that imposing an immediate order was neither necessary nor appropriate in this case and noted that there are no issues in relation to patient safety.

4. Mr Jenkins submitted that immediate orders were normally made where there were issues in relation to patient safety or *"where the doctor is a menace"*. He added that the imposition of an immediate order would result in a longer period of suspension were the doctor to appeal.

The Tribunal's Determination

5. In reaching its decision, the Tribunal referred to the relevant paragraphs of the SG. It exercised its own judgement and had regard to the principle of proportionality.

6. The Tribunal considered paragraph 172 of the SG which states:

> *'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...'*

7. The Tribunal considered that no issues in relation to patient safety had been identified in this case. Dr Arora is a competent clinician, and there is no necessity to protect the public.

8. The Tribunal determined that it was neither in the public interest nor in Dr Arora's interest to impose an immediate order.

9. This means that Dr Arora's registration will be suspended 28 days from the date on which written notification of this decision is deemed to have been served, unless she lodges an appeal. If Dr Arora does lodge an appeal she will remain free to practise unrestricted until the outcome of any appeal is known.

10. That concludes this case.

ANNEX A – 06/05/2022

Application pursuant to Rule 17(2)(g)

1. At the close of the GMC's case Mr Jenkins, Counsel, on behalf of Dr Arora, made an application pursuant to Rule 17(2)(g) of the General Medical Council (Fitness to Practise Rules) 2004, as amended ('the Rules'). His application was in respect of paragraph 4 of the Allegation, which alleged dishonesty in relation to paragraphs 2 and 3. He invited the Tribunal to determine that the GMC had adduced insufficient evidence upon which it could properly find that paragraph proved.

Submission on behalf of Dr Arora

2. Mr Jenkins reminded the Tribunal that it had seen an email from Dr B to Dr Arora, dated 24 December 2019. That email included the following:

> *"We don't have any laptops at present, but I will note your interest when the next roll out happens.*
> *Technology is advancing, we may soon be able to allow clinicians to use their own computers, watch this space."*

3. He also referred the Tribunal to the transcript of a telephone call made by Dr Arora on 30 December 2019, during which she spoke to Mr C, a representative of the IT Department at Mastercall. He acknowledged that Dr Arora had referred to Dr B having "*promised*" that she could have a laptop, but submitted that, in relation to the entirety of the telephone call, no-one could say that she was attempting to "*trick or bully*" the IT Department.

4. By reference to different sections of the transcript Mr Jenkins submitted that it was "*obvious*" that Dr Arora was indicating that Dr B should be involved in the decision as to whether or not she was to be issued with a laptop, and that she wanted him to be involved.

5. Mr Jenkins submitted that Dr Arora was not "*sliding it past*" the IT Department, and that she had not said that Dr B had authorised her to have a laptop. In that context he referred the Tribunal to an email Dr Arora had sent to Dr B on 31 December 2019, in which she informed him that a laptop had been set aside for her and that it was "*waiting your authorisation*".

6. Mr Jenkins submitted that, taking the GMC evidence at its highest, the Tribunal could not reach the conclusion that Dr Arora had been dishonest.

Submission on behalf of the GMC

7. Mr Hargan, on behalf of the GMC, submitted that there was clear evidence of dishonesty on Dr Arora's part, and that the Tribunal should hear all of the evidence before considering that part of the Allegation. He said that the matter of her reliability as a witness was of "*paramount importance*", and that the reasonableness of her belief should be tested by cross-examination.

8. He reminded the Tribunal of the test set out in *Ivey v Genting Casinos (UK) Limited* [2017] UKSC 67, and asserted that Dr Arora's subjective belief as to the facts should be properly tested.

9. Mr Hargan submitted that Dr B's email to Dr Arora was "*entirely unambiguous*", and that its content was reinforced by Dr B's oral evidence. The words "*I will note your interest*", he submitted, could not "*in any way, shape or form*" amount to Dr B having said that Dr Arora was going to get a laptop, nor justify her telephoning the IT Department and saying that she had been "*promised*" one. He also reminded the Tribunal of the further comment in the email, to the effect that clinicians may soon be allowed to use their own computers.

10. Mr Hargan stated that the Tribunal could draw the reasonable inference that Dr Arora was attempting to "*get round*" the procedure for acquiring a laptop, set out by Mr C. He submitted that Dr Arora's conduct was "*clearly dishonest*".

The Tribunal's Approach

11. The Tribunal had regard to Rule 17(2)(g) of the Rules:

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

12. It reminded itself that, at this stage, its purpose was not to make findings of fact but to determine whether sufficient evidence, taken at its highest, had been presented by the GMC

such that a Tribunal, correctly directed as to the law, could properly find the relevant paragraphs proved to the civil standard.

13. The Tribunal considered the submissions of both parties. It also took account of all of the evidence presented to date, both oral and documentary, in reaching its decision.

14. The Tribunal had particular regard to the case of *R v Galbraith* [1981] 1 WLR 1039, which sets out that:

> *(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.*
>
> *(2) The difficulty arises where there is some evidence but it is of a tenuous character; for example, because of inherent weakness or vagueness, or because it is inconsistent with other evidence.*
>
> > *(a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.*
> >
> > *(b) Where, however, the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury. [...] There will always [...] be borderline cases. They can safely be left to the discretion of the judge.'*

15. It also noted that this authority had been applied by the courts to disciplinary proceedings in the case of *Solicitors Regulation Authority v Sheikh* [2020] EWHC 3062 (Admin). In that case Davis LJ held that the key question at the half-time stage is whether, on one possible view of the evidence, there is evidence upon which a reasonable tribunal (not all reasonable tribunals) could find the matter proved when making the final adjudication. If the answer is 'yes', then there is a case to answer.

The Tribunal's Decision

16. The Tribunal noted the content of Dr B's email, dated 24 December 2019, to Dr Arora, in which he said that there were no laptops available at that time, but that "*I will note your interest when the next roll out happens.*"

17. In her conversation with Mr C, six days later, Dr Arora told him "*he sent me an email that the next time it's available he'll give it to me, so you have laptops and I thought it's best that I take one because I don't want too many people to be involved, just him and you directly, because it's my … it's* [Dr B] *who has promised it*."

18. The Tribunal had regard to the submissions of both counsel in that respect. Mr Jenkins, on the one hand, acknowledged Dr Arora's use of the word "*promised*" but said that "*we all make slips*", and that no-one could read the telephone call, in its entirety, as an attempt to mislead. Mr Hargan, on the other hand, described the wording of Dr B's email as "*entirely unambiguous*", and went on to say that Dr Arora's words, in her subsequent telephone call, were "*clear*". He added that there had never been any suggestion that her use of English was not up to the requisite standard.

19. The Tribunal concluded that, in relation to Dr Arora's assertion to Mr C that Dr B had "*promised*" her a laptop, there was sufficient evidence, on one possible view, that might properly lead to a finding of dishonesty. That evidence could not, the Tribunal concluded, be described as tenuous, or inconsistent with other evidence, such that it could not properly find paragraph 4 of the Allegation proved.

20. The Tribunal also had regard to that part of Mr Jenkins' submission, made in response to Mr Hargan's submission on behalf of the GMC, in which he said "*I have not asked the Tribunal to resolve what was her* [Dr Arora's] *state of mind*." It noted that paragraph 3 of the Allegation alleged that she "*knew*" Dr B had not sent her an email in the terms she described to Mr C, and that she "*knew*" he had not "*promised*" her a laptop. It is that 'knowledge', the GMC alleges, which means that she was dishonest.

21. The Tribunal concluded that it could not properly determine whether or not Dr Arora had been dishonest without hearing all the evidence as to her knowledge, or state of mind, at the time she spoke to Mr C. It consequently concluded that it was necessary to reach its decisions, in due course, in relation to both paragraphs 2 and 3 of the Allegation before it could properly consider the facts in relation to paragraph 4.

22. The Tribunal therefore determined that the evidence adduced by the GMC was such that it could lead to a finding that paragraph 4 of the Allegation was proved. Accordingly, it refused Mr Jenkins' application under Rule 17(2)(g) of the Rules in relation to that paragraph.