

PUBLIC RECORD

Dates: 01/03/2021 - 16/03/2021

Medical Practitioner's name: Professor Ghulam NABI

GMC reference number: 6033286

Primary medical qualification: MB BS 1992 Jammu and Kashmir
Government Medical College

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

Summary of outcomeConditions, 9 months.
Review hearing directed**Tribunal:**

Legally Qualified Chair	Mr Paul Moulder
Lay Tribunal Member:	Mrs Debbie Hill
Medical Tribunal Member:	Dr Nagarajah Thevamanoharan
Tribunal Clerk:	Mr Sewa Singh

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Lee Gledhill, Counsel, instructed by Medical Defence Shield
GMC Representative:	Mr Robin Kitching, 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 - 11/03/2021

Background

1. Professor Nabi qualified in 1992 at the Jammu and Kashmir Government Medical College, India, and then trained in General Surgery and Urology in New Delhi before moving to the UK. Professor Nabi registered with the GMC in 2002. He completed further studies and training in the UK and in France and Germany. From November 2009 to March 2010, Professor Nabi was an Honorary Clinical Lecturer in the Department of Urology at Ninewells Hospital, Dundee. In 2010 he attained a Senior Clinical Lecturer's post in Dundee and was subsequently promoted to Reader and Professor of Urology in 2014 and 2015 respectively. At the time of the events Professor Nabi was working as a Professor in Surgical Uro-oncology and was Head of Research Division of Imaging and Technology in the School of Medicine at the University of Dundee ('the University'), a post he commenced in October 2015.

2. In summary, the Allegation against Professor Nabi is that he:

- deviated from accepted ethical standards in research in respect of a Manuscript submitted for publication in the journal 'Urologic Oncology'; which contained material taken from another Manuscript written by a Dr A without attribution;
- it is also alleged that Professor Nabi failed to adequately check the Manuscript for plagiarism, including to appropriately supervise the preparation and submission of the Manuscript. Further, Professor Nabi did not adequately address the concerns raised by the Editor of the Urologic Oncology journal, misled the editor in his responses; and attempted to prevent the University's Investigating Committee from identifying that he was responsible for the plagiarism contained within the Manuscript by failing to provide all the relevant information.

3. The background to this case is that in January 2016, Student B, a second year student, applied for a short time six-week studentship through the Dundee Clinical Academic Training (DCAT) programme. Student B commenced the studentship in June 2016 and initially chose to work on a project, named 'Videotaping of laparoscopic radical prostatectomy'. However, this project had already commenced and was near completion.

4. Student B was advised that he could work on a project named 'Ureteroscopic Biopsy and Urinary Bladder cancer recurrences in Upper Tract Urothelial Cancers', which he agreed to. The project still remained within the area of urologic oncology and was a move from prostate to urothelial cancers, led by Professor Nabi. Professor Nabi met with Student B and discussed the aims and objectives of the project, including ethical information; data collection, protection and storage; and data analysis. Student B commenced gathering and collating data for the Dundee cohort, and this included the collection and analysis of data collected from other centres associated with the University.

5. Professor Nabi's group was leading in research on urothelial cancers and had published and presented a number of publications on this topic. Professor Nabi had led on a multi-centre retrospective research project assessing the outcomes of upper urinary tract cancers which commenced in July 2015. As the Lead, Professor Nabi was responsible for the design and conduct of data collection and analysis, and the any final outcomes papers. His responsibilities included a duty to maintain quality and ethical standards of the project and the safety and wellbeing of the participants; provide appropriate arrangements for and an environment for the project; regularly monitor the progress of the project; and to make appropriate arrangements for the dissemination of the project.

6. As well as Student B, another undergraduate medical student in July 2015 had previously been involved in the collection, analysis and interpretation of the data for the project. The previous student worked on the project in October to November 2015 while Student B worked on the project in June to July 2016. Having analysed all of the data collated, which showed an increase in the recurrences of urinary bladder cancers following ureteroscopic biopsy of upper tract urothelial cancers, Student B prepared an abstract, the first draft of his Manuscript, and incorporated the comments from all other investigators. Student B met with Professor Nabi on 23 June 2016 to discuss the first draft, following which Professor Nabi agreed to review the first draft. Professor Nabi reviewed the first draft Manuscript making several suggestions including to add more literature, write more text and suggesting how the data should be set out in tabulated form. In addition to his handwritten comments, Professor Nabi sent Student B, via email, copies of tables as examples to illustrate how the data could be set out. These tables were from a Manuscript prepared by Dr A for the journal Urology.

7. Professor Nabi had previously peer reviewed Dr A's Manuscript on 24 May 2016 and recommended that it be rejected for publication. A revised version of Dr A's Manuscript was subsequently resubmitted by Dr A and others and published in the Journal of Endourology on 25 October 2016 and was available online.

8. On 4 July 2016, Student B submitted a second draft of his Manuscript for Professor Nabi to review and this was shared with the other co-authors too, asking for any comments. Professor Nabi made some further suggestions, including to add a video to provide a robust evidence of intravesical recurrences. Student B incorporated the further comments and prepared a revised final Manuscript version for submission to the journal, Urologic Oncology. This was submitted on 24 August 2016. The Manuscript was accepted for publication by Dr C, the Editor of the Urological Oncology Journal, on 29 November 2016. The Manuscript was peer reviewed and one of the reviewer's was Dr A.

9. On 7 December 2016, Dr C informed Professor Nabi that the Journal of Endourology had alleged plagiarism in relation to the Manuscript submitted by Student B. Professor Nabi responded to Dr C stating that he had asked for a detailed enquiry to be undertaken by, what he described in his email response as the 'Committee', and retracted the accepted version of the Manuscript. Professor Nabi asked two colleagues, Dr G and Dr H, who were independent of the project, to look into whether Dr A's the Manuscript published in the Journal of Endourology was accessible; and whether the analysis of the data set out in Student B's Manuscript was accurate. Dr G and Dr H concluded that the Journal of Endourology was not accessible and that the analysis of the data set out in Student B's Manuscript was accurate.

10. In an email on 21 December 2016, Professor Nabi informed Dr C that there had been some overlaps in some of the paragraphs and that the alleged plagiarism had occurred in his group. He also summarised the conclusions of Dr G and Dr H stating that the 'Committee' had recommended that the Manuscript be revised taking out the overlapping portions, and that the co-authors attend a mandatory course in plagiarism.

11. Dr C reported the matter formally to the University of Dundee. A preliminary investigation was undertaken by Professor D, Dean of the University, into the alleged plagiarism, the outcome of which was reported to the University for a formal investigation. In January 2017, the University commenced the formal investigation into the matter which concluded in around March 2018.

12. The concerns were raised with the GMC by the University following conclusion of the formal investigation.

13. The Tribunal was mindful throughout that the GMC made clear in its opening that its case was that the plagiarism had occurred by mistake, when Professor Nabi left on his desk a copy of Dr A's Manuscript which Student B then collected in error, when picking up a copy of the draft of his own Manuscript from the desk. Further, at no time did the GMC allege that Professor Nabi acted dishonestly, but had sometimes been guilty of a lack of candour.

The Outcome of Applications Made during the Facts Stage

14. The Tribunal granted an application made by Professor Nabi's Counsel, Mr Lee Gledhill, pursuant to Rule 17(2)(g) (half-time submissions), in relation to the entirety of paragraph 5 of the Allegation. The Tribunal's reasoning is set out in Annex A.

15. The Tribunal also granted an application made by Mr Gledhill to withdraw the admission made by Professor Nabi in respect of paragraphs 10(a)(ii) and 13 of the Allegation. As this was unopposed by the GMC, the Tribunal allowed Professor Nabi to withdraw his admissions. No determination was produced for this.

The Allegation and the Doctor's Response

16. The Allegation made against Dr Nabi is as follows:

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

1. On or around 14 May 2016, you:
 - a. reviewed a Manuscript entitled '*Risk of Intravesical Recurrence After Ureteroscopic Biopsy for Upper Tract Urothelial Carcinoma: Does the Location Matter?*' written by Dr A and others, which had been submitted to the journal '*Urology*' on or around 25 April 2016 ('Dr A's Manuscript');
Admitted and found proved
 - b. recommended Dr A's Manuscript for rejection.
Admitted and found proved
2. On 24 August 2016, a Manuscript entitled '*Ureteroscopic Biopsy of Upper Tract Urothelial Carcinoma is associated with increased intravesical recurrences on follow-up: A Multi Institutional SUTURE Group Study*' was submitted to the journal '*Urologic Oncology*' ('the Manuscript') and:
 - a. at the time of the drafting and submission of the Manuscript you were Professor in Surgical Uro-oncology in the School of Medicine at the University of Dundee ('the University');
Admitted and found proved
 - b. you were the senior and corresponding author of the Manuscript;
Admitted and found proved
 - c. the first author of the Manuscript was a Dundee Clinical Academic Track undergraduate vacation student ('Student B'), supervised by you.
Admitted and found proved
3. You were responsible for conduct which deviated from accepted ethical standards in research, in that:
 - a. the Manuscript plagiarised Dr A's Manuscript, in that it:

- i. contained large portions of text that were the same;
Admitted and found proved
 - ii. had a 28% Similarity Index to Dr A's Manuscript according to Turnitin software;
Admitted and found proved
 - iii. did not acknowledge Dr A's Manuscript as a reference source;
Admitted and found proved
- b. Dr A's Manuscript had a 37% Similarity Index to the Manuscript according to Turnitin software;
Admitted and found proved
- c. you failed to:
- i. adequately check the Manuscript for plagiarism;
To be determined
 - ii. maintain the confidentiality of Dr A's Manuscript, in that you provided a copy of Dr A's Manuscript to one or more of your co-authors for assistance in writing up the Manuscript despite Dr A's Manuscript being:
 - 1. unpublished; **Admitted and found proved**
 - 2. confidential. **Admitted and found proved**
4. On 23 June 2016, you:
- a. provided three tables of data taken from Dr A's Manuscript ('the Tables') to Student B in an e-mail entitled 'Tables as example', without:
 - i. any attribution;
Admitted and found proved
 - ii. informing Student B that the tables:
 - 1. were confidential; **Admitted and found proved**
 - 2. could not be distributed; **Admitted and found proved**

- b. left sections of Dr A's Manuscript on your desk where others could access them.

Admitted and found proved

5. ~~You failed to appropriately supervise Student B during the preparation and submission of the Manuscript, in that:~~

- ~~a. your meetings with Student B were inadequate, as they were usually:~~

- ~~i. between approximately one and three minutes in duration;~~
Withdrawn following a Rule 17(2)(g) application

- ~~ii. impromptu in nature;~~
Admitted and found proved
Withdrawn following a Rule 17(2)(g) application

- ~~iii. not formally planned;~~
Withdrawn following a Rule 17(2)(g) application

- ~~b. you exposed Student B to a risk of reputational damage that could affect their future career.~~ **Admitted and found proved**

Withdrawn following a Rule 17(2)(g) application

6. Between 7 December 2016 and 22 December 2016 you sent emails entitled "*Plagiarism concerns for URO-D-16-00503*" [RE] *Reviewer Notification of Editor Decision*' to the Editor of the journal '*Urologic Oncology*', Dr C, which discussed the alleged plagiarism in the Manuscript ('the Emails').

Admitted and found proved

7. In the Emails you failed to mention the information as set out in paragraph 1, above.

To be determined

8. Your motive for the conduct as set out in paragraph 7, above, was to prevent Dr C from identifying that you were responsible for the plagiarism of Dr A's Manuscript.

To be determined

9. Within the Emails you said on:

- a. 7 December 2016 that you had asked for a '*detailed enquiry*';

Admitted and found proved

- b. 21 December 2016 that:
- i. you were reporting '*internal enquiry findings*';
Admitted and found proved
 - ii. '*The committee*' had recommended sanctions including, but not limited to, the '*mandatory attendance of authors to a course on plagiarism*'.
Admitted and found proved
10. Your motive for using the wording contained in the Emails, as referenced at paragraphs 9 a. and 9 b., above, was to give the impression to Dr C that:
- a. there was a formal:
 - i. internal enquiry by the University into alleged plagiarism in the Manuscript;
To be determined
 - ii. University committee in relation to alleged plagiarism in the Manuscript;
~~Admitted and found proved~~ **To be determined**
 - b. the University had recommended sanctions.
To be determined
11. You knew that the:
- a. wording contained in the Emails, as referenced at paragraphs 9 a. and 9 b., above, referred to discussions you had with your research group and the other authors of the Manuscript;
Admitted and found proved
 - b. information contained in the Emails was misleading.
To be determined
12. Your motive for the conduct as set out in paragraphs 9, 10 and 11 was to prevent Dr C from reporting the plagiarism of Dr A's Manuscript to the University.
To be determined
13. On 27 June 2017 you attended an interview with the University's Investigation into Potential Research Misconduct Committee ('the Investigating Committee') and you failed to report to the Investigating Committee the information as set out in paragraph 4 a. above.
To be determined

14. Your conduct as set out in paragraph 13 was intended to prevent the Investigating Committee from identifying that you were responsible for the plagiarism of Dr A's Manuscript.
To be determined

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

The Admitted Facts

17. At the outset of these proceedings, through his Counsel, Mr Lee Gledhill, Professor Nabi made admissions to some paragraphs and sub-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'). The Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved, in accordance with Rule 17(2)(e) of the Rules. The Admissions are reflected in the above paragraphs.

The Facts to be Determined

18. In light of Professor Nabi's response to the Allegation made against him, the Tribunal determined the disputed allegations as set out above.

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

- Student B; and his statement dated 22 November 2018;
- Professor D, Dean of Medicine at the University, at the time of alleged events; and his statement dated 5 February 2019;
- Dr E, Research Policy Manager at the University; and his statement dated 20 February 2019.

20. The Tribunal also received, on behalf of the GMC, a witness statement dated 27 February 2019, from Ms F, Senior Publisher at the journal.

21. Professor Nabi provided two witness statements dated 24 January 2021 and 19 February 2021 and also gave oral evidence at the hearing. In addition, the Tribunal received, on Professor Nabi's behalf, evidence from Dr G, Post-Doctoral Research Assistant at the time of the events, and her witness statement dated 22 February 2021.

Documentary Evidence

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

- Notes of the Investigating Committee's interview with Student B on 25 July 2017;

- Correspondence between Professor Nabi and Dr C, including the emails dated 7 December 2016 and 21 December 2016;
- Correspondence between Professor Nabi and Student B and others;
- Correspondence between the Editor of the Journal on Urological Oncology and the University;
- Copy of the Manuscript submitted for publication in the Journal for Urological Oncology;
- Copies of comparison Manuscripts (Dr A's and Student B's);
- The University's Code of Policy and Procedures for Investigating and Resolving Allegations of Misconduct in Research;
- Professor Nabi's response to the Investigation Report, dated 26 June 2017;
- Professor D Interview notes with the University Investigation Committee, dated 27th June 2017.

The Tribunal's Approach

23. 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. Professor Nabi 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.

The Tribunal's Analysis of the Evidence and Findings

24. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts. For completeness, those paragraphs admitted and found proved are included below.

Paragraph 1

1. On or around 14 May 2016, you:
 - a. reviewed a Manuscript entitled 'Risk of Intravesical Recurrence After Ureteroscopic Biopsy for Upper Tract Urothelial Carcinoma: Does the Location Matter?' written by Dr A and others, which had been submitted to the journal 'Urology' on or around 25 April 2016 ('Dr A's Manuscript');
Admitted and found proved
 - b. recommended Dr A's Manuscript for rejection.
Admitted and found proved

Paragraph 2

2. On 24 August 2016, a Manuscript entitled 'Ureteroscopic Biopsy of Upper Tract Urothelial Carcinoma is associated with increased intravesical recurrences on

follow-up: A Multi Institutional SUTURE Group Study’ was submitted to the journal ‘Urologic Oncology’ (‘the Manuscript’) and:

a. at the time of the drafting and submission of the Manuscript you were Professor in Surgical Uro-oncology in the School of Medicine at the University of Dundee (‘the University’);

Admitted and found proved

b. you were the senior and corresponding author of the Manuscript;

Admitted and found proved

c. the first author of the Manuscript was a Dundee Clinical Academic Track undergraduate vacation student (‘Student B’), supervised by you.

Admitted and found proved

Paragraph 3

3. You were responsible for conduct which deviated from accepted ethical standards in research, in that:

a. the Manuscript plagiarised Dr A’s Manuscript, in that it:

i. contained large portions of text that were the same;

Admitted and found proved

ii. had a 28% Similarity Index to Dr A’s Manuscript according to Turnitin software;

Admitted and found proved

iii. did not acknowledge Dr A’s Manuscript as a reference source;

Admitted and found proved

b. Dr A’s Manuscript had a 37% Similarity Index to the Manuscript according to Turnitin software;

Admitted and found proved

c. you failed to:

i. adequately check the Manuscript for plagiarism;

Determined and found proved

ii. maintain the confidentiality of Dr A’s Manuscript, in that you provided a copy of Dr A’s Manuscript to one or more of your co-authors for assistance in writing up the Manuscript despite Dr A’s Manuscript being:

1. unpublished; **Admitted and found proved**
2. confidential. **Admitted and found proved**

25. In his evidence to the Tribunal, Professor Nabi acknowledged that he was ultimately the responsible person for ensuring that the content of Student B's Manuscript was accurate. He also acknowledged that he had contributed to the content of Student B's Manuscript with suggestions for changes/amendments when he re-reviewed the Manuscript on two separate occasions, i.e. when he looked at the first and second drafts. The Tribunal was satisfied that Professor Nabi had a duty to ensure the authenticity of the information contained within Student B's Manuscript.

26. The Tribunal accepted undisputed evidence that when Professor Nabi reviewed the first draft of Student B's Manuscript on 23 June 2016, it consisted of about a page and half. Professor Nabi said that he suggested some changes and at this stage, provided to Student B, via email, a copy of the example tables, which turned out to be from Dr A's Manuscript (unpublished at the time) which Professor Nabi had peer reviewed.

27. In his evidence to the Tribunal, accepted by Professor Nabi, Student B said that he was unsure as to how to present certain information within his Manuscript such as the Method and Discussion sections, and that he sought guidance from Professor Nabi in relation to this. It was at this time that Professor Nabi had directed Student B to collect some documents from Professor Nabi's desk and Student B inadvertently collected documents from Dr A's Manuscript which Professor Nabi had left on the desk.

28. When Student B resubmitted the revised version of his Manuscript (the second draft), on 4 July 2016, the draft Manuscript was considerably larger than a page and half. Professor Nabi told the Tribunal that the passages within sections of the Manuscript, for example the Method, the Discussion, and the Analysis, particularly for this area of research, were similar to those which would appear in other Manuscripts published covering a similar topic.

29. Professor Nabi said that he checked the second draft adequately but given the content in the sections where there had been overlaps contained similar content, it was not evident to him and nor could he have reasonably known that the content where the overlap had occurred was the same as another Manuscript that he had reviewed and that there had been any plagiarism. He added that by the end of June 2016, he had deleted from his computer folders containing Manuscripts he had previously been involved in, one of which was Dr A's Manuscript. Professor Nabi said that he adequately checked Student B's Manuscript for plagiarism.

30. The Tribunal took into account that Professor Nabi had peer reviewed Dr A's Manuscript on 24 May 2016 when he recommended it for rejection. It concluded that he would have given that Manuscript detailed consideration in so doing. It also took into

account, by Professor Nabi's own admission, that he deleted Dr A's Manuscript from his computer at the end of June 2016.

31. The Tribunal noted the short period between the dates on which Professor Nabi had carefully considered Dr A's Manuscript and then considered the Manuscript by Student B. Professor Nabi peer reviewed Dr A's Manuscript in May 2016 and had accessed it on his computer in June 2016, in order to take off the tables as examples. The email trail showed Professor Nabi had reviewed and made several suggestions for amendment to Student B's Manuscript over the course of July 2016.

32. The Tribunal rejected Professor Nabi's account that he had forgotten completely Dr A's Manuscript by the time he came to review Student B's Manuscript for plagiarism. The Tribunal concluded that bearing in mind the detailed consideration given to each Manuscript, the closeness in time, and the very close resemblance of the topics, Professor Nabi would not have forgotten Dr A's Manuscript. Student B's Manuscript was finally sent for publication on 24 August 2016.

33. The Tribunal also concluded that given that Student B was known to Professor Nabi to be at the time a second year undergraduate medical student and the Manuscript presented on 4 July 2016 was now much larger than the first draft, and contained a detailed Methodology and Discussion, this should have given rise to Professor Nabi to question how Student B had achieved this. Professor Nabi admitted in cross-examination that he should have considered this matter more closely. The Tribunal concluded that Professor Nabi should have been aware of a need to scrutinise the Manuscript closely to establish from where Student B had obtained the additional information.

34. The Tribunal was of the view that, on the balance of probabilities, Professor Nabi had not forgotten completely Dr A's Manuscript and he had not adequately considered the reasons for the increased size and detail of the Manuscript, as prepared by Student B. Accordingly, the Tribunal determined that Professor Nabi had failed to adequately check the Manuscript for plagiarism.

35. The Tribunal therefore found paragraph 3(c)(i) of the Allegation proved.

Paragraph 4

4. On 23 June 2016, you:

a. provided three tables of data taken from Dr A's Manuscript ('the Tables') to Student B in an e-mail entitled 'Tables as example', without:

i. any attribution;

Admitted and found proved

- ii. informing Student B that the tables:
 - 1. were confidential; **Admitted and found proved**
 - 2. could not be distributed;
Admitted and found proved

b. left sections of Dr A’s Manuscript on your desk where others could access them.

Admitted and found proved

Paragraph 5

~~5. You failed to appropriately supervise Student B during the preparation and submission of the Manuscript, in that:~~

~~a. your meetings with Student B were inadequate, as they were usually:~~

~~i. between approximately one and three minutes in duration;~~
Withdrawn following a Rule 17(2)(g) application

~~ii. impromptu in nature;~~
~~**Admitted and found proved**~~
Withdrawn following a Rule 17(2)(g) application

~~iii. not formally planned;~~
Withdrawn following a Rule 17(2)(g) application

~~b. you exposed Student B to a risk of reputational damage that could affect their future career. **Admitted and found proved**~~

Withdrawn following a Rule 17(2)(g) application

Paragraph 6

6. Between 7 December 2016 and 22 December 2016 you sent emails entitled “Plagiarism concerns for URO-D-16-00503” [RE] Reviewer Notification of Editor Decision’ to the Editor of the journal ‘Urologic Oncology’, Dr C, which discussed the alleged plagiarism in the Manuscript (‘the Emails’).

Admitted and found proved

Paragraph 7

7. In the Emails you failed to mention the information as set out in paragraph 1, above.

Determined and found proved

36. In his evidence to the Tribunal, Professor Nabi said that at the time of sending the emails of 7 December 2016 and 21 December 2016 to Dr C, he did not recall that he had peer reviewed Dr A's Manuscript. He said he only became aware of this in January 2017 when Dr C had emailed him on 4 January 2017.

37. The Tribunal had regard to Professor Nabi's emails of 7 and 21 December 2016 in which he stated:

7 December 2016 email:

'I have asked for a detailed enquiry, however looking at the two documents in preliminary review it is clear that some paras in sections of "methods" and "discussion" have been clearly matching between the two papers. This is unacceptable and I as senior author apologize for this to have happened. On preliminary reflection, we feel that there are several reasons for this to have taken place:

1. Paper in Endourology was not accessible to most of senior team members and there is not much in abstract to suggest. It is not clear how duplication has taken place and at what stage. I have been assured that possibility of this was looked into using other papers.

2. The project was completed and results were presented by a short-term researcher (DCAT student-first author) who has now left the department. We were clearly encouraged by result section and hence encouraged submission for publication. Team should have been more careful in reviewing this work before submission, however this is something which will be fm1her [sic] looked into and remedial actions taken.

Pending further enquiry, we would like to retract accepted version of the Manuscript. We have gone through the raw data and analysis and feel that there is nothing wrong there and whether the editorial board would entertain a revised version (or new submission) for further consideration, we leave this at your discretion...'

21 December 2016 email:

'There seemed to be overlaps in some paras in the text and Tables in the Manuscript draft submitted to publication in Urologic Oncology with the Journal of Endourology paper'. This appears unlikely to have happened in post-publication of Journal of Endourology article as this was made online after 26th of October, the date beyond the submission to Urologic Oncology. The committee also found that journal of Endourology has not got institutional access here in the department and authors denied to have paid to download the paper. There is a possibility that Urologic Oncology paper In press has been duplicated in the published paper in the Journal of Endourology at peer review stage, particularly when there is history of this being submitted to other journals previously. However this can not be proven as one of these

is already a published paper now. There was no invitation of peer review for Journal of Endourology article by authors of Urologic Oncology paper in press.

The data of the paper was reviewed by two independent members (not authors of the paper) and was found to be correct. The analysis and findings in the result section were accurate.

The committee has suggested to revise Manuscript taking out the overlapping portions and discuss with editorial board for further action and meanwhile recommended mandatory attendance of authors to a course on plagiarism with submission of certificate in 3 months.'

38. The Tribunal considered that Professor Nabi ought to have mentioned his previous review of Dr A's Manuscript, as a relevant matter, upon receipt of the notification of a plagiarism concern, if the review had been in his mind at the time.

39. There is no mention in Professor Nabi's emails that he had peer reviewed Dr A's Manuscript. The Tribunal was of the view that given the timeline, as considered above, the fact that Dr A's Manuscript had the exact same title as that notified to him by Dr C's email dated 7 December 2016 and that Dr C also sent to Professor Nabi a copy of the published Manuscript it was more likely than not that Professor Nabi would have recalled that he had peer reviewed Dr A's Manuscript at the time he received notification from Dr C.

40. The Tribunal reminded itself that, by agreement of the parties, it had been provided with some Testimonial evidence concerning Professor Nabi's good character. It also bore in mind that it had been told that Professor Nabi had no previous regulatory findings against him. The parties had agreed that this was relevant to the issues of propensity and credibility and the Tribunal accepted this.

41. The Tribunal gave some weight to this evidence of good character, since it meant that Professor Nabi was less likely to behave improperly and less likely not to be completely truthful in giving evidence. Nevertheless, the Tribunal found that this was outweighed by the contrary evidence. The timing and proximity of Professor Nabi's review of Dr A's Manuscript and his consideration of Student B's Manuscript, occurring between May and August of 2016, Dr C's email in December 2016, which had enclosed a copy of Dr A's published Manuscript (albeit for another Journal) but with the same title as that peer reviewed, made it more likely that the previous review had been in Professor Nabi's mind.

42. The Tribunal did not accept that Professor Nabi only realised or recalled that he had peer reviewed Dr A's Manuscript in January 2017, as asserted by him. It was of the view that given the title of the topic is identical in both Manuscripts, this would, on the balance of probabilities, triggered a 'recall' in Professor Nabi's memory that he had read a similar document previously.

43. The Tribunal therefore determined that in his emails to Dr C, Professor Nabi failed to mention that he had reviewed Dr A's Manuscript entitled '*Risk of Intravesical Recurrence After Ureteroscopic Biopsy for Upper Tract Urothelial Carcinoma: Does the Location Matter?*' and that he had recommended it for rejection.

44. The Tribunal therefore found paragraph 7 in relation to paragraphs 1 proved.

Paragraph 8

8. Your motive for the conduct as set out in paragraph 7, above, was to prevent Dr C from identifying that you were responsible for the plagiarism of Dr A's Manuscript.

Determined and found proved

45. The Tribunal took into account its earlier conclusion that Professor Nabi must have known at the time of sending the emails of 7 and 21 December 2016, to Dr C that he had peer reviewed Dr A's Manuscript.

46. The Tribunal determined that, on the balance of probabilities, Professor Nabi chose not to mention in his emails of 7 and 21 December 2016 that he had reviewed Dr A's Manuscript. The Tribunal determined that it was a reasonable inference on these facts that Professor Nabi had been motivated by a desire to avoid being suspected of responsibility for the plagiarism.

47. The Tribunal determined that Professor Nabi's motive for omitting to mention this in his emails between 7 and 22 December 2016 to Dr C was to prevent Dr C from identifying that Professor Nabi was responsible for the plagiarism of Dr A's Manuscript.

48. The Tribunal therefore found paragraph 8 of the Allegation proved.

Paragraph 9

9. Within the Emails you said on:

a. 7 December 2016 that you had asked for a 'detailed enquiry';

Admitted and found proved

b. 21 December 2016 that:

i. you were reporting 'internal enquiry findings';

Admitted and found proved

ii. 'The committee' had recommended sanctions including, but not limited to, the 'mandatory attendance of authors to a course on plagiarism'. **Admitted and found proved**

Paragraph 10

10. Your motive for using the wording contained in the Emails, as referenced at paragraphs 9 a. and 9 b., above, was to give the impression to Dr C that:

- a. there was a formal:
 - i. internal enquiry by the University into alleged plagiarism in the Manuscript;
Determined and found proved
 - ii. University committee in relation to alleged plagiarism in the Manuscript;
~~Admitted and found proved~~ **Determined and found proved**
- b. the University had recommended sanctions.
Determined and found proved

49. The Tribunal considered paragraphs 10(a)(i and ii) and 10(b) together.

50. In his evidence to the Tribunal, Professor Nabi explained that English was not his first language. He said that in his emails, reference to the words 'Internal Inquiry' and 'Committee' referred to the independent inquiry made by Dr G and Dr H. He said he never gave the impression that the University was undertaking a formal investigation into the matter. Further, Professor Nabi explained that it was his understanding that in the English dictionary, the word 'Committee' referred to two or more persons. Professor Nabi said that he used the word 'Committee' to mean Dr G and Dr H. Professor Nabi went to state that when the University's formal investigation was concluded, he wrote to Dr C on 4 April 2018 to ask whether his correspondence had in any way given the impression that he was trying to influence Dr C's decision about reporting the matter to the University. Dr C had responded that this had not influenced it, to his recollection.

51. The Tribunal had regard to the Professor Nabis' emails of 7 and 21 December 2016, and to his email of 4 April 2018, all to Dr C.

52. It noted that in his email of 7 December 2016, Professor Nabi stated:

7 December 2016 email:

'I have asked for a detailed enquiry,

*Pending further enquiry, we would like to retract accepted version of the Manuscript.
We have gone through the raw data and analysis and feel that there is nothing wrong*

there and whether the editorial board would entertain a revised version (or new submission) for further consideration, we leave this at your discretion...'

21 December 2016 email:

*'There seemed to be overlaps in some paras in the text and Tables in the Manuscript draft submitted to publication in Urologic Oncology with the Journal of Endourology paper'. This appears unlikely to have happened in post-publication of Journal of Endourology article as this was made online after 26th of October, the date beyond the submission to Urologic Oncology. The **committee** also found that journal of Endourology has not got institutional access here in the department and authors denied to have paid to download the paper. There is a possibility that Urologic Oncology paper In press has been duplicated in the published paper in the Journal of Endourology at peer review stage, particularly when there is history of this being submitted to other journals previously. However this can not be proven as one of these is already a published paper now. There was no invitation of peer review for Journal of Endourology article by authors of Urologic Oncology paper in press. ...'*

The data of the paper was reviewed by two independent members (not authors of the paper) and was found to be correct. The analysis and findings in the result section were accurate.

*The **committee** has suggested to revise Manuscript taking out the overlapping portions and discuss with editorial board for further action and meanwhile **recommended mandatory attendance of authors to a course on plagiarism with submission of certificate in 3 months.**' (emphasis added)*

53. The Tribunal took into account that Professor Nabi had, when these events occurred, been working at the University for some time. While it acknowledged that English is not his first language, it did not accept his assertion that this was a contributing factor in the use of the words he used in his emails to Dr C. Bearing in mind Professor Nabi's eminence and position within the University, The Tribunal considered that he was likely to have been well aware of the meaning of terms used in the email.

54. The Tribunal took into account the terms of the email from Dr C. It had requested a formal response from the authors of Student B's Manuscript to the suggestion of plagiarism within 30 days. Professor Nabi's three emails had responded by stating he had asked for a 'detailed enquiry', then emailed the 'findings of the internal inquiry' followed by a request to consider a revised version of Student B's Manuscript.

55. The Tribunal considered the evidence of the enquiry that had been that carried out by Dr G and Dr H. It considered that enquiry to have been fairly limited. The two doctors had not spoken to Professor Nabi about the plagiarism. They had not reduced their findings to a written report. Professor Nabi had not shared the findings with the co-authors.

56. The Tribunal compared the enquiry carried out by Dr G and Dr H and the way this was described in the emails between 7 December and 22 December 2016. It noted that the reference to ‘committee’ and the ‘two independent members’ were to the same body of persons, the two doctors. This was not made clear. It took into account that apparently little was done with the outcome of these doctors’ investigation.

57. The Tribunal considered that the use of the words ‘Internal Inquiry’ and ‘Committee’ would have given the impression to Dr C that the matter was being looked into formally. The process described followed a standard, staged course. There was said to be a recommended ‘mandatory’ attendance on plagiarism courses for all the authors as an outcome, with certification.

58. The Tribunal noted that in all correspondence, Professor Nabi had entered his position and roles within the University of Dundee, when responding to Dr C. The Tribunal found that it was a reasonable inference that Professor Nabi, when sending these emails had been motivated to suggest that the emails were sent on behalf of the University, the net result being to show there had been a formal University process.

59. In addition, the Tribunal noted that Professor Nabi stated nothing in the emails to make clear that the internal inquiry he had set in motion was independent of any of the University’s official processes.

60. Further, in beginning the last paragraph of his email of 21 December 2016 with the words ‘The committee’, the Tribunal considered that this gave the impression that the recommendation for a mandatory attendance to a course on plagiarism was a formal sanction, and for the same reasons as above, was sent on behalf of the University.

61. The Tribunal took account of Professor Nabi’s email to Dr C and the latter’s response to the effect that the decision to refer the matter to the University had not been influenced by these emails. However, the issue for the Tribunal was what it concluded had been Professor Nabi’s motivation.

62. Taking account of its earlier conclusions and finding in respect of paragraph 8 of the Allegation, the Tribunal considered that Professor Nabi’s motive for using the wording contained in his emails was, on the balance of probabilities, to give the impression as set out at paragraphs 10(a) and 10(b) of the Allegation.

63. The Tribunal therefore found paragraphs 10(a)(i – ii) and 10(b) of the Allegation in relation to paragraphs 9(a) and 9(b) proved.

11. You knew that the:

a. wording contained in the Emails, as referenced at paragraphs 9 a. and 9 b., above, referred to discussions you had with your research group and the other authors of the Manuscript;

Admitted and found proved

b. information contained in the Emails was misleading.

Determined and found proved

64. The Tribunal took into account, when considering paragraph 11b, its finding in relation to paragraph 8, and its findings in respect of paragraph 10 in relation paragraph 9.

65. The Tribunal determined that a reader of the emails would be given the impression that a formal inquiry by the University had taken place, with a committee of the University and a recommendation by the University of a sanction. It was satisfied that 'mandatory' attendance on a plagiarism course would be so regarded. The reader would not be aware that the enquiry had been the review carried out by Dr G and Dr H and therefore would not be aware of the correct position or the lack of the involvement of any formal process of the University. It considered that the information contained in Professor Nabi's emails to Dr C was misleading.

66. It therefore found paragraph 11(b) of the Allegation proved in relation to paragraphs 9(a) and 9(b).

12. Your motive for the conduct as set out in paragraphs 9, 10 and 11 was to prevent Dr C from reporting the plagiarism of Dr A's Manuscript to the University.

Determined and found proved

67. The Tribunal had regard to Professor Nabi's emails to Dr C, dated 7 and 21 December 2021.

68. It noted that the matter had not yet been reported formally to the University and that Dr C had initially and up to December 2016, corresponded with Professor Nabi directly. The Tribunal took into account its findings in relation to paragraphs 8, 10 and 11 of the Allegation, and Professor Nabi's admissions in relation to paragraph 9 of the Allegation.

69. It was of the view that Professor Nabi acted in the way alleged in order to prevent Dr C from reporting the matter of plagiarism to the University. From Professor Nabi's emails, the Tribunal considered that Professor Nabi aimed to close the matter without it being escalated to higher authority.

70. The Tribunal had determined Professor Nabi's motivation had been to allow it to appear that there had been a formal process and outcome on behalf of the University. It followed from that this would be likely to prevent report to the University and his motive was clearly to prevent such report.

71. The Tribunal therefore found paragraph 12 of the Allegation proved in relation to paragraphs 9, 10 and 11.

13. On 27 June 2017 you attended an interview with the University's Investigation into Potential Research Misconduct Committee ('the Investigating Committee') and you failed to report to the Investigating Committee the information as set out in paragraph 4 a. above.

Determined and found proved

72. During his evidence to the Tribunal, Professor Nabi explained that although he was aware by the time of his interview that he had been a reviewer of Dr A's Manuscript, he had forgotten that he had provided three tables taken from Dr A's Manuscript to Student B. He further asserted that he was not asked the question by the Investigating Committee about this directly.

73. The Tribunal considered that given the seriousness of the matters alleged, it was incumbent on Professor Nabi to have disclosed this information to the Investigating Committee, in order to assist it to establish how the alleged plagiarism had occurred, if he had it in his mind at the time.

74. The Tribunal reminded itself that it had found that Professor Nabi had the matter of his peer review of Dr A's Manuscript in mind in December 2016 when he responded to Dr C. It did not accept that it had not come to his mind until January 2017. The emailed tables had been the specific part of Dr A's Manuscript which Professor Nabi had directly provided to Student B. The Tribunal bore in mind its finding that Professor Nabi had been less than candid in relation to the other parts of the Allegation. It also considered that he had had a long period to reflect on the matter and it concluded that it must have come to his mind that he had provided the tables to Student B from Dr A's Manuscript before his interview on 27 June 2017.

75. The Tribunal accepted that a copy of the email itself had not been disclosed to Professor Nabi until after the interview with the University. However, on the balance of probabilities, the Tribunal concluded that he had already recalled that he had provided the tables to Student B.

76. Although the Tribunal accepted that Professor Nabi was not asked the question during the interview on 27 June 2017, it did not accept his assertion that he had forgotten providing the tables to Student B. It considered it was more likely than not that Professor Nabi chose not to disclose the information.

77. The Tribunal therefore found paragraph 13 of the Allegation proved in relation to paragraph 4(a).

14. Your conduct as set out in paragraph 13 was intended to prevent the Investigating Committee from identifying that you were responsible for the plagiarism of Dr A's Manuscript.

Determined and found proved

78. The Tribunal had regard to its finding in respect of paragraph 13 of the Allegation. It bore in mind that it had determined that the conduct in paragraph 13 consisted of a failure to mention relevant information to the investigation. It considered that Professor Nabi's conduct was, on the balance of probabilities, intended to prevent the Investigating Committee from identifying that he was responsible for the plagiarism of Dr A's Manuscript.

79. The Tribunal found paragraph 14 of the Allegation proved.

The Tribunal's Overall Determination on the Facts

80. The Tribunal has determined the facts as follows:

1. On or around 14 May 2016, you:

a. reviewed a Manuscript entitled 'Risk of Intravesical Recurrence After Ureteroscopic Biopsy for Upper Tract Urothelial Carcinoma: Does the Location Matter?' written by Dr A and others, which had been submitted to the journal 'Urology' on or around 25 April 2016 ('Dr A's Manuscript');

Admitted and found proved

b. recommended Dr A's Manuscript for rejection.

Admitted and found proved

2. On 24 August 2016, a Manuscript entitled 'Ureteroscopic Biopsy of Upper Tract Urothelial Carcinoma is associated with increased intravesical recurrences on follow-up: A Multi Institutional SUTURE Group Study' was submitted to the journal 'Urologic Oncology' ('the Manuscript') and:

a. at the time of the drafting and submission of the Manuscript you were Professor in Surgical Uro-oncology in the School of Medicine at the University of Dundee ('the University');

Admitted and found proved

b. you were the senior and corresponding author of the Manuscript;

Admitted and found proved

c. the first author of the Manuscript was a Dundee Clinical Academic Track undergraduate vacation student ('Student B'), supervised by you.

Admitted and found proved

3. You were responsible for conduct which deviated from accepted ethical standards in research, in that:
- a. the Manuscript plagiarised Dr A's Manuscript, in that it:
 - i. contained large portions of text that were the same;
Admitted and found proved
 - ii. had a 28% Similarity Index to Dr A's Manuscript according to Turnitin software;
Admitted and found proved
 - iii. did not acknowledge Dr A's Manuscript as a reference source;
Admitted and found proved
 - b. Dr A's Manuscript had a 37% Similarity Index to the Manuscript according to Turnitin software;
Admitted and found proved
 - c. you failed to:
 - i. adequately check the Manuscript for plagiarism;
Determined and found proved
 - ii. maintain the confidentiality of Dr A's Manuscript, in that you provided a copy of Dr A's Manuscript to one or more of your co-authors for assistance in writing up the Manuscript despite Dr A's Manuscript being:
 1. unpublished; **Admitted and found proved**
 2. confidential. **Admitted and found proved**
4. On 23 June 2016, you:
- a. provided three tables of data taken from Dr A's Manuscript ('the Tables') to Student B in an e-mail entitled 'Tables as example', without:
 - i. any attribution;
Admitted and found proved
 - ii. informing Student B that the tables:
 1. were confidential; **Admitted and found proved**

2. could not be distributed;
Admitted and found proved

b. left sections of Dr A's Manuscript on your desk where others could access them.

Admitted and found proved

~~5. You failed to appropriately supervise Student B during the preparation and submission of the Manuscript, in that:~~

~~a. your meetings with Student B were inadequate, as they were usually:~~

~~i. between approximately one and three minutes in duration;~~

Withdrawn following a Rule 17(2)(g) application

~~ii. impromptu in nature;~~

Admitted and found proved

Withdrawn following a Rule 17(2)(g) application

~~iii. not formally planned;~~

Withdrawn following a Rule 17(2)(g) application

~~b. you exposed Student B to a risk of reputational damage that could affect their future career. **Admitted and found proved**~~

Withdrawn following a Rule 17(2)(g) application

6. Between 7 December 2016 and 22 December 2016 you sent emails entitled "Plagiarism concerns for URO-D-16-00503" [RE] Reviewer Notification of Editor Decision' to the Editor of the journal 'Urologic Oncology', Dr C, which discussed the alleged plagiarism in the Manuscript ('the Emails').

Admitted and found proved

7. In the Emails you failed to mention the information as set out in paragraph 1, above.

Determined and found proved

8. Your motive for the conduct as set out in paragraph 7, above, was to prevent Dr C from identifying that you were responsible for the plagiarism of Dr A's Manuscript.

Determined and found proved

9. Within the Emails you said on:

a. 7 December 2016 that you had asked for a 'detailed enquiry';

Admitted and found proved

- b. 21 December 2016 that:
- i. you were reporting ‘internal enquiry findings’;
Admitted and found proved
 - ii. ‘The committee’ had recommended sanctions including, but not limited to, the ‘mandatory attendance of authors to a course on plagiarism’.
Admitted and found proved
10. Your motive for using the wording contained in the Emails, as referenced at paragraphs 9 a. and 9 b., above, was to give the impression to Dr C that:
- a. there was a formal:
 - i. internal enquiry by the University into alleged plagiarism in the Manuscript;
Determined and found proved
 - ii. University committee in relation to alleged plagiarism in the Manuscript;
~~Admitted and found proved~~ **Determined and found proved**
 - b. the University had recommended sanctions.
Determined and found proved
11. You knew that the:
- a. wording contained in the Emails, as referenced at paragraphs 9 a. and 9 b., above, referred to discussions you had with your research group and the other authors of the Manuscript;
Admitted and found proved
 - b. information contained in the Emails was misleading.
Determined and found proved
12. Your motive for the conduct as set out in paragraphs 9, 10 and 11 was to prevent Dr C from reporting the plagiarism of Dr A’s Manuscript to the University.
Determined and found proved
13. On 27 June 2017 you attended an interview with the University’s Investigation into Potential Research Misconduct Committee (‘the Investigating Committee’) and you failed to report to the Investigating Committee the information as set out in paragraph 4 a. above. **Determined and found proved**

14. Your conduct as set out in paragraph 13 was intended to prevent the Investigating Committee from identifying that you were responsible for the plagiarism of Dr A's Manuscript.

Determined and found proved

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

Determination on Impairment - 15/03/2021

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Professor Nabi'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 a further defence Stage 2 bundle which included, but was not limited to:

- Professor Nabi's witness statement, dated 24 January 2020;
- The University's Clear Desk and Clear Screen Policy;
- Certificates of attendance at courses, which included 'Research Integrity Training Course';
- XXX Appraisal Reports dated 15 February 2019 and 22 January 2020;
- A letter from Professor I, dated 9 March 2020 outlining the actions arising from the University Investigation Committee and confirming that all of the actions had been implemented;
- A document entitled 'Reflective Template: Quality Improvement Activity (QIA)';
- A document in which Professor Nabi set out the measure he adopted to prevent leakage of confidential matters;
- Letter from Professor I, Vice Principal (Research, Knowledge Exchange and Wider Impact) dated 9 March 2020;
- Testimonials from Professor Nabi's colleagues attesting to his clinical and academic work and to his good character;
- Professor Nabi undated personal reflections on these matters.

3. Professor Nabi also gave oral evidence at this stage of the proceedings. He referred the Tribunal to his Stage 2 bundle and made reference to it throughout his evidence.

Professor Nabi directed the Tribunal's attention to a letter from Professor I in which Professor I stated that the actions recommended following the University investigation had been implemented. Professor Nabi said that he had continually reflected on these matters which are serious and continually taken steps to ensure there was no repeat of them.

4. Professor Nabi told the Tribunal that he reflected very early on as to how this situation could have been avoided, He said he had multiple meetings with his senior colleagues to discuss the factors which led to Dr A's Manuscript being plagiarised, as well as the content of his emails with Dr C. He said he discussed how he could have been clearer in what he meant when he used the words 'internal Inquiry' and 'Committee'. He accepted that his emails to Dr C could be misleading due to his poor use of the English language. He said that he willingly accepted mentoring and supervision in the use of clear English in his emails and this required someone to review his emails as and when it was considered appropriate. He added that when he received the email from Dr C, he should have raised it with a senior colleague, and in relation to his email responses that he should have re-read these to make sure the content was correct. Professor Nabi said that there were now measures in place to avoid this situation from being repeated and that this includes a Clear Desk and Screen Policy.

5. Professor Nabi said that he had produced guidance documents and, in this regard, drew the Tribunal's attention to a document entitled 'Measures to Prevent Leakage of Confidential Matters' which was signed off by the Dean of the University and this document was shared widely within the University to raise awareness. Further, he said he deleted any confidential material sent to him for review immediately after he had reviewed it and that any documents sent to the printer are only accessible by him using a password. Professor Nabi added that in future if any concerns of this nature are raised, he would bring it immediately to the attention of his senior colleagues. In this regard, he told the Tribunal that over the past few years, he has built up a good working relationship with the Dean of the University and felt that he could discuss issues with him. Professor Nabi added that he now scrutinised the work of junior colleagues more carefully, ensuring that any issues or concerns are identified and challenged early on in the process.

6. Professor Nabi went on to say that he had undertaken educational courses including one in Research Integrity, as well as other online courses and modules, and described his learning from them. He said that he shared all the documents associated with this matter with his appraiser as part of his annual appraisals, discussed the concerns and sought his advice, ensuring that he continually reflected on and learnt from the event. He explained that he was a member of a committee called 'Committee On Publications Ethics' (COPE). He explained this was an open forum where members discussed issues such as this shared and offered advice and guidance, in an educational context. Professor Nabi said he regularly accessed the forum online and found this very useful.

7. Professor Nabi went on to say that he provided information to the Investigation Committee and other panels to the best of his knowledge. He added that whilst he did not seek to excuse what he had done, he said he was a very busy clinician and an academic having responsibility for many areas within and external to the University. Professor Nabi said

he acknowledged the findings made by the Tribunal on the facts and understood its reasoning. However, he asked that the Tribunal consider the overall situation he was in at the time, and that in the last four years, his practice had changed and was ‘far away’ from when in 2016.

8. Professor Nabi told the Tribunal that although he was always learning and there was still more learning he could do, he considered he had full insight into the concerns and had sufficiently remediated. He said that the risk of repetition, given everything he had done, as well as the measures now in place, was ‘absolutely zero’.

Submissions

On behalf of the GMC

9. Mr Kitching submitted that Professor Nabi’s fitness to practise is impaired. He referred the Tribunal to Good Medical Practice (‘GMP’) and said that paragraphs 1, 65, 68, 71, 72 and 73 were engaged in full or part. Mr Kitching said that Professor Nabi’s actions were serious notwithstanding they are not characterised as dishonest, and that the GMC does not allege Professor Nabi’s actions were dishonest. However, he submitted that Professor Nabi failed in his duty of candour and his actions lacked integrity.

10. Mr Kitching said that it is accepted the plagiarism occurred accidentally but added that it was Professor Nabi’s actions from December 2016 onwards which give rise to concern. He referred the Tribunal to its determination on the facts and highlighted those sections which he said demonstrated Professor Nabi’s lack of candour. Mr Kitching said that although the plagiarism aspect of this case was an isolated incident in itself, Professor Nabi, in his email correspondence to Dr C and then his dealings with the University investigation, displayed a persistent lack of candour and his actions going forward could not be considered to be an isolated incident. Mr Kitching said that Professor Nabi actions were designed to cover up that he was responsible for the occurrence of the plagiarism. Mr Kitching submitted that for these reasons, Professor Nabi’s actions were serious.

11. Mr Kitching referred the Tribunal to the Overarching Objective and said that the second and third limb of it were engaged in this case. Mr Kitching said that Professor Nabi’s persistent lack of candour constituted misconduct. He said that Professor Nabi has not provided any evidence to demonstrate that he has reflected upon his actions nor any evidence of the steps he has taken to remediate his misconduct. He said that Professor Nabi continues to deny that he had been misleading in his communications with Dr C, and that any reflection or remediation undertaken by Professor Nabi to date was based on a false premise that his actions were not misleading. However, Mr Kitching reminded the Tribunal of its findings on the facts in this regard. He added that the development of insight and remediation has to begin with an acceptance of wrongdoing and Professor Nabi has continuously denied any wrongdoing or accept the seriousness of the allegations against him.

12. In the circumstances, Mr Kitching submitted that Professor Nabi's fitness to practise is impaired.

On behalf of Professor Nabi

13. Mr Gledhill submitted that Professor Nabi's fitness to practise is not impaired. He referred the Tribunal to case law which he said showed that it was not necessary to demonstrate full insight but rather that there is no risk of repetition.

14. Mr Gledhill said that there was overwhelming evidence which demonstrated that Professor Nabi has undertaken a great deal of reflection and remediation. He said this included discussing this incident with his peers to ensure there was no repeat. This included how he could improve the use of his English language in his correspondence documents/emails. Mr Gledhill went on to say that measures were now in place to prevent this type of incident from reoccurring.

15. He said that Professor Nabi is a man of high standards, and someone held in high regard by his colleagues. He added that as the head of funding, it was embarrassing for him and his reputation was damaged because the University had to inform all funding organisations/sponsors of this event. Further, the University recommended that Professor Nabi should attend courses to address the concerns in this case, particularly in relation to plagiarism. In this regard, Mr Gledhill directed the Tribunal to the certificates of courses Professor Nabi has completed and his learning from them. Mr Gledhill added that Professor Nabi himself has instigated policies and practices within the University to help colleagues to prevent this type of incident from reoccurring.

16. Mr Gledhill reminded the Tribunal that to find a practitioner's fitness to practise impaired, the alleged misconduct must be serious. He said that despite its findings at the facts stage, the Tribunal could still be satisfied that the matters in this case fell short of the threshold to require a finding of impairment. He added that the Tribunal should take into account the passage of time and that these events took place some five years ago and there is no evidence to suggest Professor Nabi has repeated his behaviour. Mr Gledhill submitted that Professor Nabi has undertaken significant steps to remediate his conduct, such that there is no risk of him repeating his behaviour.

17. Mr Gledhill submitted this case could be disposed of with a warning and he reminded the Tribunal of the need to keep good doctors in practice. He said that the public interest worked both ways and, in this case, would require that Professor Nabi remain in practice. Mr Gledhill referred the Tribunal to the testimonials submitted on behalf of Professor Nabi by his colleagues all of whom speak very highly of him and attest to his clinical and academic work and to his good character, even if not all of them are aware of the full history in this case. Mr Gledhill reminded the Tribunal that Professor Nabi continued to be employed by the University and continues to undertake his role as before. He said that Professor Nabi's greatest concern is to ensure the continuity of the service – that that is his pride and joy –

and that he was the ‘founding father’ as to the way in which the work of the department had developed and grown.

18. Mr Gledhill submitted that Professor Nabi has undertaken a significant amount of reflection. He said that Professor Nabi had developed full insight into the concerns and had undertaken significant remediation to address the concerns raised, which included attending relevant courses, developing practices and policies to prevent this from happening again. He added that Professor Nabi acknowledged there was always room for further learning and that he would willingly undertake such.

19. In all of the circumstances, Mr Gledhill submitted that Professor Nabi’s fitness to practise is not impaired and he invited the Tribunal to find the same.

The Relevant Legal Principles

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

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

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

23. Throughout its deliberations, the Tribunal has been mindful of its responsibility to uphold the overarching objective as set out in the Medical Act 1983 (as amended). That objective is the protection of the public and involves the pursuit of the following:

- a. to protect, promote and maintain the health, safety and wellbeing of the public
- b. to maintain public confidence in the profession
- c. to promote and maintain proper professional standards and conduct for members of the profession

The Tribunal’s Decision

Misconduct

24. The Tribunal first considered whether the facts found proved are a sufficiently serious departure from the standards of conduct reasonably expected of Professor Nabi as a registered medical practitioner to amount to misconduct. In its deliberations, the Tribunal had regard to the current version of GMP (March 2013). It also noted that Misconduct is not defined by statute but it has been said to be serious professional misconduct or conduct which a fellow professional would regard as deplorable.

25. The Tribunal had regard to paragraphs 1, 65, 68, 71, 72 and 73 of GMP. These state:

'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.

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

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

b. You must not deliberately leave out relevant information.

72 You must be honest and trustworthy when giving evidence to courts or tribunals. You must make sure that any evidence you give or documents you write or sign are not false or misleading.

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

b. You must not deliberately leave out relevant information.

73 You must cooperate with formal inquiries and complaints procedures and must offer all relevant information while following the guidance in Confidentiality.'

26. The Tribunal was mindful that Professor Nabi, at the outset, admitted some of the paragraphs and sub-paragraphs of the Allegation.

In relation to paragraphs 3(c)(i) and (ii)

27. In relation to 3(c)(i) the Tribunal found that Professor Nabi failed to adequately check Student B's Manuscript for plagiarism. It noted that Professor Nabi was, by his own admission, ultimately responsible for ensuring the quality of and the content of any Manuscripts produced by his group. Further, the Tribunal accepted evidence that Professor Nabi had made Student B aware of the ethics of writing Manuscripts and the need for confidentiality and the proper disposal of confidential material.

28. The Tribunal took into account that Professor Nabi was a very busy clinician and academic with responsibility for a number of different areas of the work within the Research department of the University. The Tribunal was of the view that Professor Nabi had not taken adequate care in his checking of Student B's Manuscript. In the circumstances of a serious obligation in relation to material that was for publication, this was misconduct.

29. The Tribunal also considered, however, that it was reasonable, given his level of confidence in Student B's abilities and intellect, for Professor Nabi to have placed a degree of reliance upon Student B not to plagiarise material from another Manuscript. It also accepted the fact that the 'plagiarised' sections were inadvertent of the copies of the Methodology, Discussion and Analysis. It had not involved the study data.

30. It was also the case that the Methodology sections at least were common to many studies of the type and the Tribunal accepted that, whilst he had undertaken some checks of Student B's Manuscript, this had been a failure to go to the particularly level of fine detail required. The Tribunal determined that fellow professionals would not regard this as being misconduct which was 'deplorable'.

31. Therefore, whilst Professor Nabi's failure to adequately check Student B's Manuscript for plagiarism amounted to misconduct, it fell short of the threshold for serious misconduct.

32. In relation to particular 3(c)(ii), the Tribunal noted that this referred to 'providing' a copy of Dr A's Manuscript to Student B, when Student B picked it up in error from Professor Nabi's desk, because Professor Nabi had left it out there, close to the papers Student B was supposed to collect. Therefore, he had not maintained confidentiality of the unpublished document.

33. The Tribunal determined that Professor Nabi had failed, through carelessness, to adequately protect the confidentiality of Dr A's Manuscript, which was misconduct, but again it did not determine that this carelessness was 'deplorable' misconduct and was not serious misconduct.

In relation to paragraph 4

34. Professor Nabi admitted that this particular of the Allegation. He provided three tables of data taken from Dr A's Manuscript to Student B in an e-mail entitled 'Tables as example', without any attribution to Dr A; and without informing Student B that the tables

were confidential and could not be distributed. Further, Professor Nabi admitted he left sections of Dr A's Manuscript on his desk where others could access them.

35. The Tribunal took into account that Student B had already written the first draft of his Manuscript. It also took into account that Professor Nabi had made Student B aware of the ethics of writing Manuscripts. It would therefore be expected that Student B, who during his evidence to the Tribunal accepted some responsibility for his part in this incident, would have been conscious not to take material from other authors articles or Manuscripts. The Tribunal took into account that in his email, Professor Nabi did state the tables were for example only.

36. It was clear that Student B had had some idea of the confidentiality of the tables, as he had not used any of their data, but only used the format as an example.

37. The Tribunal took into account and accepted Professor Nabi's evidence that he did not have a clear desk at the time and that he had left the papers on his desk accidentally when he told Student B to collect them. The Tribunal considered that Professor Nabi had been careless and sloppy in leaving the papers on his desk.

38. The Tribunal determined that Professor Nabi had failed to adequately protect the confidentiality of Dr A's Manuscript, which was misconduct, but again it did not determine that this carelessness was 'deplorable' misconduct and was not serious misconduct.

39. For these reasons, the Tribunal considered that although this amounted to misconduct, it fell short of the threshold for serious misconduct.

In relation to paragraphs 6, 7, 8, 9, 10, 11 and 12

40. The Tribunal has already found that Professor Nabi knew in December 2016 that he had peer reviewed Dr A's Manuscript, given that the title of the topic is identical in both Manuscripts, and would therefore have triggered a 'recall' in Professor Nabi's memory that he had read a similar document previously. The Tribunal also found that Professor Nabi was likely to have been well aware of the meaning of terms 'internal enquiry' and 'Committee' used in his emails to Dr C. Further, in his email of 21 December 2016, Professor Nabi summarised the conclusions of the 'Committee', including the recommended 'mandatory' attendance on plagiarism courses for all the authors as an outcome, with certification.

41. Dr C had a legitimate expectation that his queries would be given due attention and dealt with properly. He was acting on behalf of a learned publication in which Professor Nabi was seeking to publish an article to the profession. Yet, as had been found, the enquiry that had been carried out by Dr G and Dr H, was fairly limited. Neither had spoken to Professor Nabi about the plagiarism nor produced any written findings; and Professor Nabi did not share their findings with the co-authors. Further, the Tribunal had already found that Professor Nabi, when sending these emails, had been motivated for the emails to appear as if sent on behalf of the University.

42. The Tribunal had found the emails were misleading. Professor Nabi had been motivated by a desire to prevent Dr C reporting the matter to the University by giving the impression that the matter had already been dealt with appropriately.

43. The Tribunal determined that this was a serious breach of the doctor's obligations in paragraphs 68 and 71 of Good Medical Practice to be open and honest in communications and when writing emails. The Tribunal considered that this would be considered deplorable by fellow colleagues. It therefore concluded that Professor Nabi's actions amounted to serious misconduct.

In relation to paragraphs 13 and 14

44. The Tribunal had found, on the balance of probabilities, that Professor Nabi had been aware of providing three tables of data from Dr A's Manuscript to Student B, when he was interviewed. It considered that he should have mentioned this to the University investigation.

45. As the investigation interview on 27 June 2017 was a formal process conducted by the University, it was incumbent upon Professor Nabi to be open and transparent about the fact that he had provided the tables from Dr A's Manuscript to Student B. Despite this opportunity, he did not do so. Professor Nabi was under a duty to cooperate with a formal investigation and he failed to do so.

46. The Tribunal determined that the failure to be completely forthcoming with this information in this process with the University and to volunteer it (even though not directly asked about it) was a serious failing and was serious misconduct.

47. It therefore concluded that Professor Nabi's actions amounted to serious misconduct.

Impairment

48. The Tribunal, having found that some of the facts found proved amounted to serious misconduct, went on to consider whether Professor Nabi's fitness to practise is currently impaired by reason of his misconduct.

49. The Tribunal had regard to paragraph 76 of the judgment in the case of **CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin)**, in which Mrs Justice Cox provided a helpful approach to the determination of impairment:

'Do our findings of fact in respect of the doctor's misconduct...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.'

50. The Tribunal considered whether Professor Nabi's misconduct was capable of being remediated, has been remediated, and whether it was likely to be repeated. In so doing, it considered whether there was evidence of Professor Nabi's insight into his misconduct and any steps taken by him to remediate it.

51. The Tribunal took into account that doctors occupy a position of privilege and trust. They are expected to act in a manner which maintains public confidence in them and in the medical profession and to uphold proper standards of conduct. Professor Nabi's lack of candour brought the medical profession into disrepute and breached fundamental tenets of the medical profession.

52. The Tribunal noted that Professor Nabi has continued to work at the University without any further concerns. There is no evidence before the Tribunal that there are any concerns about his clinical practice; the evidence before the Tribunal is that Professor Nabi is a good doctor who is well regarded by his colleagues. There is no evidence that Professor Nabi has ever behaved in this way prior to these events, nor has the Tribunal been provided with any evidence that he has repeated his conduct since the matters before this Tribunal. The Tribunal took into account the testimonials from Professor Nabi's colleagues who speak highly of him. It noted that some of the authors of the testimonials would not have been aware of the full facts of this case at the time of writing.

53. In relation to his insight, the Tribunal took into account Professor Nabi's admissions at the outset of these proceedings. During his oral evidence at this stage of the proceedings, Professor Nabi elaborated on the steps he has taken and the measures, some of which he had developed, had been put in place to ensure that there was no recurrence of the incident of plagiarism.

54. Throughout these proceedings, Professor Nabi maintained that in his emails, he did not intend to mislead Dr C. However, on cross examination, he accepted that his emails could have given the impression, as alleged. Professor Nabi has provided no evidence of reflection into the concerns that he had not been open and transparent about what had occurred, or that he had sent the tables to Student B, and that the plagiarism had occurred from his group. There was no evidence before the Tribunal of any remediation to address the concerns in relation to this aspect.

55. The Tribunal accepts that Professor Nabi has sufficient insight and undertaken remediation to address the concerns in relation to the plagiarism aspect of this case. However, the Tribunal had made findings as to a lack of candour which had not been

addressed by Professor Nabi. He has addressed his use of language in terms of mistake rather than dealing with the Tribunal's findings concerning motivation.

56. In the absence of sufficient evidence of insight or the steps he had taken to address the aspect relating to lack of candour the Tribunal was not satisfied that he has remediated this misconduct. The Tribunal considered that the lack of candour aspect did require further reflection from Professor Nabi before the Tribunal could be satisfied there is no risk of repetition. In those circumstances, it concluded that Professor Nabi's fitness to practise is impaired.

57. The Tribunal reminded itself of the fundamental principles, as set out in GMP, in respect of doctors acting with integrity.

58. In all the circumstances, the Tribunal concluded that a finding of impaired fitness to practise was required in order to maintain public confidence in the profession and to promote and maintain proper professional standards and conduct for members of the profession.

59. The Tribunal has therefore determined that Professor Nabi's fitness to practise is impaired by reason of his misconduct.

Determination on Sanction - 16/03/2021

1. Having determined that Professor Nabi'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.

3. Professor Nabi gave oral evidence at this stage of the proceedings. He told the Tribunal that the support mechanisms put in place by the University were of the highest level and that he had engaged with these mechanisms. He said that he has three appraisals to cover his areas of work (clinical, academic and research) and he would discuss with his appraisers approaches to address the concerns of the Tribunal and to build agreed actions into his Personal Development Plan (PDP), stating as an example, the completion of relevant training courses. Professor Nabi reminded the Tribunal that he was a member of COPE and said he would undertake further reading from the online forum which he found to be a huge learning resource. Professor Nabi said that his PDP is a 'live' document which would form part of his appraisals.

4. Professor Nabi reminded the Tribunal that as part of his clinical work, he was responsible for a half million patients. The Covid-19 pandemic had left a huge backlog of cases. He said that any sanction taking him away from his clinical work would have an adverse impact on the care of these patients, and by way of example, he cited patients not receiving treatment at the early stages of cancer. In relation to his academic role, Professor Nabi said that this was a significant commitment as he was responsible for teaching international students and this would be affected. He added that his leadership role and being the responsible person for securing funding for various projects would also be adversely affected.

5. Professor Nabi said that he had informed the University of these proceedings but said that he was not aware of what, if any, contingency plans had been developed by the University in the event he was unable to return to work. He reminded the Tribunal of his evidence that the University struggled to recruit suitable persons to undertake the roles which he undertook.

Submissions

On behalf of the GMC

6. Mr Kitching submitted that the appropriate sanction is suspension. He reminded the Tribunal that these events had occurred some five years ago, that Professor Nabi had not repeated his behaviour, and of his good character. He referred the Tribunal to the Overarching Objective and said that the second and third limbs are engaged in this case. Mr Kitching referred the Tribunal to its determination on Impairment and submitted that the GMC's position has always been that Professor Nabi's conduct fell just short of being dishonest. Mr Kitching said that in relation to some aspects of this case, Professor Nabi's actions were careless and sloppy, but added that the heart of this case is his responses to Dr C's email. He accepted that there is a sliding scale of seriousness and he put Professor Nabi's misconduct as moderately serious.

7. Mr Kitching referred the Tribunal to the Sanctions Guidance (SG) and took it through the relevant paragraphs which he said indicated why this case could not be concluded with no action, or by imposing a period of conditions. Mr Kitching acknowledged that erasure was not the appropriate response. He submitted that there were no mitigating features in this case which led Professor Nabi to behave in the way he did, but he highlighted some of the aggravating features. He accepted that Professor Nabi had apologised and shown regret for his actions but said that he denied the more serious aspect of this case. He added that the removal of Professor Nabi from his clinical and academic work was of little relevance when balanced against the Overarching Objective, and as such, the Tribunal should reject Professor Nabi's evidence in this respect.

8. In relation to insight, Mr Kitching submitted that Professor Nabi's insight is only partial, and this was an aggravating feature. Further, he said that Professor Nabi has not demonstrated timely insight.

On behalf of Professor Nabi

9. Mr Gledhill referred the Tribunal to the testimonials from Professor Nabi's colleagues in which they attest to his clinical and academic work, and to his good character, and said that the Tribunal should give considerable weight to these. He reminded the Tribunal that these events occurred some five years ago and said that the passage of time was a significant factor in this case. He also reminded the Tribunal that Professor Nabi has continued in his clinical and academic roles. He said that the Tribunal heard from Professor Nabi how he aimed to address the concerns raised by the Tribunal in his appraisals.

10. Mr Gledhill submitted that a period of conditional registration, for about six months, would be adequate to allow Professor Nabi the opportunity to address the concerns in this case. He said that the basic conditions which included the requirement to report the conditions imposed on his registration, together with a condition requiring Professor Nabi to have in place a mentor, and a PDP, would be sufficient. Mr Gledhill said that Professor Nabi has, along this journey, been developing insight into the concerns and that conditions will allow him to further develop insight in relation to the concerns identified by the Tribunal in its determination on impairment and demonstrate that insight at a Review Hearing.

11. He said that a period of suspension could have a significant impact upon a practitioner's personal circumstances and yet, Professor Nabi, when asked, advanced the argument about the impact a period of suspension would have on his clinical and academic work and on his patients and students. He added that if the Tribunal decides to impose a period of suspension, then this should be for as short a period as possible, stating that a period of two weeks was appropriate, so as not to cause any impact on service provision.

12. Mr Gledhill reminded the Tribunal that there were no patient safety concerns in this case and added that there must be a significant public interest in not removing doctors from clinical work. He said that the public interest test worked both ways. He acknowledged GMC's submission in relation to erasure and said that erasure would be a step too far. Mr Gledhill submitted that a period of conditional registration would allow Professor Nabi to continue to practise and to engage directly with his employers. In all the circumstances, Mr Gledhill submitted that a period of conditions was the appropriate sanction.

The Tribunal's Approach

13. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal alone, exercising its own judgement. In so doing, it has given consideration to its findings of fact, its findings of misconduct and impaired fitness to practise and the submissions made by both Counsel.

14. Throughout its deliberations the Tribunal bore in mind that the purpose of a sanction is not to be punitive, but to protect the public interest. The public interest includes protecting the health, safety and wellbeing of the public, maintaining public confidence in the profession, and declaring and upholding proper standards of conduct and behaviour. The Tribunal bore in mind that the public interest in this case relates to the second and third element of the public interest. There were no patient safety concerns, or other risks to the public involved in the allegations directly. In making its decision, the Tribunal also had regard to the principle of proportionality, and it considered Professor Nabi's interests as well as those of the public. It noted that this may include maintaining experienced clinicians in practice in appropriate cases but the Tribunal has also to balance this with pursuit of the statutory overarching objective, also as a public interest.

The Tribunal's Determination on Sanction

15. The Tribunal considered the aggravating and mitigating features in this case and identified the following:

Aggravating:

16. The Tribunal took into account that these events took place some five years ago. It was concerned that Professor Nabi had not reflected upon the aspects of this case which the Tribunal found were misleading and a lack of candour. Professor Nabi failed to own up that the plagiarism occurred from his group early on in the informal and formal investigatory process, denying that he intended to mislead Dr C.

Mitigating

17. Whilst the Tribunal accepted that Professor Nabi was a busy clinician and academic at the time of these events, this did not detract from the fact that his actions were misleading, as found by the Tribunal. However, the Tribunal considered that there were some mitigating features such as the significant passage of time since these events, with no further concerns in this regard. Professor Nabi was, prior to these events, and as is supported by the testimonial evidence, regarded as a man of good character. The testimonials made clear he is highly regarded by his colleagues. During his evidence Professor Nabi conceded that there were some areas of his practice which required improvement, such as the use of his English language in correspondence. Professor Nabi had admitted parts of the allegation and had apologised for those parts of the allegation that he had admitted.

No Action

18. In coming to its decision as to the appropriate sanction, if any, to impose in Professor Nabi's case, the Tribunal first considered whether to take no action. The Tribunal considered, amongst others, paragraphs 68-70 of the SG which highlights that taking no action following

a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

19. The Tribunal has determined that, given the gravity of the facts found proved, and the absence of any exceptional circumstances in this case, taking no action was neither appropriate, proportionate nor in the public interest.

Conditions

20. The Tribunal next considered whether it would be sufficient to impose conditions on Professor Nabi's registration. The Tribunal took account of the SG, in particular paragraphs 79 and 81, and particularly paragraphs 82 and 85, which state:

'82 Conditions are likely to be workable where:

a the doctor has insight

b a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings

c the tribunal is satisfied the doctor will comply with them

d the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.

'85 Conditions should be appropriate, proportionate, workable and measurable.'

21. The Tribunal identified in its determination at impairment that Professor Nabi when sending the emails, had been motivated for the emails to appear as if sent on behalf of the University. Further, Professor Nabi had been motivated by a desire to prevent Dr C reporting the matter to the University by giving the impression that the matter had already been dealt with appropriately. The Tribunal also found that he had failed to be forthcoming at the investigation interview on 27 June 2020 that he had sent the 'tables' from Dr A's Manuscript to Student B.

22. However, the Tribunal determined that Professor Nabi's misconduct was remediable. It took into account his evidence that the University had implemented measures to prevent the risk of plagiarism in the future. And it noted that Professor Nabi himself had developed measures and policies to prevent this from reoccurring. Further, the Tribunal took account of his evidence to the Tribunal at this stage of the proceedings that he would discuss with his appraisers way to address the concerns identified by the Tribunal at the impairment stage and would incorporate those into his PDP. Professor Nabi also told the Tribunal that his PDP would be a 'live' document he would refer to and update on an ongoing basis.

23. The Tribunal has already found Professor Nabi has insight into the concerns relating to the plagiarism aspect in this case. It has heard and seen evidence that he attended and completed some educational courses to address this aspect.

24. The tribunal took the view that Professor Nabi's final step required to develop full insight related to his need to respond to the findings of the Tribunal and take appropriate steps to address the lack of candour found. The Tribunal was satisfied, having noted the considerable remediation steps he has taken so far, that Professor Nabi is likely to continue in this development of insight.

25. Taking account of his evidence at this stage of the proceedings, as set out above, the Tribunal is satisfied that Professor Nabi will address the concerns identified by the it, and that he will continue to develop further insight into the concerns. The Tribunal considers that given the steps he has already take to remediate, Professor Nabi is likely to comply with conditions imposed upon his registration.

26. As such, the Tribunal has determined that a period of conditional registration, for a period of nine months, is the appropriate and proportionate sanction in this case. The following conditions will be published:

- 1 He must personally ensure the GMC is notified of the following information within seven calendar days of the date these conditions become effective:
 - a the details of his current post, including:
 - i his job title;
 - ii his job location;
 - iii his responsible officer (or their nominated deputy);
 - b the contact details of his employer and any contracting body, including his direct line manager;
 - c any organisation where he has practising privileges and/or admitting rights ;
 - d any training programmes he is in.
- 2 He must personally ensure the GMC is notified:
 - a of any post he accepts, before starting it;
 - b that all relevant people have been notified of his conditions, in accordance with condition 7;

- c if any formal disciplinary proceedings against him are started by his employer and/or contracting body, within seven calendar days of being formally notified of such proceedings;
 - d if any of his posts, practising privileges, or admitting rights have been suspended or terminated by his employer before the agreed date within seven calendar days of being notified of the termination;
 - e if he applies for a post outside the UK.
- 3 He must allow the GMC to exchange information with any person involved in monitoring his compliance with his conditions.
- 4
- a He must have a workplace reporter appointed by his responsible officer (or their nominated deputy).
 - b He must not work until:
 - i his responsible officer (or their nominated deputy) has appointed his workplace reporter;
 - ii he has personally ensured that the GMC has been notified of the name and contact details of his workplace reporter.
- 5
- a He must design a Personal Development Plan (PDP), with specific aims to address the deficiencies in the following areas of his practice:
 - Lack of Candour (as found in the Tribunal’s determination on impairment)
 - b His PDP must be approved by his responsible officer (or their nominated deputy).
 - c He must give the GMC a copy of his approved PDP within three months of these substantive conditions becoming effective.
 - d He must give the GMC a copy of his approved PDP on request.
 - e He must meet with his responsible officer (or their nominated deputy), or his mentor, at least once per month to discuss his achievements against the aims of his PDP.
- 6 He must have a mentor who is approved by his responsible officer (or their nominated deputy).

- 7 He must personally ensure the following persons are notified of the conditions listed at 1 to 6:
- a his responsible officer (or their nominated deputy);
 - b the responsible officer of the following organisations:
 - i his place(s) of work, and any prospective place of work (at the time of application);
 - ii all of his contracting bodies and any prospective contracting body (prior to entering a contract);
 - iii any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application);
 - iv any locum agency or out of hours service he is registered with;
 - v if any of the organisations listed at (i to iv) does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within that organisation. If he is unable to identify that person, he must contact the GMC for advice before working for that organisation.
 - c the Director of his foundation school or the Dean of his medical school;
 - d his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts).

Length of Order

27. In considering the appropriate period of conditional registration, the Tribunal was mindful that it should be sufficient to mark the seriousness of the misconduct found in Professor Nabi's case, and send a message to the profession and protect the public interest. It considered that this period is sufficient and will allow Professor Nabi to develop further insight into the concerns which this Tribunal has identified. A period of conditional registration will also serve to reassure the public and uphold the reputation of the profession.

Suspension

28. Prior to reaching a decision on conditional registration, the Tribunal considered whether a period of suspension was the appropriate sanction. It had regard to paragraphs 91 and 93. It also had regard to paragraph 97 (a), (e), (f) and (g). The Tribunal was mindful, however, of the need to be proportionate in its response. Since it was satisfied that the level of impairment could be dealt with by imposing conditions, it was unnecessary to impose a greater restriction. The Tribunal therefore determined that suspension would not be the appropriate or proportionate sanction in this case.

Review

29. The Tribunal has directed that before the end of the period of conditional registration, Professor Nabi's case be reviewed by a Medical Practitioners Tribunal. A letter will be sent to him about the arrangements for the review hearing. The Tribunal considered that those reviewing Professor Nabi's case would be assisted by receiving the following:

- Professor Nabi's up to date PDP;
- His reflections on the Tribunal's findings;
- Testimonials from his colleagues;
- Any relevant Continuing Professional Development he has undertaken;
- Any other information that he considers would assist the Tribunal such as a statement from a mentor or senior colleague including discussion and consideration of their perspective on his remediation and insight.

Determination on Immediate Order - 16/03/2021

1. Having determined to impose conditions upon Professor Nabi's registration, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Mr Kitching submitted that an immediate order was not necessary.
3. On behalf of Professor Nabi, Mr Gledhill concurred with Mr Kitching.

The Tribunal's Determination

4. The Tribunal has taken account of Section 38 of the Medical Act 1983 and the relevant paragraphs of the SG in relation to when it is appropriate to impose an immediate order. Paragraph 172 of the SG states:

"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..."

5. The Tribunal has determined that, in light of all of the evidence adduced in this case and taking into account its findings on Impairment and Sanction, it is not necessary in the public

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interest or to protect patients, or in Professor Nabi's interests, to direct an immediate order of suspension.

6. The substantive decision of conditions, as already announced, will take effect 28 days from when notice is deemed to have been served upon Professor Nabi, unless he lodges an appeal in the interim.
7. The Tribunal notes that there is no interim order to revoke.
8. That concludes the case.

Confirmed

Date 16 March 2021

Mr Paul Moulder, Chair

ANNEX A - Determination: Rule 17(2)(g) Application (4 March 2021) – 04/03/2021

Half-time Submissions

1. On 3 March 2021 (Day 3), Mr Gledhill made an application under Rule 17(2)(g) of the Rules, in relation to paragraph 5(a) and (b).

2. Rule 17(2)(g) states:

“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.”

3. The allegation is:

‘5. You failed to appropriately supervise Student B during the preparation and submission of the Manuscript, in that:

a. your meetings with Student B were inadequate, as they were usually:

i. between approximately one and three minutes in duration; **To be determined**

ii. impromptu in nature;
Admitted and Found Proved

iii. not formally planned; **To be determined**

b. you exposed Student B to a risk of reputational damage that could affect their future career.

Admitted and Found Proved;’

On behalf of Professor Nabi

4. Mr Lee Gledhill, Counsel, submitted that the evidence in relation to the whole of paragraph 5 of the Allegation had been undermined in the course of examination of the relevant witness to the point where the Tribunal could not find the matter proved. He acknowledged that Professor Nabi had already made admissions to paragraph 5a(ii) and 5(b) but submitted that these admissions were made in error due to a misunderstanding in relation to the stem of paragraph 5 as Professor Nabi has always denied that he failed to appropriately supervise Student B during the preparation and submission of the Manuscript. Mr Gledhill said that the evidence showed that meetings between Professor Nabi and

Student B were not always necessary as it depended on Student B's experience and on Professor Nabi's view as to whether a meeting was required.

5. Mr Gledhill submitted that when Student B commenced the six week studentship, Professor Nabi, at the outset, provided guidance to Student B about plagiarism, the importance of handling confidential material appropriately, disposing of such material appropriately, and of the need to maintain confidentiality.

6. Mr Gledhill referred the Tribunal to Student B's oral evidence. He said that Student B clearly stated that his meetings with Professor Nabi were longer than 1 – 3 minutes, often lasting between 15 and 30 minutes; that Student B was enthused by the guidance he received from Professor Nabi and had learnt a lot from him; and that because Professor Nabi was a busy academic who had other areas of responsibility too, Student B preferred not to disturb Professor Nabi except when it was absolutely necessary. Further, Mr Gledhill said that Student B stated in his evidence that Professor Nabi operated an 'open-door' policy and that he could speak to or meet with Professor Nabi as required. Mr Gledhill submitted that therefore the impromptu nature of the meetings, as set out in paragraph 5(a)(ii) of the Allegation was such that it was not always necessary for Professor Nabi to meet with Student B for long periods of time. He said that this was more than passing each other in the corridor. Mr Gledhill reminded the Tribunal that Student B stated that there were at least eighteen occasions when he had met with Professor Nabi for periods longer than 1 – 3 minutes, and that he had always received proper and appropriate supervision from Professor Nabi. Mr Gledhill submitted that it was not necessary for supervision meetings to be formally planned as there was a very fluid and dynamic relationship between Professor Nabi and Student B which enabled proper and appropriate supervision to be provided as and when required. Furthermore, Student B told the Tribunal that he did not go back to clarify anything with Professor Nabi after having accidentally taken the tables from his desk with the rest of the papers.

7. Mr Gledhill referred to the written evidence before the Tribunal, including Student B's witness statement and his exhibited documents, and submitted that it is more likely that Student B's oral evidence is more accurate. He added that it was to the credit of Student B that he accepted responsibility for his part in the events. This showed that he acted in good faith in assisting the Tribunal, agreeing with matters put to him in cross examination. He said that it was evident from Student B's evidence that it was not clear to him what the tables were when he took them from Professor Nabi's desk. He added that it was clear from Student B's demeanour that he was genuine in his recollections and was reliving what had happened. Mr Gledhill submitted that the Tribunal could draw inferences from this. Furthermore, Student B's evidence was that he found the whole experience of the interviews with the University very daunting.

8. Mr Gledhill submitted that on the face of it, the level of supervision provided by Professor Nabi to Student B was adequate.

9. Mr Gledhill submitted that while Professor Nabi has already made an admission that he may have exposed Student B to risk of reputational damage, as set out in paragraph 5(b) of the Allegation, there was no evidence to suggest that that was the case here and questioned whether Professor Nabi's actions contributed to this. He reminded the Tribunal that Student B went on to win a prize for a published work. Mr Gledhill added that Student B at no time sought to or blamed Professor Nabi for the events which occurred.

10. Mr Gledhill said that with all of his other projects that he managed and had responsibility for, as well as his clinical work, it is no wonder Professor Nabi did not notice the information which had found its way into the Manuscript.

11. Mr Gledhill referred the Tribunal to the case of *R v Galbraith* and said that he relied on the first and second limb in that case. He said that on the balance of probabilities, there was no culpable evidence on which the Tribunal could find paragraphs 5a (i, ii and iii) or 5(b) of the Allegation proved. He invited the Tribunal to grant the application.

On behalf of the GMC

12. Mr Robin Kitching, Counsel, opposed the application. He said that the test to be applied was that to the civil standard. He said that the test set out in *R v Galbraith* provided for a 'low hurdle'. He acknowledged that as the Tribunal is a Tribunal of facts, if it were to find that this paragraph of the Allegation could not be found proved, then the allegation would fall. Mr Kitching said the evidence fell in to two parts when considering the stem of paragraph 5 and then when considering the individual parts of paragraph 5, which rely on evidence provided by Student B during the interviews with the University in July 2017. Mr Kitching said that there was some conflict in what Student B had told the University and what he has told this Tribunal.

13. Mr Kitching said that the supervision would be provided verbally and not merely via face-to-face meetings. He said that not only had Professor Nabi failed to provide this adequately, but he also failed to supervise Student B in the preparation of the Manuscript. He reminded the Tribunal of the written evidence, including the email from Professor Nabi to Student B of 23 June 2016 to which were attached the tables. Mr Kitching acknowledged that the 'subject' matter stated 'Tables as example' but said that Professor Nabi's email did not provide any guidance to Student B as to how the information in the examples should be utilised, or where the 'tables' came from, that they were the work of another student. Further, no information was given to Student B when he collected the papers from Professor Nabi's desk, and he had failed to adequately guide Student B on their proper use. Mr Kitching submitted that the evidence was that Professor Nabi left the 'tables' next to Student B's first draft which he had annotated, and given that the 'tables' had already been sent to Student B, there was a level of carelessness which could be said to be lack of supervision. Further, Mr Kitching submitted that when Student B had prepared the second draft, Professor Nabi did not question why the document was now lengthier, and how Student B had completed the additional parts of the draft paper. Mr Kitching submitted that asking such questions was part and parcel of the supervision Professor Nabi should have provided to Student B.

14. Mr Kitching submitted that Professor Nabi's admission in relation to paragraph 5(b), albeit made in error, was an admission that he had exposed Student B to the risk of reputational damage. He submitted how else could Professor B have exposed Student B to such a risk except through lack of adequate supervision.

15. Mr Kitching submitted that the Tribunal could, in due course, find paragraph 5 of the Allegation proved, and he invited the Tribunal to refuse the application.

Tribunal Decision

16. The Tribunal accepted that, although Professor Nabi had accepted some of the factual paragraphs of particular 5, he had always denied failing to provide appropriate supervision as a result of any of the facts. The Tribunal therefore considered it was at liberty to consider the application in respect of the underlying facts, both admitted and denied, as each related to the stem of particular 5.

17. In considering Mr Gledhill's application, the Tribunal first considered paragraph 5(a)(i – iii). It had regard to the evidence, including the notes of Student B's first interview with the University on 25 July 2017. The Tribunal noted that this had been the evidence which gave rise to and supported the alleged particulars 5a (i to iii). The Tribunal noted that in his oral evidence Student B said that he found the experience of the University interviews "daunting" and his evidence to the Tribunal was more reliable. Student B spoke highly of Professor Nabi and stated that in his view the level of supervision he received was adequate and appropriate.

18. The Tribunal noted that allegation 5 referred to a 'failure' to appropriately supervise. It therefore required the Tribunal to consider the nature of the project and Professor Nabi's obligations. It considered that it was relevant that this was a mid-Summer research project, which Student B had been working on under Professor Nabi's direction. The Tribunal considered what constituted 'supervision' for the purposes of the allegation had to be viewed in this context.

Turning to the individual particulars of paragraph 5:

- (i) between approximately one and three minutes in duration

19. In his interview with the University on 25 July 2017, Student B stated regarding his usual interaction with Professor Nabi, that '*it would be one, two or 3 minutes.*' However, in his oral evidence to the Tribunal Student B said that this was rarely the case as the formal meetings he had with Professor Nabi lasted around 15 – 20 minutes and that he had such meetings with Professor Nabi on at least eighteen occasions. Further, Student B explained why the meetings with Professor Nabi varied in the time in that sometimes the meetings were on an ad-hoc basis, sometimes involving a quick chat while crossing paths in the corridor, and sometimes arranged in advance to discuss specific matters relating to the

project. Student B explained that he had found the University interview had been a daunting experience and his oral evidence to the Tribunal was more reliable. His oral evidence clearly contradicted that his meetings with Professor Nabi had been ‘usually’ between approximately one to three minutes.

20. The Tribunal therefore concluded, in light of the evidence before it, that it could not find paragraph 5(a)(i) of the Allegation proved.

(ii) impromptu in nature

21. The Tribunal noted that Professor Nabi admitted this particular of paragraph 5(a).

22. The Tribunal took into account Student B’s evidence as to the nature of the project and Professor Nabi’s busy academic and clinical schedule. It accepted that it was not always possible to have formally arranged meetings with him. Student B’s evidence was that the supervisory meetings took place on an ad-hoc basis which suited both Professor Nabi and himself. Further, Student B did not consider this arrangement to be inadequate in the level of supervision he received from Professor Nabi. The Tribunal also noted Student B’s evidence that he had been provided an office close to Professor Nabi’s and the latter had an ‘open door’ policy regarding contact. The Tribunal concluded, in light of the evidence, there was no basis on which it could find that the impromptu nature of meetings rendered the supervision inappropriate.

23. The Tribunal therefore concluded, in light of the evidence before it, that it could not find paragraph 5(a)(ii) of the Allegation proved.

(iii) not formally planned

24. The Tribunal understood this to relate to the lack of formal agenda or plan for meetings between Student B and Professor Nabi. Student B’s evidence had been that he had been able to contact Professor Nabi and raise matters ‘ad hoc’. It was therefore not surprising the meetings lacked formal agenda. The Tribunal concluded, in light of the evidence, there was no basis on which it could find that the lack of formal planning of meetings rendered the supervision inappropriate. For the same reasons as in relation to paragraph 5(a)(ii) the Tribunal considered that it could not find paragraph 5(a)(iii) proved.

25. The Tribunal therefore determined to allow the application made by Mr Gledhill in respect of paragraph 5(a)(i – iii).

b. you exposed Student B to a risk of reputational damage that could affect their future career

26. The Tribunal then considered paragraph 5(b) of the Allegation.

27. The Tribunal considered that Professor Nabi had been supervising an academic project and adequate 'supervision' had to be regarded as appropriate to that activity and all the surrounding circumstances. It considered that supervision did not need to be 'direct', for example in the sense of the supervisor directly supervising the supervisee at all times.

28. The Tribunal took into account that Professor Nabi was a busy academic, as was clear in Student B's oral evidence. It also took into account that Student B was an undergraduate studying medicine, and that he too had accepted some level of responsibility. The GMC's case was that Student B had collected some incorrect papers from Professor Nabi's desk by accident. The Tribunal viewed the matter of supervision of Student B as set out above. The Tribunal did not accept that the failure to more particularly specify the use of the tables emailed to Student B materially added to a lack of supervision. It was the inclusion of material from another manuscript which had led to the risk of reputational damage to Student B. The Tribunal was of the view that the question of supervision was separate to the alleged events and how they came about. Therefore, the risk of reputational damage, even on the GMC's evidence, did not flow from any inadequate supervision. The Tribunal noted that the failure to check the Manuscript for plagiarism was the subject of a separate particular of the Allegation, which the Tribunal was due to consider later in the proceedings.

29. On the basis of the evidence before it, the Tribunal concluded that it could not find paragraph 5(b) of the Allegation proved.

30. The Tribunal therefore determined to allow the application made by Mr Gledhill in respect of paragraph 5(b).