

**Dates:** 11/07/2016 – 29/07/2016, 08/11/2016 – 28/11/2016, 15/03/2017 – 22/03/2017

**Medical Practitioner's name:** Dr Khashayar GHAHARIAN

**GMC reference number:** 4436553

**Primary medical qualification:** MB BS 1997 University of London

**Type of case**  
New - Misconduct

**Outcome on impairment**  
Impaired

**Summary of outcome**

Erasure

Immediate order imposed

**Tribunal:**

Medical Tribunal Member (Chair)	Dr Wendy Kuriyan
Lay Tribunal Member:	Mr Peter Brown
Lay Tribunal Member:	Mr David Fisher
Legal Assessor:	Mr Gary Tobin
Tribunal Clerk:	Ms Victoria Bean (July 2016) Ms Dee Montgomery (November 2016, March 2017)

**Attendance and Representation:**

Medical Practitioner:	Not present but represented on days 1 to 10, 14 & 15 Present and represented on days 11, 12, 13 & 28 Not present and not represented on days 29 to 34
Medical Practitioner's Representative:	Mr David Lock, QC, and Mr Pravin Fernando, Counsel, instructed by Freeths LLP (not instructed at March hearing)
GMC Representative:	Mr Paul Williams, Counsel

## Record of Determinations – Medical Practitioners Tribunal

### Allegation and Findings of Fact

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

1. On a day or days unknown between 2006 and December 2012, you;
  - a. when speaking to a receptionist, Ms A, referred to your patients as;
    - i. fuckers, or words to that effect; **Found proved**
    - ii. pieces of shit, or words to that effect; **Found proved**
  - b. when speaking to Ms A, referred to your head receptionist as “the fat blob”, or words to that effect; **Found proved**
  - c. when speaking to Ms A, referred to one of your receptionists as a “Soosk” (meaning cockroach in Farsi); **Found proved**
  - d. in respect of Ms A;
    - i. called her Cockerelcunt; **Found proved**
    - ii. called her thick; **Found proved**
    - iii. threw prescriptions on the floor and made Ms A pick them up; **Found proved**
  - e. described to Ms A that when on holiday you put your penis in a hole in the wall in a nightclub, or words to that effect; **Found proved**
  - f. asked Ms A, in a non-clinical capacity, about the frequency and detail of her sexual activities, or words to that effect; **Found proved**
  - g. said to Ms B that you “will have 900 pairs of eyes watching you”; **Found proved**
  - h. said to Ms B about a doctor at another practice situated in the same building as your practice, that you “hated him and hope he fucking died”, or words to that effect. **Found proved**
2. On 2 October 2012 you;

## Record of Determinations – Medical Practitioners Tribunal

- a. asked a receptionist, Ms D, who the whistleblower was at the Practice who had prompted an investigation by the PCT (the 'Investigation'), or words to that effect; **Found proved**
  - b. suspended Ms D after falsely claiming she had subjected you to racist abuse. **Found proved**
3. On days in October or November 2012 (including 31 October 2012 and 16 November 2012), you;
  - a. asked Ms A to provide a false statement to the Investigation that placed the blame for the fictitious clinics on 4 and 7 September 2012 on Ms B or a statement to that effect, when Ms B was not responsible for the creation of those fictitious clinics; **Found proved**
  - b. made the request of Ms A in 3(a) knowing it to be a request for Ms A to provide a false statement or not believing any such statement would be factually true; **Found proved**
  - c. offered Ms A inducements in the form of gifts and an increased rate of pay if she complied. **Found proved**
4. On or about 10 December 2012 you;
  - a. handled or were involved in the handling of a mobile telephone belonging to Ms A when you knew or ought to have been aware that it was being handled without Ms A's consent; **Found proved**
  - b. did not arrange for the return of the mobile telephone to Ms A when you knew or ought to have been aware that Ms A had reported the loss to the Practice; **Found proved**
  - c. were involved in text messages on the mobile telephone being accessed and recorded without the consent of Ms A. **Found proved**
5. On 30 December 2013, you asked a nurse, Ms E, to provide a false statement to the Investigation that Ms E had overheard the investigators planning a conspiracy against you, or a statement to that effect. **Found proved**
6. On 18 June 2013 during a meeting with a Community Matron, Ms F, you, having arranged to be accompanied by a member of your staff, asked Ms F how she would feel if you reported her, which Ms F perceived to be a veiled threat as to what you may do in the future. **Found proved**

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

7. Your conduct as set out at paragraphs 2b, 3, 4 and 5 was dishonest. **Found proved in relation to 2b, 3, 4b, 4c and 5 and found not proved in relation to 4a.**

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

### **Attendance of Press / Public**

The tribunal agreed, in accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004, that the press and public be excluded from those parts of the hearing where matters under consideration were deemed confidential.

### **Determination on Preliminary Procedural Matters - 13/07/2016**

Mr Lock:

1. The Tribunal has heard detailed submissions from both you and Mr Williams over the course of two days in relation to your application. These are a matter of record, both in the form of the written skeleton arguments submitted to the Tribunal by both Counsel and the digital recording of the oral submissions made. In these circumstances, the Tribunal has not rehearsed those submissions in detail in this determination, but has briefly summarised them below.

2. You applied for the Tribunal to consider whether it could properly proceed to consider paragraphs 2, 3, 4, 6 and 7 of the Allegation and whether the allegations made in those paragraphs were capable of amounting to misconduct. You also raised the possible infringement of Dr Ghaharian's human rights as an issue. Further, you submitted that redactions should be made to the GMC bundle of written evidence, prior to it being received by the Tribunal.

3. Mr Williams opposed your application. He submitted that, as a preliminary issue, the Tribunal does not have the jurisdiction to strike out the paragraphs of the Allegation to which you object. He submitted that these matters will be dealt with, in full, during the course of the hearing. He said, so far as you object to paragraphs 2(a), 4 and 6, your submissions, where relevant, should be dealt with at stage 2 of the process, i.e. under Rule 17(2)(l). He submitted that your criticisms of paragraph 3(a) can be dealt with at stage 1 under rule 17(2)(g), and your comments in respect of paragraph 7 were more relevant at stage 2, under Rule 17(2)(j). In essence, Mr Williams contended that the Tribunal is obliged to hear at least some evidence first and then weigh this against the legal arguments at the appropriate time.

4. The Tribunal has not received any evidence at this stage of the proceedings. Sections of witness statements have been read into the record as part of both Counsels' submissions but the Tribunal noted that this evidence is, as yet, untested.

## Record of Determinations – Medical Practitioners Tribunal

5. The information before the Tribunal regarding the possible circumstances of the paragraphs which are the subject of your application has been presented in the form of submissions alone. The Tribunal has only heard selected excerpts from some of the witness statements and this evidence has not been tested through cross-examination. The Tribunal has yet to consider and determine the credibility and reliability of the totality of the evidence presented. This will take place at the facts stage of the hearing. Only then, and having determined whether any of the facts are found proved, will the Tribunal go on to consider whether any facts proved amount to misconduct (in accordance with the Medical Act 1983, as amended).

6. The Tribunal considered that it would not be appropriate for it to remove any of the paragraphs of the Allegation at this stage of the hearing. Rules 17(2)(a) and (c) of proceedings relate more to the clarification of allegations rather than to assessing their substantive merit. The Tribunal was of the view that the argument made by you in respect of the case of *Chauhan v GMC* [2010] EWHC 2093 (Admin) applies more to determinations that exceed the charges as drafted, rather than to the appropriateness of the consideration of allegations proceeding.

7. In these circumstances, the Tribunal concluded that it did not have the power, nor would it be appropriate, to strike out parts of the Allegation on the basis of these preliminary arguments alone.

8. The Tribunal noted that, in referring a doctor to a Medical Practitioners Tribunal (MPT), the GMC is required to follow a specified process, as set out in the Medical Act 1983 as amended, and the General Medical Council (Fitness to Practise) Rules 2004, as amended. There is no evidence before the Tribunal that the GMC has not done so, nor have you submitted that this is the case.

9. The Tribunal considered your submission that the GMC had not proceeded with earlier allegations formulated in the Rule 7 letter because the witnesses were not credible.

10. Mr Williams submitted that these allegations did not proceed, not because the specific evidence of witnesses was not believed, but because the case examiner considered that there was insufficient evidence in the generality to find those allegations proved.

11. The Tribunal had regard to the decision of the case examiner which states that these paragraphs “do not meet the realistic prospect test due to evidential difficulties.” The Tribunal was of the view that there is more than one possible reason as to why an allegation does not meet the realistic prospect test and what may constitute “evidential difficulties.” It therefore concluded that it was not possible to determine the reason for the removal of these allegations. In addition, it cannot

## Record of Determinations – Medical Practitioners Tribunal

be determined, at this stage of the hearing, whether the evidence of specific individuals can or cannot be believed.

12. The Tribunal wishes to confirm that it accepts the potential relevance of the legal authorities to which you referred it, but it was of the view that this will be properly taken account of at the appropriate stages of the hearing.

13. The Tribunal noted your submission that to proceed with paragraph 4 would be to penalise Dr Ghaharian for exercising his rights under the European Convention of Human Rights (ECHR). You referred the Tribunal to the case of *R (on the application of Dr S) v Knowsley NHS Primary Care Trust, R (on the application of Ghosh) v Northumberland NHS Care Trust* [2006] EWHC 26 (Admin) where, at paragraph 68, Toulson J said:

“It cannot, however, be in accordance with the spirit of the Convention or the common law that the court should be powerless to prevent a violation of a right to a fair procedure, merely because of the existence of a later way of remedying the consequences. A stitch in time may save nine.”

14. The Tribunal was of the view that Toulson J was saying that, just because an individual has a right of appeal to a higher court, it does not mean that it is appropriate to continue with a case. However, the Tribunal determined that the case of *Knowsley* can be distinguished from the facts of this case and is not applicable here. MPT hearings consist of three substantive stages: facts; impairment; and warning/sanction. These all take place within the context of one hearing. A later stage of an MPT hearing is not, in the view of the Tribunal, comparable to a separate appeal process at a higher court. Furthermore, after the presentation of the GMC case, before Dr Ghaharian’s case is opened and before any decision on the facts is made, he will have the opportunity to make submissions, through you, as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed as a result (Rule 17(2)(g)).

15. The Tribunal regarded the process to be adopted at this hearing to be compliant with the ECHR. The Tribunal, upon reading paragraph 4, cannot see any *prima facie* ECHR concerns. You, however, submitted that the Tribunal is now on notice as to potential concerns that could arise. The Tribunal has considered the submissions of both Counsel and, on balance, it determined to reject your submissions on this point, at this stage.

16. In your submissions, you also addressed the formulation of paragraph 6 of the Allegation and, in particular, that no misconduct could be alleged, even if paragraph 6 were to be found proved. The Tribunal concluded that, in respect of 6(a), this could arguably be the case. Paragraph 6 states:

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

“6. On 18 July 2013 during a meeting with a Community Matron, Ms F, you;

- a. arranged to be accompanied by a member of your staff;
- b. asked Ms F how she would feel if you reported her, which Ms F perceived to be a veiled threat as to what you may do in the future.”

17. The Tribunal determined to exercise its powers under Rule 17(6) and amend this paragraph of the Allegation to read as follows:

“6. On 18 July 2013 during a meeting with a Community Matron, Ms F, you, having arranged to be accompanied by a member of your staff, asked Ms F how she would feel if you reported her, which Ms F perceived to be a veiled threat as to what you may do in the future.”

18. The Tribunal has heard extensive submissions on the Allegation and the formulation of the paragraphs and concluded that it could make such an amendment without injustice to the doctor. Indeed, it was of the view that this amendment would remove one of the concerns raised by you regarding the formulation of paragraph 6, without adding to or removing the meaning of the paragraph, as alleged by the GMC.

19. The Tribunal also determined to amend the typographical error in paragraph 4(b) so that the initials used read “Ms A” as follows:

- “4. On or about 10 December 2012 you;
- b. did not arrange for the return of the mobile telephone to Ms A when you knew or ought to have been aware that Ms A had reported the loss to the Practice;”

20. As it indicated earlier in open session, the Tribunal could not make a decision on the matter of whether the GMC bundle should be redacted until it had informed you of this determination.

### **Determination on Application to hear Evidence via Videolink – 13/07/2016**

Mr Williams:

1. You applied for one of the GMC witnesses, Ms B, to give evidence via videolink. You explained that Ms B now lives in Sarasota, Florida and would have to undertake a lengthy flight in order to attend the hearing in Manchester. You submitted that such a requirement would be disproportionate and would limit Ms B’s flexibility in

## Record of Determinations – Medical Practitioners Tribunal

giving evidence, were there to be any unforeseen delays. You referred the Tribunal to Rules 34(13) and (14) which state:

(13) A party may, at any time during a hearing, make an application to the Committee or Tribunal for the oral evidence of a witness to be given by means of a video link or a telephone link.

(14) When considering whether to grant an application by a party under paragraph (13), the Committee or Tribunal must— (a) give the other party an opportunity to make representations; (b) have regard to— (i) any agreement between the parties, or (ii) in the case of a Tribunal hearing, any relevant direction given by a Case Manager; and (c) only grant the application if the Committee or Tribunal consider that it is in the interests of justice to do so.

2. Mr Lock opposed your application. He submitted that Ms B is a key witness in the GMC case and her reliability, the evidence she gives and its credibility are crucial. For these reasons, Mr Lock submitted that it was important that Ms B attended in person. However, Mr Lock conceded that if Ms B were unwell and therefore unable to travel, videolink evidence would suffice.

3. The Tribunal had regard to the email to the GMC from Ms B, dated 12 July 2016. In this, Ms B explains that she has a chest infection for which she is receiving treatment and she encloses a copy of her medical appointment form and prescription. Ms B confirms that she has been well enough to attend work, although she tires easily and states her preference to give evidence by videolink. However, Ms B goes on to say:

“I do feel it is of utmost importance to do whatever you feel will most help the hearing so I am glad to follow your advice in this capacity ... I am \*not\* trying to shirk my duty in any way and wish to do this job right. I will do as the hearing panel and you wish me to do.”

4. In making its decision, the Tribunal took account of the importance of Ms B's evidence. She was the initial whistleblower who raised concerns about Dr Ghaharian, and her evidence and credibility appear to be of the utmost importance. The Tribunal also considered whether Ms B was well enough to attend, particularly given the potentially fatiguing nature of her journey. It noted that Ms B is, by her own admission, attending work, and that her medical appointment form states “No restrictions” in the section labelled “ACTIVITY”.

5. Given the importance of Ms B's evidence, her apparent improving health and her expressed willingness to attend if required, the Tribunal determined that it would be of benefit to all parties if Ms B were to attend the hearing in person.



## Record of Determinations – Medical Practitioners Tribunal

### Determination on Application under Rule 17(2)(g) – 22/07/2016

Mr Lock:

1. Following the close of the GMC's case you made a submission, on behalf of Dr Ghaharian, under rule 17(2)(g) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended (the Rules). That rule 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;'*

#### Submissions

2. Both Counsel made detailed submissions and the Tribunal does not propose to rehearse them in detail as they are a matter of record.

3. You submitted that insufficient evidence had been adduced by the GMC, to support the dishonesty alleged at paragraph 7 in relation to paragraph 4 and that, as a matter of law, it should be dismissed. You reminded the Tribunal of the relevant issues it will need to decide in considering whether or not Dr Ghaharian's actions were dishonest.

4. You submitted that the case for the GMC relies on it being considered dishonest by the standards of reasonable and honest doctors, for a doctor to retain Ms A's mobile telephone for approximately a week where:

- a. this was done for the purpose of transcribing text messages which were relevant to the defence of the doctor in regulatory proceedings;
- b. the evidence would be lost if the telephone was returned; and
- c. the doctor had been advised by his lawyers that he should do this.

5. You submitted that consideration of mental state is required in determining any allegation of dishonesty. You acknowledged that these proceedings operate on the civil standard of proof but you explained the principles of a "claim of entitlement" defence, citing section 2(1)(a) of the Theft Act 1968 and *R v Turner (no 2)* [1971] WLR 901 and *Twinsectra v Yardley and Others* [2002] UKHL 12. In brief, this is where a defendant asserts that he believed he was entitled to act as he did, whether or not that belief was right in law or would be shared by others. You argued that it follows that, if an individual asserts a "claim of entitlement", then by definition he cannot simultaneously believe that he is transgressing the ordinary standards of honest behaviour. You submitted that, where a defendant raises a *prima facie* case

## Record of Determinations – Medical Practitioners Tribunal

of a belief of entitlement, as you say you have done in this case, the onus falls on the GMC to disprove the belief of “entitlement”.

6. You submitted that, for the GMC to disprove Dr Ghaharian’s belief of “entitlement”, it would have to show that either:

- a. Dr Ghaharian did not receive legal advice on the retention of the mobile telephone; or
- b. Dr Ghaharian did receive such advice, but he knew that he did not have the legal right to retain the telephone for the specified purpose.

You submitted that neither of these contentions is supported by the evidence.

7. Mr Williams opposed your application. He submitted that, at this stage of the hearing, the Tribunal can only consider the evidence that has been formally adduced and the only evidence before it is that of the GMC. Mr Williams acknowledged that the Tribunal has before it documents from the doctor and his representatives, including Dr Ghaharian’s witness statement. However, he submitted that these have been provided in advance of the doctor’s case only in order to assist the Tribunal in that they may help to focus the Tribunal’s questions so that it is not necessary to recall a witness at a later date, potentially causing delays to the timely hearing of the case. Mr Williams contended that the advance reading by the Tribunal of this information, and its use in your submission, does not formally adduce the doctor’s case as evidence. Mr Williams submitted that if the approach suggested by you were agreed, it would lead to the refusal by the GMC of any doctor’s documents going before a Tribunal in advance of the conclusion of the GMC’s case. He also submitted that accepting your approach would be manifestly unfair to the GMC as the information submitted on the doctor’s behalf, unlike the evidence of the GMC, is untested at this stage.

8. Mr Williams submitted that the Tribunal should consider each of the allegations separately. In this case it must consider paragraphs 4(a), (b), (c) in order properly to consider your application on paragraph 7 in respect of 4. He also submitted that the GMC has adduced “clear evidence” on which a finding of dishonesty could be found, as follows:

- a. the circumstances of the mobile telephone’s loss;
- b. the reporting of the loss and the enquiries made by Ms A at Dr Ghaharian’s GP Practice;
- c. the circumstances of its finding;
- d. XXX
- e. the nature of the telephone (i.e. its age and therefore the accessibility of its features);
- f. the telephone was turned off;

## Record of Determinations – Medical Practitioners Tribunal

- g. Ms A's name was the first thing to be shown once the telephone was switched back on;
- h. it was not returned for some time after the loss
- i. Ms A was not told of its whereabouts nor reassured that it was not lost or stolen, in the intervening period.

### Legal advice

9. The Legal Assessor advised the Tribunal that the test it is applying at this stage is as that set out at rule 17(2)(g) and so the application succeeds or fails on the evidence adduced by the GMC. He advised the Tribunal that the application is not that no evidence has been adduced, but that insufficient evidence has been adduced upon which the Tribunal could find dishonesty capable of being proved. He directed the Tribunal to consider whether that evidence is tenuous in that it is inconsistent, inherently weak or otherwise unreliable and that it is such that the Tribunal could not be satisfied that the allegations could be made out (in accordance with *R v Shippey* [1998] Crim LR 767).

10. The Legal Assessor reminded the Tribunal that it is not making findings of fact at this stage and so should not form a firm or conclusive view as to dishonesty. Therefore, he advised that it should be mindful of the dishonesty test but only insofar as it relates to the evidence – or the GMC's case – as it has been adduced.

11. The Legal Assessor further advised that, in reaching its decisions, the Tribunal must take the evidence currently before it, at its highest, remembering that in respect of each allegation it must be satisfied that, on the balance of probabilities, the facts could be proved.

12. The Legal Assessor reminded the Tribunal that the burden of proof rests on the GMC. He advised that the Tribunal must look at the evidence thus far adduced, as a whole, not merely that which supports the GMC case. In short, when taking the evidence at its highest, the Tribunal must not "take the plums and leave the duff behind". Whereas consideration may be taken of the doctor's contended facts, limited weight should be given to them – at this stage – because this has not been tested as evidence, as required by Rule 17(2)(g).

13. The Tribunal accepted the advice of the Legal Assessor.

### Tribunal decision

14. The Tribunal first considered whether the facts alleged at paragraph 4 are capable of supporting the contention that Dr Ghaharian's actions were dishonest, as alleged in paragraph 7. Paragraph 4 is as follows:

"4. On or about 10 December 2012 you;

## Record of Determinations – Medical Practitioners Tribunal

- a. handled or were involved in the handling of a mobile telephone belonging to Ms A when you knew or ought to have been aware that it was being handled without Ms A's consent;*
- b. did not arrange for the return of the mobile telephone to Ms A when you knew or ought to have been aware that Ms A had reported the loss to the Practice;*
- c. were involved in text messages on the mobile telephone being accessed and recorded without the consent of Ms A."*

15. The Tribunal considered each of the sub-paragraphs separately. It accepted that there may be a legitimate case to be put forward as to why such actions were not dishonest. However, you have referred to matters that have not yet been tested in evidence. At this stage, having only heard evidence from the GMC's witnesses, the Tribunal is satisfied that it has heard evidence which could support the allegations made at paragraphs 4(a), (b) and (c). The evidence that supports possible findings of facts that could lead to a determination of dishonesty arises in the witness evidence of Ms A, specifically: her witness statement dated 28 March 2015 at paragraphs 72 to 77; exhibit JH/3 and her oral evidence. This evidence relates to all three limbs, i.e. (a) to (c), of paragraph 4. Furthermore, were those paragraphs to be found proved (at the appropriate stage in proceedings), the Tribunal was satisfied that those actions are capable of being found to be dishonest, applying the relevant test as advised by the Legal Assessor.

16. In making this decision the Tribunal bore in mind that, while you have made submissions and put before it documents which set out the doctor's case, it has yet to hear evidence on the matters you have raised in this application. Dr Ghaharian has yet to give oral evidence, or be cross examined. You may contend at that stage that he had a "claim of entitlement". However, the Tribunal considered that this argument should be capable of being properly tested when Dr Ghaharian's case is adduced. At this stage of the proceedings, the information that Dr Ghaharian was allegedly advised to act as he did, by his solicitors, and therefore could not be considered to be acting dishonestly, is not formally in evidence and has not been tested. It is, at this stage, an assertion by you. Although the Tribunal notes this assertion, it can at this stage only rely on the evidence before it. It therefore follows that the Tribunal cannot go on to consider the doctor's state of mind and determine whether to dismiss paragraph 7 as it relates to paragraph 4. The Tribunal accepts that the burden of proof rests with the GMC. Nevertheless, the Tribunal concluded that a rule 17(2)(g) application should not rely on an expectation that the GMC cannot disprove detailed aspects of the doctor's case, prior to its proper introduction into the proceedings.

## Record of Determinations – Medical Practitioners Tribunal

17. The Tribunal wishes to stress that, in making this decision, it is not making findings of fact. It has only considered whether, on the evidence so far adduced by the GMC, a finding *could* be made and not whether it *will* be made.

### Determination on Application for Recusal – 25/07/2016

Mr Lock:

1. Following receipt of the Rule 17(2)(g) application determination you, on behalf of Dr Ghaharian, made an application for the Tribunal to recuse itself.

#### Submissions

2. Both Counsel made detailed submissions and the Tribunal does not propose to rehearse them in detail as they are a matter of record.

3. You submitted that the Tribunal must recuse itself from this hearing. You drew the Tribunal's attention to sections of paragraph 15 of its determination on your application under Rule 17(2)(g). For the avoidance of doubt, the whole paragraph reads:

*'The Tribunal considered each of the sub-paragraphs separately. It accepted that there may be a legitimate case to be put forward as to why such actions were not dishonest. However, you have referred to matters that have not yet been tested in evidence. At this stage, having only heard evidence from the GMC's witnesses, the Tribunal is satisfied that it has heard evidence which could support the allegations made at paragraphs 4(a), (b) and (c). The evidence that supports possible findings of facts that could lead to a determination of dishonesty arises in the witness evidence of Ms A, specifically: her witness statement dated 28 March 2015 at paragraphs 72 to 77; exhibit JH/3 and her oral evidence. This evidence relates to all three limbs, i.e. (a) to (c), of paragraph 4. Furthermore, were those paragraphs to be found proved (at the appropriate stage in proceedings), the Tribunal was satisfied that those actions are capable of being found to be dishonest, applying the relevant test as advised by the Legal Assessor.'*

4. You submitted that by relying on paragraphs 72 -77, and specifically paragraphs 72 and 77, of Ms A's witness statement dated 28 March 2015 in making its decision, the Tribunal had made a serious error. You submitted that the whole case depends upon the Tribunal being able to identify what evidence is relevant and what is not, and that there must be an appearance to the unbiased observer that the Tribunal does so.

5. You submitted that the test to be applied in this application is whether an unbiased and reasonable observer would think that this is a Tribunal that will give a fair hearing to Dr Ghaharian. An essential feature of this is that the Tribunal can demonstrate the ability to discard the irrelevant evidence before it.

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

6. Your submission was that this Tribunal has made an error of law by taking into account evidence from Ms A's witness statement about what happened at lunch time and after, on 10 December 2012. You stated that one of the allegations against Dr Ghaharian relate to that period of time. You submitted that the wording of paragraph 15 blatantly demonstrates that the Tribunal has taken account of irrelevant material on a central issue. You said this gives rise to an inference that Dr Ghaharian had a dishonest state of mind prior to the time that he says he found the mobile phone. Your submission made no reference to the oral or exhibit evidence which was also referred to in paragraph 15. You further submitted that it is not permissible for the Tribunal to consider whether Dr Ghaharian stole Ms A's mobile phone or not.

7. Mr Williams, on behalf of the GMC, invited the Tribunal to reject your application which he submitted was misguided in fact and law. Mr Williams did not agree with your submission that the Tribunal had made an error in its analysis of the evidence before it and, even if it had, that was not what recusal was about. Mr Williams submitted that this issue might be the basis for an appeal by Dr Ghaharian but that this was not the basis for an application for recusal.

8. Mr Williams did not agree with your submission that the Tribunal made an error by considering paragraphs 72 - 77 of Ms A's witness statement. Mr Williams pointed out that he specifically asked the Tribunal to take account of these paragraphs during his submissions on your Rule 17(2)(g) application and noted that neither you nor Mr Fernando raised any objection to this, following Mr Williams' written and oral submissions. Mr Williams submitted that it was not agreed between parties that the Tribunal should not take into account paragraphs 72 -77 of Ms A's witness statement. You never said that the Tribunal should not take into account paragraphs 72 – 77 of that statement. He stated that the judgement regarding this was for this Tribunal to make and said that if the decision was wrong then the defence had the right to appeal.

### **The Tribunal's approach**

9. The Tribunal considered the submissions made by you and Mr Williams and its previous determination when making its decision on your recusal application.

10. The Tribunal adopted the test set out in *Magill v Porter [2001] UKHL 67* which states, at paragraph 103:

*'The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.'*

### **The Tribunal's decision**

11. Early during the course of proceedings the Tribunal, at the request of the parties and therefore, by definition, with their knowledge and consent, read the bundle of

## Record of Determinations – Medical Practitioners Tribunal

witness statements and exhibits referred to therein. Although much of the material was redacted, no objection was made by you as to the Tribunal reading this material. Indeed, although you said at the time that you wished to reserve your position, you did indicate your confidence in this experienced and professional Tribunal being able to exercise its judgement, to assess material that was relevant to the allegation and to disregard that which was not.

12. The Tribunal considered your application and noted that during the course of your submissions you stated that '*Paragraph 15 of the determination makes a finding of dishonesty*' and you said later '*the Tribunal has concluded that it [Dr Ghaharian's] was a dishonest state of mind*'. The Tribunal considered that this demonstrates that you have misunderstood its Rule 17(2)(g) determination, as it has not made any findings of fact. The Tribunal specifically did not make the findings you suggested in your submission. The Tribunal notes that in its determination it did not state that it had accepted the evidence contained in Ms A's witness statement, her oral evidence or in exhibit JH/3; it had merely stated that this evidence '*supports possible findings of facts that could lead to a determination of dishonesty*', when it was appropriate for the Tribunal to consider this aspect of the case. In fact the Tribunal specifically refers to this in paragraphs 15 and 17 of its determination where it states:

*15 'It accepted that there may be a legitimate case to be put forward as to why such actions were not dishonest... The evidence that supports possible findings of facts that could lead to a determination of dishonesty arises in the witness evidence of Ms A, specifically: her witness statement dated 28 March 2015 at paragraphs 72 to 77; exhibit JH/3 and her oral evidence.'* (emphasis added).

*17 'The Tribunal wishes to stress that, in making this decision, it is not making findings of fact. It has only considered whether, on the evidence so far adduced by the GMC, a finding **could** be made and not whether it **will** be made.'*

13. The Tribunal has done no more at this stage than to apply the test in Rule 17(2)(g).

14. The Tribunal noted that during its discussion in relation to your Rule 17(2)(g) application it took into account both your and Mr Williams' submissions and that Mr Williams specifically asked it to read paragraphs 72 - 77 in full. During its discussions the Tribunal followed Mr Williams' suggestion, which was unopposed by you and Mr Fernando. It determined that those paragraphs could support a finding of fact in relation to paragraphs 4(a) - 4(c) of the allegation, and any alleged dishonesty therein arising. The Tribunal also considered Ms A's oral evidence, during which she retracted from parts of her witness statement and she did not state that her mobile phone was definitely stolen. The Tribunal also considered her exhibit JH/3. The Tribunal notes that the GMC do not allege that Dr Ghaharian stole Ms A's mobile phone. Irrespective of Ms A's possible inference against XXX, it is not open to this Tribunal to consider whether the mobile phone was stolen. In any event, such allegations of theft are not made in

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

paragraphs 4a - 4c, and therefore were not in the Tribunal's consideration and were not taken into account in arriving at its determination under Rule 17(2)(g).

15. The Tribunal accepted Mr Williams' submission that when the defence presents its case there will be an opportunity for the GMC to cross-examine Dr Ghaharian on his witness statement, and at that stage the Tribunal may be better able to establish a fuller timeline for the events that occurred on 10 December 2012. The Tribunal also noted that in paragraph 15 of its determination it acknowledged that Dr Ghaharian's evidence has not yet been tested.

16. The Tribunal concluded that in making its Rule 17(2)(g) determination it followed the correct procedure by considering the evidence before it and matters highlighted to it by you and Mr Williams. There was no mistake in considering the material put before it. No findings of fact were made. The Tribunal therefore determined that it is not required to recuse itself from this hearing.

### **Determination on Facts - 28/11/2016**

Dr Ghaharian:

#### **Application under Rule 41**

1. Prior to you giving evidence, Mr Lock, QC on your behalf, made an application for the Tribunal to use its power, under Rule 41 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, to exclude the public from parts of this hearing XXX.

2. Mr Williams did not oppose the application and the Tribunal acceded to Mr Lock's request.

3. This determination will be read in private XXX. However, a redacted version of the determination will be published in due course.

#### **Facts**

4. The Tribunal has given careful consideration to all the evidence adduced in this case, both oral and documentary. This included, but was not limited to, your oral evidence and witness statement, and the oral evidence and witness statements of the following witnesses called on behalf of the GMC:

- Ms A, former patient and former receptionist (Ms A)
- Ms B, former patient and former receptionist (Ms B)
- Ms D, former receptionist (Ms D)
- Ms E, Registered Nurse & Manager of the Out of Hours Service operating at the George Eliot Hospital (Ms E)



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

- Ms F, Community Matron operating out of the Medical Centre that housed your practice (Ms F)

5. The Tribunal also heard oral evidence and received witness statements from the following witnesses called on your behalf:

- Ms G, Registered Nurse & your Practice Nurse
- Ms H, your patient, Practice Secretary & part-time receptionist
- Mr I, your patient and friend who helps with IT related projects
- Ms J, your patient and receptionist
- Ms K, your patient and receptionist
- XXX
- Mr M, your patient and friend
- Ms N, your patient and friend
- Mr O, Solicitor
- Mr Q, Solicitor

6. The Tribunal has taken account of the submissions of Mr Williams, Counsel, on behalf of the GMC and those of Mr Lock, QC, on your behalf.

### **Background to the case**

7. You work as a single handed general practitioner operating from a practice in Wollaton, Nottingham. On 5 September 2012, Ms B, a receptionist at your practice made a call to the local Primary Care Trust (PCT) alleging that fictitious clinics had been created on the practice computer system for 4 and 7 September 2012. It was alleged that this was for the purpose of suggesting that patients with long-term conditions had been called to the practice for monitoring, when they had not.

8. As a result of Ms B's allegation, you were the subject of a PCT investigation (the Investigation) and disciplinary proceedings conducted by the PCT and subsequently NHS England (who became the governing body for GPs). On the basis of this investigation, matters were referred to the GMC.

9. You appealed the outcome of your NHS England disciplinary proceedings at the High Court on the basis of 'misfeasance in public office', resulting in NHS England issuing an apology for the fact that it had 'failed to carry out proper investigations...' and 'did not adhere fully to the relevant NHS policies'. NHS England also apologised for the fact that 'the conduct of NHS England officials in the investigations created an appearance of bias' and it acknowledged that there was no evidence held by them to show that you had committed acts of a fraudulent nature against the NHS.

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

### **Tribunal approach**

10. The Tribunal has borne in mind throughout that the burden of proof rests with the GMC and that the standard of proof is on the balance of probabilities. That means the Tribunal will be satisfied that an event occurred if it considers that the occurrence of the event was more likely than not.

11. The Tribunal does not accept the application of a shifting burden of proof because the Equality Act 2010 and Burden of Proof Directive do not apply to these proceedings under the Medical Act 1983, as amended.

12. In relation to the allegation of dishonesty the Legal Assessor advised that the Tribunal should consider the following:

- whether your conduct was dishonest by the ordinary standards of reasonable and honest people, and if so,
- whether you realised that what you were doing was dishonest by those standards.

### **Fictitious clinics**

13. It is not disputed that fictitious clinics were created on the practice computer system for 4 and 7 September 2012. However, the GMC do not allege that you were involved in the creation of these fictitious clinics. The Tribunal does not accept Mr Lock's submission that it is required to determine who, in fact, did create the clinics. However, in the context of the charges, the Tribunal did consider that it would be necessary to determine whether or not Ms B created the fictitious clinics. The Tribunal heard evidence that fictitious clinics may also have been created prior to 2012. The circumstances of these earlier fictitious clinics were not clearly established by the Investigation. The matters under consideration at this hearing, relate to your alleged conduct towards members of staff in the years prior to, and during, the Investigation and to your conduct towards a senior NHS Manager with whom you worked in the Out-of-Hours service, George Eliot Hospital, Ms E. It is your case that the fictitious clinics were created by one or more of your receptionists in an attempt to discredit you and have you replaced at the practice. You claim that their actions were motivated by racism XXX.

14. The Tribunal has not been able to clearly determine whether the earlier fictitious clinics were created or, indeed, if they were, who created them. The Tribunal had regard to the Report of Dr R of February 2013. In section 8.1.22 Dr R identified seven potentially fictitious clinics in 2011 as follows:

- created on 15 August 2011 for a clinic that afternoon
- created on 5 April 2011 for a clinic that afternoon
- created on 5 April 2011 for a clinic on the afternoon of 8 April 2011

## Record of Determinations – Medical Practitioners Tribunal

- created on 17 March 2011 for a clinic on the afternoon of 18 March 2011
- created on 17 March 2011 for a clinic on the afternoon of 21 March 2011
- created on 28 February 2011 for a clinic on the afternoon of 4 March 2011
- created on 28 February 2011 for a clinic that afternoon.

15. Having analysed the records and computer audit trails for all seven of the clinics listed Dr R concluded 'there is evidence indicating sustained use of fictitious health check clinics'. Further, he went on to conclude 'a single individual was responsible for the clinic entries. The individual involved would need to understand report generation, have the ability to create clinic templates, be familiar with the requirements for health checks, and have knowledge of QOF standards and blood pressure measurements. This suggests the individual involved was at a higher level than a receptionist and also, given the inclusion of fictitious urine test results in some records, had some clinical experience'. The Tribunal accepts Dr R's view that it is unlikely that anybody in a receptionist's role could be responsible for creating the clinics or inputting the records.

16. Dr S, in his report dated 11 May 2015, examined the clinic run on the afternoon of 18 April 2011 by looking at entries in respect of six patients. Dr S was not able to 'state with certainty whether or not the entries supplied to [him] are false or untruthful'. However, he opined that these entries appeared genuine.

17. With regard to the clinics of 4 and 7 September 2012, the Report of Mr I and the Report of Dr R both confirm that these were fictitious, which is accepted by both parties in this case. The template creation sequence was identified by Dr R at sections 8.1.6 of his Report. Mr I's Report at section 5.1.3 identifies staff present at the surgery during:

- the creation of the templates
- the first clinic, and
- the second clinic.

18. He finds that 'apart from Ms G and XXX (although he was not present for the whole period of events, there is no one person present at all three events. (The booking of appointment and two consultation). [sic]' Mr I logged your activity and that of XXX, Ms A, Ms T, Ms D, Ms H and Ms B. There was an error in Mr I's analysis of XXX movements on 4 September 2012. He deduced that XXX was away from the practice until 16:00 to 16:30. However, one of Mr I's appendices and Dr R's report show that Ms G identified that XXX was in the practice between 15:00 and 15:30.

19. XXX may have misled the previous inquiry because Dr R's Report at section 8.1.19 states 'in his statement for the practice report XXX says "I returned to the surgery at about 16:30". He confirmed this at interview'.

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

20. Further, Dr R in his Report at section 8.1.16 states: 'The practice internal review comments, referring to the morning of the 4 September 2012, that XXX states that he left a query running on his machine on the Tuesday so anyone would be able to access the EMIS system using his credentials. XXX confirmed this at interview, however a review of the audit trail for XXX entries for that morning does not identify any report query being generated.'

21. Given the information above, the Tribunal is satisfied that Ms B did not, as a matter of fact, create any fictitious clinics. There are some significant contradictions in relation to the evidence and specific allegations have not been put to relevant witnesses, other than Ms B. Therefore, the Tribunal makes no findings of fact as to who did create any fictitious clinic.

### **Assessment of GMC witness evidence**

22. The Tribunal found Ms A broadly, to be credible witness and it was satisfied that she was giving an honest account of events as she recalled them. Ms A was mistaken in some aspects of her evidence, such as the evidence she gave in relation to her name appearing on the screen when her mobile phone was turned on. It might have been the case that this was another mobile phone owned by her in the past and the Tribunal did not consider that this undermined her evidence. The Tribunal accepted that she genuinely believed this to be true. Her confusion of the meaning of the word contemporaneous did not detract significantly from the credibility of her evidence. Notwithstanding the fact that Ms A had a 'colourful past' and the fact that her son had been in trouble with the law, the Tribunal considered that Ms A was a hardworking individual who gave a fundamentally truthful account. During cross-examination, Ms A accepted that she may have been mistaken in her belief that there had been fictitious clinics prior to September 2012. However, the Tribunal was satisfied that at the time of the Investigation she genuinely believed that fictitious clinics had been created. The Tribunal noted that Ms A's evidence has been consistent throughout the Investigation, in her written statements and during cross-examination at this hearing.

23. The Tribunal considered that Ms B was a credible witness although it is clear that she remains angry with you and that this affected her demeanour in the way that she gave her evidence. The Tribunal was satisfied that Ms B also genuinely believed that fictitious clinics had been created on the practice computer system and that she reported this to the PCT in good faith.

24. In closing submissions Mr Lock questioned Ms B's credibility on the basis that she made her referral to the PCT on 5 September 2012, citing the creation of two fictitious clinics for 4 and 7 September 2012, despite the purported fact that on 5 September 2012 only the 4 September 2012 clinic existed on the computer records. Mr Lock asserted that this was evidence that Ms B knew in advance that a fictitious

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

clinic would be created for 7 September 2012 and he referred the Tribunal to Dr R's report in support of his assertion. However, Dr R's report actually states:

'8.1.6 The two clinic templates were created on the morning of 4 September 2012 at 9.04 and 9.14 respectively.'

25. Mr I also confirmed this in Appendix 3 of his report. It appears that Mr Lock may have misinterpreted a later entry in the report that refers to additional information being added to the 7 September 2012 clinic, which was already in existence. Therefore the clinic on 7 September 2012 had already been created on the computer system before 5 September 2012 which was when Ms B reported these clinics to the PCT.

26. The Tribunal found Ms D to be a credible and reliable witness. In her evidence Ms D stated that you treated her differently from the other receptionists, in that you always acted nicely towards her and, indeed, were courteous. This evidence was supported by that of the other receptionists and also the witnesses called on your behalf (although Mr M took some pressing on this point). Several witnesses also confirmed that they had never heard Ms D use any foul or abusive language in the workplace.

27. The Tribunal found Ms E to be an independent, credible and reliable witness. The Tribunal noted that her evidence was clear and has remained consistent and is supported by contemporaneous documents.

28. The Tribunal found Ms F to be a credible and reliable witness. It noted that she was a senior nurse who had worked with you for some time without incident prior to these events. Ms F stated she had safeguarding concerns about you in respect of an elderly, vulnerable patient in the Investigation and had reported these concerns to her manager.

### **General observations**

29. The Tribunal heard evidence that in the years up to 2012 staff at the practice socialised as a team and were comfortable with each other. Your own evidence was that Ms A had bought you a keyring which said 'Top Doctor'. You also stated that Ms B would bring you eggs that her chickens had laid and flowers from her garden. This positive working environment appeared to change at an unidentified point, just prior to, or at the time of, the occurrence of the matters which led to the Investigation.

30. The Tribunal noted that, despite Mr Lock's assertion that the receptionists were motivated by racism XXX in an attempt to destroy you, the only independent evidence of the receptionists using racist XXX comments are contained in text messages taken from Ms A's phone. Given Mr Lock's contention that relationships had become so toxic that the reception staff would go to such extreme lengths to

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

attack you, there were few direct references of a racist XXX. There were four comments in a total of 193 text messages that, using a wide interpretation, could be construed as racist XXX. This at a time when the evidence shows that the situation was escalating, tensions were running high and some staff felt they were being singled out and treated badly.

31. The Tribunal accepted that some racist XXX language was used in the texts. Such language is wholly unacceptable regardless of the circumstances but it does not nullify the credibility of witnesses who used this language.

### **Assessment of your evidence**

32. The Tribunal did not find you to be a credible or satisfactory witness. During cross-examination, you were at times evasive in your response to questions and at other times your evidence was contradicted or inconsistent. For instance, you claimed that you always acted in a courteous and professional manner towards patients and staff. However, the Tribunal has been provided with a copy of a letter sent to you by another GP who had been in the waiting room of the practice while waiting to be seen as a patient, by another doctor. She overheard you speaking to your receptionist. She expressed her concern at the 'harsh' manner in which you had spoken to your staff and highlighted the importance of giving feedback 'privately' to 'preserve the dignity and respect of your staff'. In addition Ms U, previous Practice Manager, in her statement dated 19 May 2015, reports that when under pressure, you could lose your temper and could swear at times when you were stressed. The Tribunal regarded these as important, impartial and authoritative evidence.

33. The Tribunal also noted that on a number of occasions you asserted that you could not, or would not, have made the comments alleged, due to the fact that patients or members of the public would be able to overhear. However, at the same time you allege that you were subjected to a 'significant barrage of insults, derogatory comments and threatening behaviour' from Ms A, particularly throughout the period commencing December 2012. You claimed that Ms A would make derogatory comments about you XXX on a daily basis and that it got to the stage where you would stay in your consulting room for most of the day as you were 'frightened' to visit the reception of your own surgery for fear of the insults and abuse to which you would be subjected. You claimed that Ms A also threatened to get her son to put a gun in your mouth, burn your house down and murder your father. The Tribunal does not find it credible that Ms A would act in this way, especially in a setting where patients or a member of the public could overhear.

### **Assessment of witnesses called on your behalf**

34. The Tribunal found Ms G to be an unsatisfactory and unreliable witness. It noted that Ms G was a key witness in a number of the alleged incidents and was able to produce 'contemporaneous' notes to support your version of events. The Tribunal

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

considered that Ms G's explanation for her so-called contemporaneous notes was implausible and her presence on these occasions appeared to be too convenient. In her verbal evidence Ms G said that she routinely made contemporaneous notes of any meetings or events at work. However when asked by Mr Williams to produce such evidence it became apparent that many of the documents were produced some time after the events. Most of the notes that she produced were titled 'statements' and in one case 'Pointers' and did not have an air of authenticity.

35. The Tribunal found Ms H to be a neutral witness who told the truth as she saw it. The Tribunal found nothing inconsistent in her evidence. The Tribunal noted that Ms H is currently employed by you.

36. The Tribunal found Mr I to be an honest witness. However, it considered that he is not completely independent and his evidence was given through the perspective of assisting his friend who is also his doctor. The Tribunal noted that Mr I carried out an investigation into the fictitious clinics of 4 and 7 September 2012 on your behalf and some of his conclusions were inconsistent with those of Dr R who produced a report for the PCT.

37. The Tribunal placed little weight on the evidence of Mr V. The Tribunal noted that Mr Lock stated that, having been a police officer for a number of years, Mr V had experience in the writing of statements and the giving of evidence. However, although it was clear that he was trying to be helpful to the Tribunal, at times he appeared inconsistent and utterly confused.

38. The Tribunal did not find Mr M to be a credible or reliable witness. On his own evidence he is a close personal friend of yours and would 'do anything he could to help [you]'. During the course of proceedings, and after the evidence of GMC witnesses, Mr M produced supplementary statements to support your account of events and cast doubt on the evidence of the GMC witnesses. However, this had the opposite effect, in that it undermined his own credibility. The Tribunal would have placed more reliance on his evidence if it had not been given piecemeal and in an apparent attempt to refute stronger or creditable evidence.

39. The Tribunal found Ms K and Ms J to be basically truthful and straightforward witnesses. However, it placed little weight on their evidence as they were not employed at the practice at the material times. Furthermore, Ms K appeared to be incorrect in her recollection of events around January 2013 regarding Ms A which could not have occurred at that time. The Tribunal was also conscious of the fact that both Ms K and Ms J are your patients as well as employees. Their attitude towards you seemed to be based on an unquestioning loyalty, which militated against an independent, detached and more credible approach.

## Record of Determinations – Medical Practitioners Tribunal

### Tribunal Findings

40. The Tribunal has considered each paragraph and sub-paragraph of the allegation separately and has made the following findings.

1. On a day or days unknown between 2006 and December 2012, you;
  - a. when speaking to a receptionist, Ms A, referred to your patients as;
    - i. fuckers, or words to that effect **has been found proved;**
    - ii. pieces of shit, or words to that effect **has been found proved;**

Ms A was a receptionist at another practice where you worked as a locum doctor when she first met you. In her witness statement to the GMC, dated 22 April 2015, Ms A stated that XXX she found you to be 'amusing'. When you offered Ms A a job, she recalled feeling that the job offer was 'too good to be true'. The Tribunal accepted her evidence that her job at the practice meant a lot to her due to the pay, the hours she worked and the fact that it was near her home. This was despite her evidence that you were 'moody and could be off with everyone'.

In her evidence Ms A reported that about a year after she started working at the Practice, you started making comments in passing about patients. She stated that you would often call her from your office at the beginning of morning and afternoon surgeries and having discussed work issues you would ask her to 'send the fuckers down', meaning that she should send the patients to your waiting area. She also reported that you referred to patients as 'pieces of shit', 'especially if they were having regular consultations or didn't bring you presents'. She believed that you were being 'sarcastic'.

The Tribunal had regard to the witness statement of Ms U, former Practice Manager. Ms U left her position on 30 June 2005. She recalled that throughout her time working for you the working environment in the Practice was 'very good and friendly'. Ms U stated that she could imagine Ms A being more risqué with you than other members of



## Record of Determinations – Medical Practitioners Tribunal

staff and you responding to this in similar fashion. The Tribunal was satisfied that your relationship with Ms A was such that you felt that you could be a bit more relaxed and open in your interactions with her.

- b. when speaking to Ms A, referred to your head receptionist as “the fat blob”, or words to that effect **has been found proved;**

The Tribunal preferred Ms A’s evidence to yours on this matter and, in respect of all other conflicts of evidence.

- c. when speaking to Ms A, referred to one of your receptionists as a “Soosk” (meaning cockroach in Farsi) **has been found proved;**

The Tribunal accepted Ms A’s evidence. The phrase ‘Soosk’ is pronounced similarly to XXX so it is broadly credible that this phrase could be directed primarily at one individual. The Tribunal noted that none of the receptionists, employed at the time, spoke Farsi. The Tribunal had regard to Ms D’s oral evidence in which she stated that both Ms A and Ms T had reported to her that you had referred to Ms T as ‘Soosk’, although Ms D stated that she had never heard you use this word herself.

- d. in respect of Ms A;  
i. called her Cockerelcunt **has been found proved;**

In her witness statement, Ms A stated that, about two to three years after she started at the practice, you started to use this nickname for her after she had her hair coloured with red and with blonde showing through. The Tribunal noted that this is an unusual phrase and, to its knowledge, not one that is in common usage. The Tribunal was of the opinion that Ms A’s account was credible, particularly as her colleagues reported seeing her upset a number of times and in tears on two occasions. It also noted the secondary evidence of Ms B, who recorded in her GMC witness statement, dated 13 December 2014, that Ms A told her that you had a nickname for her but

## Record of Determinations – Medical Practitioners Tribunal

did not tell her, Ms B, what it was and that she seemed very uncomfortable when asked.

You denied using this nickname on the basis that your surgery was 'an open amphitheatre' with patients and members of the public within earshot. The Tribunal did not accept your explanation as it considered it inherently unlikely that you would use derogatory nicknames for staff members within earshot of others.

- ii. called her thick **has been found proved;**

The Tribunal accepted Ms A's evidence. It also had regard to Ms D's oral evidence in which she stated that she was present at a staff meeting in the surgery when you said that Ms A was thick.

- iii. threw prescriptions on the floor and made Ms A pick them up **has been found proved;**

The Tribunal preferred the evidence of Ms A.

- e. described to Ms A that when on holiday you put your penis in a hole in the wall in a nightclub, or words to that effect **has been found proved;**

The Tribunal had regard to Ms A's witness statement to the GMC, dated 28 March 2015, in which she states that you told this story to her a few times whilst you were in the reception area. She stated that this took place after she had been working at the practice for about three or four years and that Ms T (another receptionist) was present.

The Tribunal considered that there is a consistency to Ms A's evidence.

- f. asked Ms A, in a non-clinical capacity, about the frequency and detail of her sexual activities, or words to that effect **has been found proved;**

The Tribunal had regard to Ms A's witness statement to the GMC, dated 28 March 2015, in which she states that you would ask this question when she was in your office

## Record of Determinations – Medical Practitioners Tribunal

at lunchtimes, or when she went to collect a prescription from you. She stated that you would ask this a few times a week but then not ask again for a few months. She further stated that it began after the former Practice Manager had left and continued until about five or six months before she, Ms A, left the practice.

- g. said to Ms B that you “will have 900 pairs of eyes watching you” **has been found proved**;

The Tribunal had regard to Ms B’s unsigned and undated witness statement to the PCT, in which she stated that since the ‘incident’ you were saying things such as ‘900 pairs of eyes are watching you’ and ‘I am listening outside of the doors’. Ms B stated that this was said in a manner to intimidate her.

In your oral evidence, you denied that you had told Ms B that you would have 900 pairs of eyes watching her. However, you stated that you explained to her that Wollaton was a small village, in which you had 2,800 patients, and that whatever she or anyone else said would find its way back to you.

The Tribunal noted that your account of the conversation with Ms B is essentially the same as Ms B’s. Both suggest that you were letting Ms B know that you had people who would report back to, you should she speak badly of you. The Tribunal noted that ‘...900 pairs of eyes...’ is an unusual expression and it considered that it unlikely that Ms B had made it up. Accordingly the Tribunal was satisfied that it was more likely than not that you used this expression.

- h. said to Ms B about a doctor at another practice situated in the same building as your practice, that you “hated him and hope he fucking died”, or words to that effect **has been found proved**.

The Tribunal had regard to Ms B’s unsigned and undated witness statement to the PCT, in which she makes this allegation.

You deny that you said this, stating that you would be unlikely to talk about a professional colleague in this way.

## Record of Determinations – Medical Practitioners Tribunal

However, the Tribunal noted that Ms B's allegation is corroborated in a private text message exchange between her and Ms A on 11 November 2012. The authors of these texts would not have foreseen that the text would enter the public domain. The Tribunal considered that Ms B was giving an accurate account of a statement made by you.

2. On 2 October 2012 you;
  - a. asked a receptionist, Ms D, who the whistleblower was at the Practice who had prompted an investigation by the PCT (the 'Investigation'), or words to that effect **has been found proved**;
  - b. suspended Ms D after falsely claiming she had subjected you to racist abuse **has been found proved**.

You denied that you asked Ms D who the whistleblower was. In your oral evidence, you stated that you rang Ms D to ask her to bring any letters and prescriptions that needed to be signed to your office, in the normal way. You stated that you 'simply asked' her if she had been in touch with Ms B. You claimed that, at this point Ms D went 'very quiet', before she suddenly exploded in what you described as a 'volcano of hatred and enmity' before 'barging' out of the room and 'growling' at Ms G who happened to be waiting outside.

The Tribunal did not find your evidence credible. It considered it inherently unlikely that Ms D, who had worked with you for over six years and was considered by all to be reserved and polite, would have subjected you to a racist outburst such as the one that you described. The Tribunal had regard to your oral evidence in which you confirmed that you had no problem with Ms D's work or attitude up until the point that Ms B was suspended. You stated that she was polite, did her job and was 'adequate'.

The Tribunal noted that Ms D made no racist XXX comments in the text exchanges with other members of staff and there is no other evidence to suggest that she had ever made such comments before. The Tribunal accepted Ms D's evidence that she believed that she was being suspended for talking to Ms B and it noted that her oral evidence is entirely consistent with her statement to the PCT dated 22 October 2012, shortly after her suspension.

## Record of Determinations – Medical Practitioners Tribunal

Although Ms G claimed to have overheard the outburst, the Tribunal did not find Ms G to be a credible or reliable witness. As previously stated, the Tribunal considered that the purported 'contemporaneous' notes did not appear to be so. It noted that Ms G's account of the conversation that she claimed to have overheard was overly complimentary to you who she asserted remained 'calm and professional at all times', even in the face of Ms D's purported aggression and extreme racism. The Tribunal considered this unlikely. The Tribunal noted that you reported this incident to the police. However, there is no evidence to suggest that any action was taken by the police against Ms D, despite the subsequently reported presence of a witness to the alleged racist abuse.

3. On days in October or November 2012 (including 31 October 2012 and 16 November 2012), you;
  - a. asked Ms A to provide a false statement to the Investigation that placed the blame for the fictitious clinics on 4 and 7 September 2012 on Ms B or a statement to that effect, when Ms B was not responsible for the creation of those fictitious clinics **has been found proved;**
  - b. made the request of Ms A in 3(a) knowing it to be a request for Ms A to provide a false statement or not believing any such statement would be factually true **has been found proved;**
  - c. offered Ms A inducements in the form of gifts and an increased rate of pay if she complied **has been found proved.**

The Tribunal had regard to Ms A's witness statement to the GMC, dated 28 March 2015, in which she stated that you called her into your office and 'cried saying that all [you] had was the practice'. Ms A stated that you asked her to say that Ms B had put the clinics on the computer and that you said that Ms B 'must have done it darling' as 'XXX would never do it'. She further stated that you asked her to tell Dr R from the PCT that Ms B had put the clinics on the practice system on the computer in XXX room one lunchtime and had then returned to reception to report to Ms D that she had 'got Dr Ghaharian now'. Ms A stated that she refused and at that point you offered her a 50p per hour pay rise, to be given in cash initially. Ms A claimed that she was also offered your late mother's Estee Lauder creams

## Record of Determinations – Medical Practitioners Tribunal

and at a later date was told that she could choose one of your late mother's fur coats.

The Tribunal had regard to Mr I's report, dated November 2012, which indicated that Ms B was not working on the morning of 4 September 2012 when the fictitious clinics were created. The Tribunal was satisfied that Ms B did not create the fictitious clinics as she was not present in the practice at the relevant times. The Tribunal was satisfied that when you asked Ms A to implicate Ms B, you were aware, in view of Ms A's immediate refusal to do so, that you were asking her to make a statement she did not believe to be true. It was also satisfied that when Ms A refused you offered her inducements in an effort to encourage her. The Tribunal noted that Ms A's assertion that she had been offered a pay rise is supported by a text sent to Ms A from Ms B on 4 December 2012, stating:

'Next time the liars promise u a pay rise tell'em to put it in writing ;)'.  
'

The Tribunal was satisfied that this text, which was never intended to be viewed by anyone other than Ms A, provided corroboration for Ms A's assertion that she had been offered a pay rise. The Tribunal preferred the evidence of Ms A to your evidence.

4. On or about 10 December 2012 you;
  - a. handled or were involved in the handling of a mobile telephone belonging to Ms A when you knew or ought to have been aware that it was being handled without Ms A's consent **has been found proved**;

The Tribunal accepted that you found Ms A's phone and accessed it on your return home to ascertain who the owner was. The Tribunal was satisfied that once you turned the phone on, you quickly became aware that it was Ms A's phone and you would have known that Ms A had not consented to you handling it further.

- b. did not arrange for the return of the mobile telephone to Ms A when you knew or ought to have been aware that Ms A had reported the loss to the Practice **has been found proved**;

The Tribunal heard that after leaving work for the day, Ms A subsequently returned to the practice and reported the loss of

## Record of Determinations – Medical Practitioners Tribunal

the phone XXX. The Tribunal did not find it credible that XXX had not mentioned to you at any point that day or evening that Ms A had reported the loss of her phone, particularly when you had been discussing the texts which were on the telephone that you said you had found.

- c. were involved in text messages on the mobile telephone being accessed and recorded without the consent of Ms A **has been found proved.**

The Tribunal noted that there was a contradiction between your evidence and that of Mr O, the third solicitor you spoke to after discovering the content of the text messages on Ms A's phone. You stated that Mr O had advised you that you should 'hold on to the mobile phone' and 'guard it with your life' whereas Mr O, in his oral evidence, could not recall if he had given advice on this matter. He merely stated what would have been his normal practice in similar circumstances. In his written statement, Mr O stated that you had referred to the phone 'in passing' during a meeting you had on 12 December 2016. In any event, it is clear that you retained the phone and were involved in the accessing and recording of text messages without Ms A's consent.

5. On 30 December 2013, you asked a nurse, Ms E, to provide a false statement to the Investigation that Ms E had overheard the investigators planning a conspiracy against you, or a statement to that effect **has been found proved.**

Ms E was known to you as she managed an Urgent Care Centre at which you worked on a sessional basis.

In your witness statement, dated 26 April 2016, you stated that on 17 December 2013, you were in your consulting room with Ms G when you received a telephone call, from Ms E, from a withheld number. You advised Ms G that she could remain in the room and you answered the call on loud speaker. You stated that Ms E started the call by saying that she did not want to distress you but you were in 'great danger' as people were out to get you. You claimed that Ms E advised you that those against you wanted to drag matters out so that you would be financially broken and they would offer your surgery to the next door practice. Ms E is also purported to have stated that if you ever revealed her as your informant then she would deny that she had told you these things and would claim that you had lied.

## Record of Determinations – Medical Practitioners Tribunal

You referred the matter to your solicitors, stating that you had a source who was a 'high up doctor'. Your solicitors produced a draft letter to NHS England referring to the information that your source was alleged to have provided. You were asked to check with your source (Ms E) that the paragraphs in the letter that referred to her were factually accurate. You stated that you contacted your solicitor on the 27 December 2013 to ask them to remove the reference to Ms E as you were concerned that she would not come forward and you did not want to jeopardise anything.

You stated that you contacted Ms E again on 29 December 2013 and that she again discussed the way NHS employees had behaved towards you. You say that you informed her that you wanted her to approve the draft wording of the letter that your legal representatives had produced. You agreed that you would come to the Urgent Care Centre the following day. You claimed that you had arranged to meet as Ms E was not comfortable discussing anything over the telephone. You travelled with Mr M who remained outside the room while you met Ms E. You stated that Ms E 'was happy to read through the draft letter but her behaviour suddenly changed' as she got to the part of the draft which referred to the information she had given you. Ms E then appeared 'stressed, irritated and tense' and asked that you take out everything in the letter that related to her as she was fearful for her livelihood. You stated that you advised her that you would arrange for this to be done and you say you parted on good terms.

Ms E denies that she called you on 17 December 2013. An audit of her phone records show that no call was made to you from her personal or work mobile, or from the Urgent Care Centre. She stated that on 29 December 2013 she received some instant messages from you asking if you could meet and you did so on 30 December 2013. Ms E read the letter that you had brought with you, stopping at a point indicated by you. She stated that you then informed her that if you had a witness to say that they had overheard a conversation between staff at the PCT then that would help your case. Ms E advised you that she could not be your witness as she was not aware of any conspiracy and she would not lie, as doing so would mean that she may have to answer to her regulator, risk losing her job and thus would be unable to support her family.



## Record of Determinations – Medical Practitioners Tribunal

The Tribunal had regard to a statement that Ms E wrote on 17 January 2014, setting out her interactions with you on 29 and 30 December 2013, which disputes your account. The Tribunal noted that she reported the matter to her manager at the earliest opportunity.

The Tribunal did not find your evidence credible. It noted that phone records confirmed that no phone calls were made to you from Ms E's personal or work mobile, or from the Urgent Care Centre on 17 December 2013. Although Ms G claims to have been in the room when the call was received, the Tribunal did not find her evidence reliable for reasons which it has previously stated. The Tribunal noted that you originally referred to your source as a 'high up doctor'. It considered it likely that you had quoted a doctor as your source in the belief that this would add more credibility to your allegations against the PCT. The Tribunal also considered it likely that, when you were asked to reveal your source, you approached Ms E to ask her to fulfil that function as she had been supportive of you in the past. When she refused you were placed in a difficult position and maintained the fiction that Ms E was a reluctant source. In your witness statement, you explained that you used the phrase 'doctor', rather than a 'senior nurse', as this is how you refer to someone generally in authority. The Tribunal did not find this credible.

The Tribunal noted that during the course of these proceedings, Mr M produced a supplementary witness statement, dated 29 July 2016, in which he recalled that you had rung Ms E on the way to the meeting of 30 December 2013, as you were running late. Mr M stated that the tone of the conversation, which was about the draft letter, was friendly and that the production of the letter should not have come 'as a bolt out of the blue'. Mr M reported that after the meeting you and Ms E were behaving amicably toward each other. He further stated that you informed him that the meeting had gone well, that Ms E wished to remain anonymous so could not be referenced in the letter but 'essentially the content of the letter was correct'.

The Tribunal was sceptical of Mr M's supplementary evidence in relation to this telephone call for the reasons it has previously stated. Furthermore, neither he, nor you, in your previous statements made any reference to this telephone call. Although Mr M claimed that you had called to say you were running late, Ms E's evidence was that you were in fact early and arrived

## Record of Determinations – Medical Practitioners Tribunal

when she was in a meeting and you had to wait for her. She further stated that she could not have taken a phone call from you as her meeting had lasted for an hour and she would not have interrupted it to take a phone call. The Tribunal noted that following your visit on 30 December 2013, Ms E spoke to a legal advisor at the George Eliot Hospital and was advised to report the episode as an incident and to raise it at the Governance meeting, which she did. The Tribunal preferred Ms E's evidence.

6. On 18 June 2013 during a meeting with a Community Matron, Ms F, you, having arranged to be accompanied by a member of your staff, asked Ms F how she would feel if you reported her, which Ms F perceived to be a veiled threat as to what you may do in the future **has been found proved**.

The Tribunal noted that Ms F's account is consistent with yours in that you accept that you asked Ms F how she would feel if you reported her. It is clear from Ms F's evidence that she perceived this to be a veiled threat that was made in response to her reporting her concerns about you to her manager.

7. Your conduct as set out at paragraphs 2b, 3, 4 and 5 was dishonest **has been found proved in relation to 2b, 3, 4b, 4c and 5 and found not proved in relation to 4a**.

In relation to sub-paragraph 2(b), the Tribunal was satisfied that your conduct in suspending Ms D after falsely claiming that she had subjected you to racist abuse would be regarded as dishonest according to the ordinary standards of reasonable and honest people. The Tribunal was also satisfied that you realised that your conduct was dishonest by those standards.

In relation to paragraph 3 of the allegation, the Tribunal was satisfied that your conduct in asking Ms A to provide a false statement, and offering her inducements to do so, would be regarded as dishonest according to the ordinary standards of reasonable and honest people. The Tribunal was also satisfied that you realised that your conduct was dishonest by those standards.

In relation to sub-paragraph 4(a), the Tribunal was not satisfied that your 'handling of Ms A's phone in the circumstances in which it came into your possession would be regarded as dishonest according to the ordinary standards of reasonable and honest people, as it follows that anyone who finds a phone handles it without the consent of the owner.

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

In relation to sub-paragraph 4(b), the Tribunal has already stated that it did not find it credible that you were not aware that Ms A had reported the loss of her phone XXX, especially given the fact that XXX to discover that you had found the phone. The Tribunal considered that you decided to retain the phone as it could be of benefit to you. The Tribunal was satisfied that such conduct would be regarded as dishonest according to the ordinary standards of reasonable and honest people. The Tribunal was also satisfied that you realised that your conduct at that time was dishonest by those standards, notwithstanding any legal advice you were subsequently given.

In relation to sub-paragraph 4(c), the Tribunal accepted that your conduct, in being involved in the accessing and recording of text messages from Ms A's phone without her consent, would be regarded as dishonest according to the ordinary standards of reasonable and honest people. The Tribunal was also satisfied that you realised that your conduct was dishonest by those standards.

In relation to paragraph 5, the Tribunal was satisfied that your conduct in asking Ms E to provide a false statement to the Investigation, would be regarded as dishonest according to the standards of reasonable and honest people. The Tribunal was also satisfied that you realised that your conduct was dishonest by those standards.

### **Determination on Impairment - 21/03/2017**

Mr Williams:

1. This determination will be read in private XXX At the close of the hearing, a redacted version of the determination will be published XXX

#### **Proceeding in absence**

2. Dr Ghaharian is neither present nor legally represented at this stage of the hearing.

3. You made an application, on behalf of the General Medical Council (GMC), for the Tribunal to proceed with this hearing in Dr Ghaharian's absence under Rule 31 of the GMC (Fitness to Practise) Rules 2004. Your full submission is a matter of record and the Tribunal has not rehearsed it in detail in this determination.

XXX

12. You submitted that Dr Ghaharian has made a conscious decision not to attend this hearing and that it would be proper for the Tribunal to proceed with the case in

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

his absence. XXX You further stated that Dr Ghaharian is aware that it was open to him to request an adjournment of this hearing, yet he has not done so.

13. Your submission was that there is nothing positive to be gained by adjourning the hearing as Dr Ghaharian has been clear that he will not engage further. You stated that, on the face of it, Dr Ghaharian would like the matter to be concluded XXX

### **Tribunal decision**

14. In deciding whether to proceed with this hearing in Dr Ghaharian's absence, the Tribunal considered all the information before it, XXX It has also considered your submissions.

15. The Tribunal was conscious that the discretion to proceed with a hearing in the absence of a doctor, and/or his legal representative, should be exercised with the utmost care and caution.

16. Dr Ghaharian has not requested an adjournment of this hearing and there is no indication that he would attend the hearing on a future date if the case were adjourned. XXX

18. Having considered all the evidence, the Tribunal was satisfied that Dr Ghaharian had deliberately and voluntarily absented himself from this hearing and waived his right to attend. It was also satisfied that he had waived his right to legal representation.

19. The Tribunal noted that it is now over eight months since this case first commenced. The findings of fact that the Tribunal has made relate to serious matters in terms of Dr Ghaharian's dishonesty and his behaviour towards colleagues. XXX

20. Having considered all the circumstances, the Tribunal determined that it was in the public interest, XXX for the hearing to proceed.

### **Impairment**

21. Having previously announced its determination on facts, the Tribunal has now considered whether Dr Ghaharian's fitness to practise is impaired by reason of misconduct.

22. The Tribunal has taken into account all the evidence before it. It has also considered your submissions. Your full submissions are a matter of record and the Tribunal has not rehearsed them in detail in this determination.

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

23. You submitted that Dr Ghaharian’s fitness to practise is impaired by reason of misconduct. You submitted that his unsavoury, bullying, harassing and deeply unpleasant conduct can readily be described as deplorable. You stated that this conduct occurred within the wider context of Dr Ghaharian’s practice as a doctor and was sustained over a six year period.

24. In respect of Dr Ghaharian’s proven dishonesty, you stated that probity goes to the very heart of the medical profession. You submitted that his calculated and persistent dishonesty, which was done for his own purposes and benefit, was deeply disgraceful.

25. You submitted that Dr Ghaharian has shown a persistent lack of insight and has provided no evidence of rehabilitation or remediation. You stated that there is therefore a real risk of repetition and that public confidence would be undermined if a finding of impairment were not made.

### **Tribunal decision**

26. In deciding whether Dr Ghaharian’s fitness to practise is impaired, the Tribunal has exercised its own judgement. It has borne in mind the statutory overarching objective which is to protect the public. This includes: to protect and promote the health, safety and wellbeing of the public; to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for members of the profession.

27. The Tribunal first considered whether the proven facts in this case amount to misconduct. The Tribunal’s findings in relation to Dr Ghaharian’s alleged misconduct can be summarised as follows:

- Referring to patients in a disrespectful manner
- Speaking and acting in an insulting and disrespectful manner towards receptionists at his practice
- Referring to another General Practitioner in an unprofessional and inappropriate manner
- Inappropriately discussing matters of a sexual nature with a receptionist
- Acting in a manner which intimidated colleagues
- Repeated dishonesty - making dishonest accusations against staff, asking colleagues to make false statements in an investigation and dishonestly retaining a mobile phone belonging to a member of staff in order to access and make a record of text messages on the phone.

28. The Tribunal had regard to the 2006 and 2013 editions of the GMC’s guidance, Good Medical Practice (GMP), which were in effect at the time of these events. From the 2006 version, the Tribunal considered that the following paragraphs were particularly relevant and were echoed in the 2013 version:

## Record of Determinations – Medical Practitioners Tribunal

`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.

46 You must treat your colleagues fairly and with respect. You must not bully or harass them, or unfairly discriminate against them by allowing your personal views to affect adversely your professional relationship with them. You should challenge colleagues if their behaviour does not comply with this guidance.

56 Probity means being honest and trustworthy, and acting with integrity: this is at the heart of medical professionalism.

57 You must make sure that your conduct at all times justifies your patients' trust in you and the public's trust in the profession.'

29. It is clear that Dr Ghaharian's conduct has breached a number of the principles set out in GMP and did not meet the standards expected of a registered medical practitioner.

30. The facts found proved ranged in terms of gravity. The Tribunal was satisfied that its findings of dishonesty in relation to paragraphs 2(b), 3, 4(b), 4(c) and 5 amounted to serious misconduct. Dr Ghaharian's dishonest conduct fell below the standards to be expected, to such an extent that any fellow practitioner would consider it to be deplorable.

31. In relation to paragraphs 1(a), 1(d)(i), 1(d)(iii), 1(e), 1(f) and 1(h) the Tribunal determined that, individually they each amount to serious misconduct as they represented a breach of the fundamental tenets of GMP.

32. The Tribunal determined that paragraphs 1(b), 1(c), 1(d)(ii), 1(g) and 6 of the allegation did not amount to serious misconduct in and of themselves. However, it concluded that collectively they demonstrated a pattern of bullying behaviour towards others which cumulatively amounted to serious misconduct.

33. In reaching this conclusion the Tribunal had regard to the observations of Lord Justice Beatson, in the case of *Schodlok v GMC* [2015] EWCA Civ 769, where he stated:

'...I recognise that a small number of allegations of misconduct that individually are held not to be serious misconduct should normally not be regarded collectively as serious misconduct. Where however there are a large

## Record of Determinations – Medical Practitioners Tribunal

number of findings of non-serious misconduct, particularly where they are of the same or similar misconduct, I consider the position is different. In such a case, it should in principle be open for a fitness to practise panel to find that cumulatively, they are to be regarded as serious misconduct capable of impairing a doctor's fitness to practise.'

34. The Tribunal then went on to consider whether Dr Ghaharian's fitness to practise is impaired by reason of his misconduct.

35. In making its decision, the Tribunal bore in mind that the purpose of fitness to practise proceedings is not to punish a doctor for past wrongdoing but to maintain proper standards in the profession and to protect the public. The Tribunal must look forward, not back, but in order to determine whether a doctor is fit to practise without restriction today it must take into account the way in which a doctor has acted, or failed to act, in the past.

36. The Tribunal accepted that some of the concerns raised by Dr Ghaharian's misconduct may, in principle, be remediable. However, in order for remediation to take place a doctor must have insight. The Tribunal has previously stated that it did not find Dr Ghaharian to be a credible or satisfactory witness. At times he was evasive in response to questions and at other times his evidence was inconsistent. At no stage during these proceedings did he acknowledge any wrongdoing on his part; rather he maintained his position that he was the victim of a racist XXX conspiracy, despite evidence to the contrary. He has now chosen to disengage from proceedings following the Tribunal's findings of fact.

37. The Tribunal was particularly troubled by Dr Ghaharian's dishonesty which was directly related to his practice as a doctor. Dr Ghaharian attempted to interfere with an official NHS investigation by asking others to make false statements. The Tribunal bore in mind that dishonesty can be difficult to remediate. Further there is no evidence that Dr Ghaharian has made any attempt at remediation. Rather, in relation to Ms E, he has maintained his position by pursuing a case against her before her regulatory body. The Tribunal had regard to the email dated 13 March 2017, from Mr W, Case Officer at the Nursing and Midwifery Council (NMC), in which he stated that Dr Ghaharian had been scheduled to give evidence against Ms E at an NMC hearing in January of this year. However, his evidence was not required as the hearing concluded on day one with a finding that Ms E had 'no case to answer'.

38. Having considered all the evidence before it, the Tribunal concluded that Dr Ghaharian has shown no insight, nor has he provided any evidence of remediation or demonstrated any attempt at remediation. The Tribunal therefore could not be satisfied that his misconduct in relation to colleagues and others would not be repeated or that he would not be liable to act dishonestly in the future.

## Record of Determinations – Medical Practitioners Tribunal

39. On the basis that there remains a risk of repetition of Dr Ghaharian's misconduct, and in view of the need to uphold proper standards of conduct and to maintain public confidence in the profession, the Tribunal has concluded that Dr Ghaharian's fitness to practise is impaired by reason of misconduct.

### Determination on Sanction - 22/03/2017

Mr Williams:

1. This determination will be read in private XXX At the close of the hearing, a redacted version of the determination will be published XXX
2. Having determined that Dr Ghaharian's fitness to practise is impaired by reason of his misconduct the Tribunal has now considered what action, if any, it should take with regard to his registration.
3. The Tribunal has given careful consideration to all the evidence adduced in this case. It has also considered your submissions on behalf of the General Medical Council (GMC) and reread the previous submissions of Mr David Lock, QC on Dr Ghaharian's behalf. Your full submissions are a matter of record and the Tribunal has not rehearsed them in detail in this determination.
4. You submitted that the necessary and proportionate sanction in this case is one of erasure. You referred the Tribunal to the Sanctions guidance (July 2016) (SG), and in particular, paragraphs 101, 102, 103, 114 and 118 which state:

'101 The tribunal may erase a doctor from the medical register in any case – except one that relates solely to the doctor's health and/or knowledge of English – where this is the only means of protecting the public.

102 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession...

103 Any of the following factors being present may indicate erasure is appropriate...

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

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

d Abuse of position/trust...



## Record of Determinations – Medical Practitioners Tribunal

- h Dishonesty, especially where persistent and/or covered up...
- j Persistent lack of insight into the seriousness of their actions or the consequences.

114 *Good medical practice* states that registered doctors must be honest and trustworthy, and must make sure that their conduct justifies their patients' trust in them and the public's trust in the profession.

118 Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor's clinical responsibility (eg providing false statements or fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities should be able to trust the integrity of doctors, and where a doctor undermines that trust there is a risk to public confidence in the profession. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.'

5. You submitted that erasure is the only means of protecting the public. You accepted that there are no clinical concerns in this case but stated that, by his actions, Dr Ghaharian had shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession. You submitted that the facts found proved represent a fundamental breach of the principles set out in *Good medical practice*.

6. In reference to Dr Ghaharian's proven dishonesty you stated that it had persisted over a long period of time, in a number of different situations and has been maintained to this day. You referred the Tribunal to the recent Facebook messages posted by Dr Ghaharian in February 2017 in which he asserts that he cannot understand 'any of the charges of the GMC'. You submitted that the messages clearly indicate that Dr Ghaharian has no insight and that he has not reflected on the Tribunal's findings, despite having had time to do so.

7. You submitted that taking no action, or imposing conditions, on Dr Ghaharian's registration would be inappropriate. You further stated that suspension would be inappropriate as there is clear evidence that Dr Ghaharian is unlikely to remediate his misconduct because of his lack of engagement at the latter stages of this hearing and the fact that he has an utter lack of insight.

### **Tribunal decision**

8. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement.

## Record of Determinations – Medical Practitioners Tribunal

9. In reaching its decision, the Tribunal has taken account of the SG. It has borne in mind that although sanctions are not imposed to punish or discipline doctors, they may have a punitive effect.

10. Throughout its deliberations, the Tribunal has had regard to the principle of proportionality and has weighed the interests of the public with Dr Ghaharian's interests. It has also borne in mind the statutory overarching objective. This includes: to protect and promote the health, safety and wellbeing of the public; to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for members of the profession.

XXX

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

13. The Tribunal first considered whether it would be sufficient to conclude Dr Ghaharian's case with no action. It determined that there were no exceptional circumstances that would justify it taking no action.

14. The Tribunal then considered whether it would be sufficient to impose conditions on Dr Ghaharian's registration. It has borne in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

15. The Tribunal determined that conditions would not be workable in the circumstances of Dr Ghaharian's case due to his lack of insight and his non-engagement with the latter stages of these proceedings. Further, it considered that, even if Dr Ghaharian had demonstrated a willingness to engage, it would not be possible to formulate conditions to address the wider public interest in this case. The Tribunal has found repeated and persistent dishonesty directly related to Dr Ghaharian's professional role.

16. The Tribunal next considered whether it would be sufficient to suspend Dr Ghaharian's registration. The SG, at paragraphs 85, 86, 87 and 91, states:

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

86 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and

## Record of Determinations – Medical Practitioners Tribunal

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

87 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions...

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

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

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.

f No evidence of repetition of similar behaviour since incident.

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.'

17. The Tribunal has previously stated that Dr Ghaharian's conduct breached a number of the principles set out in GMP and did not meet the standards expected of a registered medical practitioner.

18. There is no evidence before the Tribunal to suggest that remediation is likely to be successful in this case. Dr Ghaharian has not acknowledged any wrongdoing on his part. He has also chosen to disengage from proceedings following the Tribunal's findings on facts and has now applied for early retirement XXX

19. The Tribunal has previously stated its conclusion that Dr Ghaharian had shown no insight into his conduct and that, therefore, it is not satisfied that he would not repeat his misconduct in the future.

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

20. The Tribunal considered Dr Ghaharian's lack of insight and his failure to acknowledge his wrongdoing to be aggravating factors in this case. It had regard to his recent Facebook posts in which he continues to refuse to accept responsibility for his actions and asserts that he was the victim of a conspiracy to 'destroy' his practice. This is despite the fact that this Tribunal did not accept the vigorous defence presented on his behalf.

21. The Tribunal considered whether there were any mitigating factors in this case.  
XXX

22. The Tribunal had regard to the witness statements presented on Dr Ghaharian's behalf. Some of these statements included positive comments regarding the standard of care that Dr Ghaharian provided. It is clear that he was valued as a practitioner by these patients, some of whom were previously employed at the practice. The Tribunal placed little weight on this evidence as this is not a case in which clinical concerns have been raised. It had regard to the guidance that 'evidence of clinical competence cannot mitigate serious and/or persistent dishonesty'.

23. The Tribunal has given considerable weight to the public interest in this case and it has determined that the maintenance of public confidence in the medical profession and the need to maintain proper professional standards and conduct for the members of the profession would not be satisfied by a period of suspension. The Tribunal concluded that the totality of Dr Ghaharian's misconduct, which included repeated dishonesty directly related to his professional role, is fundamentally incompatible with continued registration.

24. The Tribunal has determined that the appropriate and proportionate sanction is that of erasure. Accordingly, it directs that Dr Ghaharian's name be erased from the Medical Register.

25. The effect of the foregoing direction is that, unless Dr Ghaharian exercises his right of appeal, his name will be erased from the Medical Register 28 days from the date on which written notice of this decision is deemed to have been served upon him.

### **Determination on Immediate Order - 22/03/2017**

Mr Williams:

1. Having determined to erase Dr Ghaharian's name from the register, the Tribunal has now considered whether to impose an immediate order of suspension on his registration.

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

2. You submitted that this is a case in which it would be appropriate for the Tribunal to impose an immediate order of suspension, given the serious factual findings the Tribunal has made, and its concerns regarding the public interest in this case.

3. The Tribunal has determined that, given the seriousness of Dr Ghaharian's misconduct, its concerns about his lack of insight and the risk of repetition, it is in the public interest to impose an immediate order of suspension on his registration.

4. This means that Dr Ghaharian's registration will be suspended when notice of this decision is deemed to have been served upon him.

5. If Dr Ghaharian lodges an appeal against the substantive sanction of erasure, the immediate order of suspension will remain in force until the substantive direction takes effect, or until any appeal is determined.

6. That concludes this case.

**Confirmed:**

**Date:** 22 March 2017

Dr Wendy Kuriyan, Chair