Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 13/01/2020 - 20/01/2020
Medical Practitioner’s name: Dr Anthony MACKENZIE-GUREJE

GMC reference number: 7280627
Primary medical qualification: MB ChB 2012 University of Bristol
Type of case
New - Misconduct
Outcome on impairment Not Impaired

Summary of outcome
No action (warning not considered)

Tribunal:

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
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<tr>
<td>Legally Qualified Chair</td>
<td>Mr David Urpeth</td>
</tr>
<tr>
<td>Lay Tribunal Member:</td>
<td>Mr Peter Scofield</td>
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<tr>
<td>Medical Tribunal Member:</td>
<td>Dr Nisreen Hannah Booya</td>
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Tribunal Clerk: Mrs Lorraine Cheetham

Attendance and Representation:

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<tr>
<th>Role</th>
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<tr>
<td>Medical Practitioner:</td>
<td>Present and represented</td>
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<tr>
<td>Medical Practitioner’s Representative:</td>
<td>Mr Thomas Hulme, instructed by Aly &amp; Hulme Associates.</td>
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<tr>
<td>GMC Representative:</td>
<td>Mr Christopher Hamlet, Counsel, instructed by GMC legal.</td>
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Attendance of Press / Public

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

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

Determination on Facts - 20/01/2020

Background

1. Dr MacKenzie-Gureje qualified in 2012 from the University of Bristol. He was granted full registration with the GMC in August 2013, with an approved practice setting (‘APS’) restriction, requiring that he only practise medicine in the UK if he has a prescribed connection to a designated body (‘DB’), until his first revalidation with the GMC.

2. The GMC opened an investigation into Dr MacKenzie-Gureje’s fitness to practise after becoming aware that he was practising without a prescribed connection to a DB, in breach of his APS restriction.

3. Dr MacKenzie-Gureje contacted the GMC Contact Centre on 17 November 2016 and again on 1 December 2016, about an administrative matter. During those conversations, he said he was working as a self-employed doctor, but was obtaining work through Medacs Healthcare locum agency (‘Medacs’). He was reminded by a GMC adviser that his registration with the GMC was subject to an APS restriction, and that he was sent information about this when he first qualified as a doctor.

4. Dr MacKenzie-Gureje said he did not understand what this meant, and it was duly explained to him that he was obliged to hold a prescribed connection to a DB, and that he should contact Medacs urgently to check if he had a prescribed connection to them, after which he should update the details of his DB with the GMC. A fitness to practise investigation was opened after the GMC adviser noted that Dr MacKenzie-Gureje had failed to update the GMC with details of his DB.

The Outcome of Applications Made during the Facts Stage

5. The Tribunal granted the GMC’s application for paragraph 5 of Allegation to be amended pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’). The GMC also applied to withdraw paragraph 7(d) of the allegation. This application was not opposed by Mr Hulme and the Tribunal determined that the amendment could be made fairly and without injustice. The Tribunal’s full decision can be found at Annex A.
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6. The Tribunal determined to refuse the application from Mr Hulme, made pursuant to Rule 17(2)(g) of the Rules, of no case to answer in relation to the outstanding paragraphs of the Allegation. The Tribunal’s full determination on this application is included at Annex B.

The Allegation and the Doctor’s Response

7. The Allegation made against Dr MacKenzie-Gureje is as follows:

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

1. On the following dates you were informed by the GMC that it was a condition of your registration that you worked with a connection to a designated body (‘DB’):
   a. 17 November 2016; Admitted and found proved
   b. 1 December 2016. Admitted and found proved

2. You failed to connect to a DB until 13 February 2017. Admitted and found proved

3. In a telephone call with the GMC on 25 July 2017 you stated you had been working at the Royal National Orthopaedic Hospital NHS Trust (‘the Trust’) since February 2017 in a permanent role, or words to that effect. Admitted and found proved

4. You knew that you had been employed by the Trust through their bank and not in a permanent capacity. To be determined

5. In a telephone call with the GMC on 23 November 2017, you stated you had spoken to been trying to sort out the DB issue with Medacs Healthcare Ltd (‘Medacs’) about the DB issue, since 2014, or words to that effect. Amended under Rule 17(6) Admitted and found proved

6. You knew the information you provided as set out in paragraph 5 was untrue. To be determined

7. In a letter to the GMC dated 30 November 2017, you stated that:
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a. in 2014 you asked Medacs who your DB should be; Admitted and found proved
b. in 2015 you asked Medacs who your DB should be and what you needed to do about it, and were told not to worry about it; Admitted and found proved
c. you spoke to Medacs who confirmed that they could and should have acted as your DB between August 2014 and January 2017; Admitted and found proved
d. in June/July 2017, you had telephoned the GMC to let them know of a change of DB. Withdrawn by the GMC

8. You knew the information you provided at paragraph 7 was untrue. To be determined

9. Your conduct as described at paragraph:
   a. 3 was dishonest by reason of paragraph 4; To be determined
   b. 5 was dishonest by reason of paragraph 6; To be determined
   c. 7 was dishonest by reason of paragraph 8. To be determined

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

The Admitted Facts

8. At the outset of these proceedings, through his solicitor, Mr Hulme, Dr MacKenzie-Gureje made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended (‘the Rules’). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

9. In light of Dr MacKenzie-Gureje’s response to the Allegation made against him, the Tribunal is required to determine the outstanding paragraphs of the allegation.

Factual Witness Evidence

10. The Tribunal received evidence on behalf of the GMC from the following witnesses:
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- Ms A, Policy Manager in the Policy and Regulatory Development Team at the GMC, in person;
- Ms B, UK Applications Manager at the GMC, in person;
- Ms C, Revalidation Manager at Medacs, in person;
- Ms D, Team Coordinator in the Assessment Delivery Team;
- Ms E, Investigation Officer at the GMC, in person;
- Ms F, Contact Centre Advisor at the GMC, in person;
- Ms G, Contact Centre Advisor, in person;
- Mr H, Associate Medical Director at the Trust.

11. Dr MacKenzie-Gureje provided his own witness statement and also gave oral evidence at the hearing.

**Documentary Evidence**

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

- Initial and supplemental witness statements of Ms B;
- Witness statement of Ms A;
- Initial and supplemental witness statements of Ms C;
- Witness statement of Ms D;
- Witness statement of Ms F;
- Witness statement of Ms G;
- Initial and supplemental witness statements of Mr H;
- Initial and supplemental witness statements of Ms E;
- Various letters sent by the GMC regarding changes to the APS scheme;
- Various Medacs call logs dated 14 August 2013 – 09 November 2018;
- Various telephone notes from Dr MacKenzie-Gureje to the GMC;
- Witness statement of Dr MacKenzie-Gureje;
- Various certificates and positive testimonials relating to Dr MacKenzie-Gureje’s clinical work and character.

**The Tribunal’s Approach**

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

14. The Tribunal reminded itself that it must form its own judgment about the witness evidence it heard and the reliability of each witness. It must decide whether to accept or reject such evidence, and where it is accepted, to decide the weight to attach to it.
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15. When considering matters of dishonesty, the Tribunal took account of the test laid down by the Supreme Court in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. The Tribunal bore in mind that it should first ascertain, subjectively, the actual state of Dr MacKenzie-Gureje’s knowledge or belief as to the facts and should then decide whether his conduct was dishonest or not by applying the objective standards of ordinary decent people.

The Tribunal’s Analysis of the Evidence and Findings

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

GMC witness evidence

17. The Tribunal considered all the GMC witnesses did their best to assist the Tribunal, and that they were credible in their evidence. In some respects the witnesses could not be considered wholly reliable because of issues such as misunderstanding of the relevant rules and because of the passage of time.

18. In relation to the witness Ms G the Tribunal did not accept her evidence that Dr MacKenzie-Gureje had failed or refused to inform her of his employer when she had asked for it.

Dr MacKenzie-Gureje’s evidence

19. The Tribunal considered Dr MacKenzie-Gureje’s oral evidence. It found Dr MacKenzie-Gureje to be a straightforward, honest and reliable witness who tried his best to give direct and consistent answers to all questions put to him. He was honest when he could not recall specific events. Where the doctor’s evidence was different to that of the GMC witnesses, it preferred his evidence and determined that it could place significant weight on it. The Tribunal noted the testimonial evidence before it in favour of Dr MacKenzie-Gureje’s probity, honesty and trustworthiness. The Tribunal concluded that the evidence as to his character allowed the Tribunal to rely on the integrity of his evidence and made it inherently less likely that a man of his character would behave in the manner alleged.

Tribunal’s findings

Allegation 4

20. In considering paragraph 4 of the allegation, the Tribunal took into consideration the length of time Dr MacKenzie-Gureje worked full-time for the Trust. During his oral evidence Dr MacKenzie-Gureje confirmed that he worked 40+ hours per week. Mr H further confirmed in his evidence that the word ‘permanent’ is a
generic term not used formally and could be used to reflect a substantive or an ongoing contract with no fixed end date. This was the case with Dr MacKenzie-Gureje’s arrangement with the Trust at the time.

21. The GMC placed significant weight on an email from the doctor in January 2017 in which he described his role as temporary. The Tribunal noted however that the conversation in July 2017, in which he described his role as permanent was over 6 months later and after he had been working for the same organisation between 40 – 45 hours per week with no end date to that arrangement. The Tribunal was not critical of the doctor regarding his use of the word ‘permanent’, and reminded itself of the evidence of Mr H, who accepted that ‘permanent’ was an ambiguous word.

22. The Tribunal was of the opinion that it is understandable that Dr MacKenzie-Gureje used the word ‘permanent’ and found his explanation of this to be believable. It further determined that during his conversation with the GMC on 25 July 2017 Dr MacKenzie-Gureje did state that he was ‘permanent’ but he did not state this dishonestly. The Tribunal therefore finds paragraph 4 of the allegation not proved.

Allegation 6

23. In considering paragraph 6 of the allegation, the Tribunal accepted Dr MacKenzie-Gureje’s evidence that he had asked Medacs about the issue with his DB from 2015 onwards. It had regard to Dr MacKenzie-Gureje’s oral evidence in which he stated that, “it wasn’t a lie. I was incorrect. There was no intention to be dishonest. I was angry, and I said the wrong thing. I meant to say 2015.” The Tribunal accepted Dr MacKenzie-Gureje’s evidence and found his explanation entirely reasonable. The Tribunal therefore found paragraph 6 of the allegation not proved.

Allegation 8

24. The Tribunal considered that Dr MacKenzie-Gureje thought that the content of his letter to the GMC, dated 30 November 2017, was correct at the time he wrote it, and it was not, therefore, knowingly untrue. As such the Tribunal found paragraph 8 not proved.

Allegation 9:

25. In relation to the dishonesty alleged, the Tribunal had regard to all the evidence before it. Having done so it has applied the test in *Ivey v Genting Casinos* referred to earlier.

26. In considering both limbs of the *Ivey* test. In relation to the first limb, namely the subjectivity of the test, the Tribunal found that Dr MacKenzie-Gureje believed his statements were true at the time of making them. In relation to the objective test, the Tribunal has found that Dr MacKenzie-Gureje’s actions were not dishonest by the
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standards of ordinary people. It therefore found paragraph 9 found not proved in its entirety.

The Tribunal’s Overall Determination on the Facts

27. The Tribunal has determined the facts as follows:

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

1. On the following dates you were informed by the GMC that it was a condition of your registration that you worked with a connection to a designated body (‘DB’):
   a. 17 November 2016; Admitted and found proved
   b. 1 December 2016. Admitted and found proved

2. You failed to connect to a DB until 13 February 2017. Admitted and found proved

3. In a telephone call with the GMC on 25 July 2017 you stated you had been working at the Royal National Orthopaedic Hospital NHS Trust (‘the Trust’) since February 2017 in a permanent role, or words to that effect. Admitted and found proved

4. You knew that you had been employed by the Trust through their bank and not in a permanent capacity. Found not proved

5. In a telephone call with the GMC on 23 November 2017, you stated you had spoken to been trying to sort out the DB issue with Medacs Healthcare Ltd (‘Medacs’) about the DB issue, since 2014, or words to that effect. Amended under Rule 17(6) Admitted and found proved

6. You knew the information you provided as set out in paragraph 5 was untrue. Found not proved

7. In a letter to the GMC dated 30 November 2017, you stated that:
   a. in 2014 you asked Medacs who your DB should be; Admitted and found proved
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b. in 2015 you asked Medacs who your DB should be and what you needed to do about it, and were told not to worry about it; **Admitted and found proved**

c. you spoke to Medacs who confirmed that they could and should have acted as your DB between August 2014 and January 2017; **Admitted and found proved**

d. in June/July 2017, you had telephoned the GMC to let them know of a change of DB. **Withdrawn by the GMC**

8. You knew the information you provided at paragraph 7 was untrue. **Found not proved**

9. Your conduct as described at paragraph:

   a. 3 was dishonest by reason of paragraph 4; **Found not proved**
   b. 5 was dishonest by reason of paragraph 6; **Found not proved**
   c. 7 was dishonest by reason of paragraph 8. **Found not proved**

28. During this case, the Tribunal heard clear evidence from a GMC witness that the call handlers could have made the doctor’s connection with a DB immediately, and at the time he was on the phone. The Tribunal felt the call handlers could and should have done so.

29. The Tribunal heard that Medacs could and should have been the doctor’s DB and felt that it was entirely reasonable that the doctor had assumed that they were.

30. Whilst the Tribunal accepted that a doctor has an obligation to make a DB connection, it felt that the greater criticism in this case, related to the GMC and Medacs. As such the Tribunal felt that this was a case that never should have been brought against the doctor. It was not in the public interest, nor in the interests of the profession and only risks to tarnish the reputation of the GMC.

**Determination on Impairment** - 20/01/2020

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr MacKenzie-Gureje’s fitness to practise is impaired by reason of misconduct.
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The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.

Submissions

3. On behalf of the GMC, Mr Hamlet submitted that in relation to the matter of impairment, the GMC is ‘neutral’ on this point and it is a matter for the Tribunal to determine.

4. On Dr MacKenzie-Gureje’s behalf, Mr Hulme submitted that in the light of the Tribunal’s findings in its previous determination, Dr MacKenzie-Gureje’s fitness to practice is not currently impaired.

5. Mr Hulme drew the Tribunal’s attention to the various certificates of training which Dr MacKenzie-Gureje had undertaken and submitted that Dr MacKenzie-Gureje’s professional performance has not been called into question, nor has his clinical skills. He further stated that there are no health concerns in this case and no evidence that the public has been put at risk.

The Relevant Legal Principles

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

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

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

Misconduct

9. The Tribunal considered whether the facts found proved amounted to misconduct. In considering whether Dr MacKenzie-Gureje’s actions amounted to misconduct the Tribunal reminded itself of its previous determination on Facts and the conclusions made in it.
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10. The Tribunal reminded itself that the conduct complained of must be serious for it to amount to misconduct as set out in Nandi v GMC [2004] EWHC 2317 (Admin)

“\textit{What amounts to professional misconduct has been considered by the Privy Council in a number of cases. I suppose perhaps the most recent observation is that of Lord Clyde in Rylands v General Medical Council [1999] Lloyd's Rep Med 139 at 149, where he described it as \textquoteleft\textquoteleft\textit{a falling short by omission or commission of the standards of conduct expected among medical practitioners, and such falling short must be serious}. The adjective \textquoteleft\textquoteleft\textit{serious} must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners. It is of course possible for negligent conduct to amount to serious professional misconduct, but the negligence must be to a high degree.\textquoteright\textquoteright}”

11. In Roylance v GMC (No 2) [2000] 1 AC 311 it was stated as follows:

\textit{“Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be following by a practitioner in the particular circumstances.”}

12. The Tribunal was mindful that Dr MacKenzie-Gureje had been trying to rectify the issue of his DB since at least 2015. It was confirmed by Ms C that Medacs could and should have been his DB at that time. The Tribunal noted that the GMC has not directed the Tribunal to any paragraphs of \textit{Good Medical Practice (GMP)} and the Tribunal has not considered that there are any areas of GMP which Dr MacKenzie-Gureje has breached.

13. In all the circumstances, the Tribunal did not consider that the facts admitted in this case amounted to misconduct. As such the Tribunal determined that Dr MacKenzie-Gureje’s fitness to practise is not currently impaired.

14. The Tribunal reminded itself that where it finds a doctor’s fitness to practise not impaired, it cannot impose a sanction. However it must consider under Rule 17(2)(n) whether to:

a) take no action
b) issue a warning if the doctor’s conduct, behaviour or performance has significantly departed from the guidance in Good Medical Practice

15. The Tribunal noted that the GMC had not highlighted any departures from GMP. Equally, the Tribunal itself did not find any significant departures from GMP. As
such the Tribunal felt that a warning was not appropriate and determined to take no action.

16. That concludes this case.

Confirmed

Date 20 January 2020

Mr David Urpeth, Chair
Application under Rule 17(6)

1. Mr Christopher Hamlet, Counsel, on behalf of the GMC made an application under Rule 17(6) of the Rules to amend Paragraph 5 of the allegation and withdraw paragraph 7(d).

Submissions

Submissions on behalf of the GMC

2. Mr Hamlet submitted that the wording of paragraph 5 be changed to read:

   In a telephone call with the GMC on 23 November 2017, you stated you had spoken to Medacs Healthcare ('Medacs') about the DB issue, since 2014, or words to that effect.

3. Mr Hamlet submitted that paragraph 7(d) of the allegation should be withdrawn as there was evidence that the conversation took place.

4. Mr Hamlet submitted that in these circumstances there would be no injustice to Dr MacKenzie-Gureje in amending the allegations.

Submissions on behalf of Dr MacKenzie-Gureje

5. Mr Thomas Hulme, on Dr MacKenzie-Gureje’s behalf did not oppose the GMC’s application to amend the Allegation.

The Tribunal’s Decision

6. The Tribunal noted the provisions of Rule 17(6)(b) which allow an amendment to an allegation if it could be made without injustice. It considered that the proposed amendments sought to clarify the GMC’s case and there would be no injustice to Dr MacKenzie-Gureje. The Tribunal was therefore content to allow the amendments in fairness to all parties and formally amended paragraph 5 of the allegation and deleted 7(d).
1. At the end of the GMC case, Mr Hulme, on behalf of Dr MacKenzie-Gureje, made an application under Rule 17(2)(g) of the Rules, which 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".

2. This application related to the whole Allegation.

**Submissions on Dr MacKenzie-Gureje’s behalf**

3. Mr Hulme referred to the test set out by Lord Lane CJ in *R v Galbraith* [1981] 1 WLR 1039, as follows:

"(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty - the judge will stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence.

Where the judge concludes that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case.

Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness’s reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

4. Mr Hulme submitted that in relation to paragraphs 4, 6, 8 and 9 of the Allegation there is no case to answer, and in relation to the remaining paragraphs he stated that they could not amount to misconduct.

**Allegations 1 & 2**

5. Mr Hulme submitted that Dr MacKenzie-Gureje did connect to a DB on 13 February 2017 and it was within three months of the call to the GMC dated 17 November 2016. This connection was effortlessly arranged by Medacs via the portal. Ms C confirmed in her evidence that Medacs acted as DB for thousands of doctors,
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and that Dr MacKenzie-Gureje was entitled to consider that the agency was his DB. Mr Hulme further stated that whilst Dr MacKenzie-Gureje accepted he had a responsibility himself, the relevant hospital and agency had not been helpful. He referred to the complexity of the rules which, in his submission, the GMC witnesses did not understand. He concluded that it would be wrong to attribute culpability to Dr MacKenzie-Gureje in relation to these paragraphs.

Allegations 3 & 4

6. Mr Hulme submitted that the doctor had explained explicitly to the GMC call handler that he was a bank doctor. His use of the word permanent simply meant ongoing. Mr Hulme submitted that there could be no dishonesty in terms of Dr MacKenzie-Gureje’s wording.

Allegations 5 & 6

7. Mr Hulme submitted that the doctor accepted that he had said 2014 in the telephone call with the GMC on 23 November 2017 but has since realised that it was actually 2015. This was an honest mistake.

8. Mr Hulme added that the doctor was entirely right to think that he was properly employed by a reputable agency. Checks were repeatedly carried out by Medacs and the doctor was entitled to believe that they were his DB. The Medacs log was clearly not comprehensive.

Allegations 8 & 9

9. Mr Hulme referred the Tribunal to the evidence of Ms C and stated that she accepted that there were “holes and gaps” in the Medacs log in relation to the conversations that occurred. He further stated that the GMC investigation was marred by the complexity of the GMC rules and when they should apply. He submitted that the contested facts were not proved, and that it would be wholly wrong for the case to continue.

Submissions on behalf of the GMC

10. Mr Hamlet submitted that the appropriate test to be applied was whether there was evidence upon which a Tribunal, properly directed, could conclude on the balance of probabilities that Dr MacKenzie-Gureje had conducted himself in the manner alleged as set out in the Allegations.

11. Mr Hamlet stated that the correct approach at this stage was for the Tribunal not to assess the accuracy or reliability of the evidence but, taking it at its highest, to determine what direct evidence there was and thereafter to determine what inferences could be drawn to establish the primary facts.
12. Mr Hamlet submitted that the GMC opposes the application made by Mr Hulme. He further submitted that allegations 4, 6, 8 and 9 relate to dishonesty and it is for the Tribunal to assess the evidence before it and decide, in due course, if they have been found proved or not. He further submitted that there is evidence which is capable of crossing the threshold and support the charges, and if found proved, these would undoubtedly reach a conclusion of misconduct.

13. Mr Hamlet said that if the Tribunal was only left with the admitted and found proved parts of the allegation, then he accepted that those were unlikely, by themselves, to amount to misconduct.

**Tribunal’s Decision**

14. Having carefully considered the wording of 17(2)g, the evidence heard and the helpful submissions from both advocates, the Tribunal could not safely find at this point, that there was insufficient evidence to support some or all of the facts proved.

15. The Tribunal accepted Mr Hamlet’s submission that the proper consideration, at this stage of the hearing, was not whether the disputed facts had been proved but whether the GMC evidence, taken at its highest was capable of being proved. It noted that Mr Hulme had based his submission on his contention that the contested issues were not proved, rather than that they were incapable of being proved.

16. The Tribunal needed to hear from the doctor so as to properly consider the totality of evidence in this case. It would do so at the conclusion of the facts stage.

17. For those reasons the Tribunal rejected Mr Hulme’s application under 17(2)g which was dismissed accordingly.