Record of Determinations –
Medical Practitioners Tribunal
PUBLIC RECORD

**Dates:** 03/06/2019 – 11/06/2019

30/09/2019 – 03/10/2019

**Medical Practitioner’s name:** Asad Amin KHAN

**GMC reference number:** 6105228

**Primary medical qualification:** MB BS 2004 University of London

**Type of case**

**Outcome on impairment**

New - Misconduct

Impaired

**Summary of outcome**

Suspension, 1 month.

**Tribunal:**

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<td>Legally Qualified Chair</td>
<td>Mrs Kim Parsons</td>
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<tr>
<td>Lay Tribunal Member:</td>
<td>Mr Andrew Gell</td>
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<td>Medical Tribunal Member:</td>
<td>Dr Nisreen Hannah Booya</td>
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<td>Tribunal Clerk:</td>
<td>Ms Jeanette Close</td>
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**Attendance and Representation:**

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<td>Medical Practitioner:</td>
<td>Present and represented</td>
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<td>Medical Practitioner’s Representative:</td>
<td>Mr Christopher Mellor, Counsel, instructed by the Medical Protection Society</td>
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<td>GMC Representative:</td>
<td>Mr Nigel Grundy, Counsel</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 – 11/06/2019

Background

1. Dr Khan qualified from the Royal Free University College of London School of Medicine in 2004. Prior to the events which are the subject of the hearing, he held a number of Senior House Officer (SHO) locum positions, primarily in orthopaedic surgery. At the time of the events Dr Khan was working as a locum SHO for West Middlesex University Hospital NHS Trust.

2. The allegation that led to Dr Khan’s hearing can be summarised as on 6 November 2017 Dr Khan responded to an email dated 3 November 2017 from HCL Workforce Solutions, formerly Thames Medics Limited (the Agency). This was about registering for locum work. The Agency took Dr Khan’s details and when entering them into their electronic system discovered that Dr Khan had previously registered with them in February 2012. Although Dr Khan had not undertaken work for the Agency, his name remained on their system, along with the reference documents he supplied at that time dated 9th February 2011 and 8 March 2012, purportedly from Dr A, and dated 9 February 2012 and 8 March 2012 purportedly from Dr B.

3. When checking Dr Khan’s electronic file the Agency realised the references were out of date. In an email dated 7 November 2017, the Agency asked Dr Khan for up to date referee details. Dr Khan responded the same day informing the Agency that his referee details remained the same. Before the Agency could respond, Dr Khan sent another email the same day, attaching two signed references dated 7 November 2017 (the 2017 references), purportedly provided by Dr A and Dr B respectively.

4. When making the necessary compliance checks to verify the 2017 references the Agency discovered that, other than for the date and address information, the 2017 references were identical in content to the references Dr Khan had supplied to the Agency in February 2012. On 9 November 2017 the Agency made enquiries by email to Dr A as to the source and validity of the 2017 reference. In an email response dated the same day, Dr A stated that the reference “dated 07/11/2017 is a fake and not done
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by me.” During a follow up email dated the same day, the Compliance Team at the
Agency asked Dr A about the validity of the references dated February 2011 and March
2012, Dr A stated “I cannot recall doing that reference and I doubt I did.”

5. In an email dated 9 November 2017, the Agency asked Dr Khan to confirm when
he received the 2011 and 2012 references and in his email response on the same day
Dr Khan stated “He did it a while ago and his Secretary gave it to me to send to the
Agency.”

6. Staff raised their concerns regarding the validity of Dr Khan’s references to
Ms G, Head of Clinical Governance at the Agency, and on 16 November 2017 she
referred the matter to the GMC.

The Allegation and the Doctor’s Response

7. The Allegation made against Dr Khan is as follows:

1. You provided the locum agency, HCL Workforce Solutions (‘HCL’), with
references purportedly from:

   a. Dr A dated 9 February 2011 (unaddressed); Delected after a successful Rule 17(2)(g) application

   b. Dr A dated 8 March 2012 addressed to Thames Medics Ltd; Delected after a successful Rule 17(2)(g) application

   c. Dr A dated 7 November 2017 addressed to HCL Doctors; Admitted and Found Proved

   d. Dr B dated 9 February 2012 (unaddressed); Delected after a successful Rule 17(2)(g) application

   e. Dr B dated 8 March 2012 addressed to Thames Medics Ltd; Delected after a successful Rule 17(2)(g) application

   f. Dr B dated 7 November 2017 addressed to HCL Doctors. Admitted and Found Proved

2. When you provided the references to HCL, as set out at paragraph 1, you knew that the references that you had provided were false as:

   a. Dr A had not provided you with a reference dated:

      i. 9 February 2011 (unaddressed); Delected after a successful Rule 17(2)(g) application
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ii.  8 March 2012 addressed to Thames Medics Ltd;  
*Deleted after a successful Rule 17(2)(g) application*

iii. 7 November 2017 addressed to HCL Doctors;  
*Admitted and Found Proved*

b.  Dr B had not provided you with a reference dated:

i.  9 February 2012 (unaddressed);  
*Deleted after a successful Rule 17(2)(g) application*

ii.  8 March 2012 addressed to Thames Medics Ltd;  
*Deleted after a successful Rule 17(2)(g) application*

iii.  7 November 2017 addressed to HCL Doctors;  
*Admitted and Found Proved*

3.  Your actions described in paragraph 1 were dishonest by reason of paragraph 2.  
*Admitted and Found Proved*

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 counsel, Mr Mellor, Dr Khan 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 Outcome of Applications Made during the Facts Stage**

9.  The Tribunal granted the joint application from Mr Grundy, Counsel on behalf of the GMC, and Mr Mellor, Counsel for Dr Khan, made pursuant to Rule 34(1) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to admit further evidence in the form of additional defence case documents and supplemental statements for clarification purposes. The Tribunal’s full decision on the application is included at Annex A.

10.  The Tribunal also granted Mr Mellor’s application, made pursuant to Rule 17(2)(g) of the Rules, that there is no case to answer in relation to a number of
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sub-paragraphs of the Allegation. The Tribunal’s full decision on the application is included at Annex B.

**Determination on Impairment - 02/10/2019**

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 Khan’s fitness to practise is impaired by reason of misconduct.

**The Evidence**

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

3. Dr Khan provided his own witness statements dated 8 and 23 May 2019, and also gave oral evidence on day eight of the hearing. In addition, the Tribunal received evidence from the following witnesses on Dr Khan’s behalf:

   - Mr E, Consultant Orthopaedic Surgeon, in person along with his witness statement, dated May 2019;
   - Dr C, Consultant Anaesthetist, in person along with his witness statement, dated May 2019;
   - Miss F, Consultant Orthopaedic Trauma and Upper Limb Surgeon, by video link, along with her witness statement dated 12 May 2019.

4. The Tribunal also received in support of Dr Khan a number of testimonial letters from colleagues:

   - Mr I, Consultant Trauma and Orthopaedic Surgeon, dated 1 June 2019
   - Dr D, Consultant Physician, dates 21 May 2019
   - Mr J, Advanced Practitioner Diagnostic Radiographer, dated 16 May 2019
   - Mr K, Consultant Oncoplastic Breast Surgeon, dated 28 May 2019
   - Mr L, Consultant Surgeon and Senior Lecturer Imperial College, dated 27 May 2019

5. In addition, the Tribunal received further evidence as follows:

   - Certificate of Attendance – Maintaining Professional Ethics Course;
   - Dr Khan’s written reflections following attendance on the Course;
   - Colleague and Patient Questionnaires;
   - Evidence of Dr Khan’s charitable activities.

**Submissions**
On behalf of the GMC

6. On behalf of the GMC, Mr Grundy submitted Dr Khan’s fitness to practise was impaired today and reminded the Tribunal of the statutory overarching objective which includes to:

   a protect and promote the health, safety and wellbeing of the public,

   b promote and maintain public confidence in the medical profession,

   and

   c promote and maintain proper professional standards and conduct for the members of the profession.

7. Mr Grundy reminded the Tribunal of the two-stage process to be adopted when considering impairment. First, a Tribunal must consider whether the facts as admitted and found proved amounted to misconduct, and if so if that misconduct was serious. Secondly, the Tribunal must consider whether Dr Khan’s fitness to practise was impaired as at today’s date.

Misconduct

8. Mr Grundy stated the GMC’s position was that this is a case of misconduct. Mr Grundy said that Dr Khan had used a reference he knew to be false to obtain locum work with an Agency.

9. Mr Grundy stated that when Dr Khan had been asked by the Agency for up to date references, he told them that he would get them but did not. Instead, Dr Khan used the March 2012 references, which by then were 5 years old, changing the date.

10. Mr Grundy said that when Dr Khan was challenged about them in a telephone call, he tried to explain his way out of it. Mr Grundy submitted that Dr Khan had cut corners and acted dishonestly for his own advantage.

11. Mr Grundy stated that honesty and integrity were at the heart of the medical profession and that Dr Khan’s actions were a clear breach of this fundamental tenet of the profession, something that is repeated in every version of Good Medical Practice (GMP).

12. Mr Grundy submitted that Dr Khan’s conduct amounted to serious misconduct.

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13. Mr Grundy submitted that this was a public interest issue and referred to the case of Yeong and GMC [2009] EWHC 1923 Admin where it makes it clear that remediation is of less relevance in non-clinical cases. He said less relevance is attached to attempts at remediation where public interest considerations apply.

14. Mr Grundy further submitted that Dr Khan had attempted remediation only shortly before the hearing by attending a three-day Professional Ethics course.

15. Mr Grundy stated that Dr Khan’s problem solving of the situation, where the issue was Dr Khan needed to get references quickly, was to act dishonestly; he amended old references and pretended they were up to date.

16. Mr Grundy reminded the Tribunal that Dr Khan considered or saw the referencing process as a ‘tick box exercise’, which should be a matter of concern for the Tribunal now and going forward. Mr Grundy stated that proper standards, conduct and behaviour must be maintained and that a finding of impairment was the only way to ensure that this would happen.

On behalf of Dr Khan
Misconduct

17. On behalf of Dr Khan, Mr Mellor submitted that Dr Khan fully accepts the facts as found proved amount to misconduct, and that Dr Khan had admitted that what he had done was ‘completely wrong’.

18. Mr Mellor stated that Dr Khan accepts that his actions amount to serious misconduct.

Impairment

19. Mr Mellor stated that Dr Khan leaves it to the Tribunal to determine whether his fitness to practise is currently impaired, and that Dr Khan makes no positive submission in that regard.

20. Mr Mellor further stated that given Dr Khan’ admission of dishonesty he accepts that a finding of current impairment may reasonably made if the Tribunal finds his misconduct egregious.

21. Mr Mellor submitted that Dr Khan accepts that honesty and integrity are fundamental tenets of the medical profession and central to maintaining public safety and confidence. Mr Mellor stated that Dr Khan accepts the Tribunal may find him impaired based on his past behaviour and whilst he makes no excuse he has asked the Tribunal to take into consideration:

   a. His previous good character, the testimonials and 360 feedback which show his
conduct on this occasion was out of character. Three witnesses gave oral evidence to attest to having no concerns about Dr Khan’s honesty, trustworthiness and reliability.

b. The context of Dr Khan’s actions, in that he failed to think through the consequences at the time. His thought process was wrong and he should have known better.

i. The background, the generic undated references from 2012, that Dr Khan reasonably understood were agreed.

ii. In 2017, he genuinely did not believe Dr A or Dr B would have changed their views on his competence or abilities, particularly as Dr B, had signed a revalidation reference in similar terms weeks before in October 2017. Also, Dr Khan had worked with Dr A shortly before.

c. Dr Khan was seeking to obtain work at the same level of competence as the original references related to.

d. It was entirely inappropriate to see it as a tick box exercise, Dr Khan accepted the way he saw it was completely wrong and said he should have put as much effort into obtaining references as he did his clinical practice.

e. Early acceptance of what Dr Khan had done wrong. Dr Khan had emailed the Agency on 15 November 2017, to correct the situation, 8 days after submitting the references.

f. Dr Khan was not using old references because he could not obtain up to date references. There were no issues with his clinical competence and a number of doctors said they would have provided him with a reference at the time and now. This included Miss F, Clinical Lead who gave evidence to the Tribunal.

g. Such an issue will never arise again due to the fact that:

i. Dr Khan admitted the relevant allegations at the outset and throughout these proceedings;

ii. Dr Khan repeatedly accepted what he had done wrong and his dishonesty;

iii. the remediation Dr Khan has undertaken is embedded by his Professional Ethics Course, his written reflections, his Development Plan, undertaking focused CPD and discussing these issues with his seniors; and

iv. crucially, Dr Khan has changed his approach to obtain references so that he is not part of the process.
22. In conclusion Mr Mellor stated that as before, Dr Khan leaves it to the Tribunal to determine whether his fitness to practise is currently impaired.

The Relevant Legal Principles

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

24. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted as referred to by Mr Grundy on behalf of the GMC.

25. The Tribunal must determine whether Dr Khan’s fitness to practise is impaired today, taking into account Dr Khan’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.

The Tribunal’s Determination on Impairment

Misconduct

26. In reaching its determination the Tribunal reminded itself that doctors must act with honesty and integrity. It had regard to Good Medical Practice (GMP 2013), in particular paragraph 65:

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

27. The Tribunal accepted that Dr Khan had admitted his misconduct. It noted that Dr Khan had acted dishonestly and cut corners in order to provide references as quickly as possible to obtain work for personal gain.

28. The Tribunal concluded that Dr Khan knew the references were false, he had exercised poor judgement in seeing the reference process as merely a ‘tick box’ and an ‘administrative exercise’. It considered that Dr Khan had not recognised the importance of providing accurate and up to date references for locum positions, in the context of protecting the public and maintaining public confidence in the profession.

29. The Tribunal determined that this was a serious breach of a fundamental tenet of the profession. The Tribunal found that Dr Khan’s conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct.
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30. The Tribunal having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Khan’s fitness to practise is currently impaired.

Impairment

Insight

31. The Tribunal had regard to Dr Khan’s oral evidence and his revised recognition of the important part references play in maintaining public confidence in the profession and in protecting patient safety. It noted that Dr Khan stated he had learnt that trust was most important for patients and their families, organisations and the GMC and the implications could be huge. He stated that he had learnt that he was wrong, that the reference procedure was not just a tick box exercise, it meant a lot as it could cause danger to patients. He further stated that even though there were no concerns raised regarding his clinical practice, this could have been someone who there were concerns about.

32. The Tribunal considered that Dr Khan had developed good insight, illustrated by his attendance on a Professional Ethics course, his subsequent written reflections, and the mentoring arrangements he has put in place. The Tribunal also noted that Dr Khan had adopted a new arms-length system for dealing with references.

Remediation

33. The Tribunal determined that Dr Khan had made good progress with regards to his remediation and that a risk of a repetition of his dishonest behaviour was very low. This was not a case where there were any concerns about Dr Khan’s clinical competence.

Public Interest

34. The Tribunal considered that Dr Khan’s actions at the material time were egregious, dishonest and for personal gain. He knew the references were given to him 5 years earlier, but dishonestly changed the date on the references knowing that neither Dr A or Dr B had provided them to him on that date.

35. The Tribunal had regard to Miss F’s evidence and to the testimonials of Dr Khan’s colleagues who stated that they would have provided Dr Khan with a positive reference at that time and were willing to do so still.

36. The Tribunal noted that Dr Khan had admitted in his evidence that conduct of this nature would undermine public confidence in the profession as a whole and in him personally as a doctor. The Tribunal noted that whilst there were no concerns about
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Dr Khan’s clinical competence, his behaviour and failure to recognise the importance of the referencing process also gave rise to a real risk to the health and safety of the public. Taken as a whole, the Tribunal considered that any weight it gave to the remediation Dr Khan had shown was significantly outweighed by the seriousness of his misconduct.

Impairment

37. The Tribunal concluded that a finding of impairment is required in this case in order to protect the public interest, to promote and maintain the health and safety of the public, promote and maintain public confidence in the profession and maintain proper professional standards and conduct for the members of the profession.

38. The Tribunal has therefore determined that Dr Khan’s fitness to practice is impaired by reason of his misconduct.

Determination on Sanction - 03/10/2019

1. Having determined that Dr Khan’s fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

The Evidence

2. The Tribunal has taken into account the background to the case and the evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction. No further evidence was adduced at this stage.

Submissions

On behalf of the GMC

3. Mr Grundy submitted that the appropriate sanction in this case was a matter for the Tribunal alone exercising its own judgement. He referred the Tribunal to the Sanctions Guidance (6 February 2018) (‘the SG’) and stated that the purpose of sanctions was to not to be punitive, but to protect patients and the wider public interest, although he recognised that sanctions may have a punitive effect.

4. Mr Grundy stated that when imposing a sanction, a Tribunal should start with the least restrictive and move upwards to the most appropriate sanction for the case. Mr Grundy submitted that the appropriate sanction in this case was one of suspension from the medical register, and that the period of suspension was a matter for the Tribunal to consider.
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5. He stated that the sanction of suspension would reflect the Tribunal’s finding that, at the material time, Dr Khan’s actions were egregious, dishonest and for personal gain, and they undermined public confidence in the medical profession. Mr Grundy stated that in order to maintain proper professional standards and mark the seriousness of Dr Khan’s actions a period of suspension was necessary.

6. Mr Grundy submitted that this was not a case of exceptional circumstances where no action should be taken, nor was it a case for conditions as no conditions could be formulated that would be practical in this case.

7. Mr Grundy referred the Tribunal to paragraphs 120 to 128 of the SG relating to suspension of a doctors’ registration. He also referred the Tribunal to some of the factors it had already taken account of in its Determination on Impairment and in particular to the relevant paragraphs in the SG 91, 92, 93 and 97 a, e, f and g:

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

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

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

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

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

8. Mr Grundy stated that the Tribunal may wish to consider paragraphs 99 – 102 of the SG when determining the length to impose on Dr Khan’s suspension.

9. In conclusion Mr Grundy stated that a sanction of suspension was proportionate, appropriate and necessary in this case to send a signal to the doctor, the profession and the public.

On behalf of Dr Khan

10. On behalf of Dr Khan, Mr Mellor submitted that as previously stated Dr Khan accepted that in acting the way he did he breached a fundamental tenet of the profession. He recognised that dishonesty within the medical profession was particularly serious.

11. Mr Mellor stated that Dr Khan was not seeking to detract from the seriousness of his actions. He directed the Tribunal’s attention to Dr Khan’s level of insight and remediation, something the Tribunal had referred to in its Determination on Impairment at paragraph 32. Mr Mellor reminded the Tribunal of Dr Khan’s attendance at a Professional Ethics Course, of his personal reflections following the course, that he had undertaken further CPD as a result and that he regularly discussed matters with senior mentors.

12. Mr Mellor also reminded the Tribunal that Dr Khan had changed his practice with regards to references to ensure these were now produced at arms-length. He further stated that the Tribunal in its Determination on Impairment also considered that there was a ‘very low’ risk of repetition of Dr Khan’s dishonesty.

13. Mr Mellor referred the Tribunal to the generic references supplied by Dr A and Dr B. He stated that Dr Khan genuinely believed that both doctors’ opinions in relation to his clinical abilities had not changed. Dr B had provided a revalidation reference to Dr Khan in October 2017 and Dr Khan had worked with Dr A just before then.

14. Mr Mellor submitted that as the Tribunal’s finding on impairment related solely to Dr Khan’s past behaviour a finding of no action could be taken in this case.
15. Mr Mellor stated that this would not detract from Dr Khan’s serious, egregious and dishonest behaviour, but that the Tribunal in its finding on impairment determined that the risk of repetition was ‘very low’. Mr Mellor further stated that if the Tribunal imposed a suspension of Dr Khan’s registration this would impact on him as this was his only income.

16. Mr Mellor stated that in the circumstances of this case and given the Tribunal’s finding of impairment at stage 2, it may consider that some form of sanction was necessary. Mr Mellor said that if the Tribunal considered that to be the case then it must take into account the mitigating factors of this case and that there are no concerns with Dr Khan’s clinical practice and that he does not pose a risk to patient safety.

17. Mr Mellor referred the Tribunal to paragraph 91 of the SG and said that any period of suspension should be short in order to be just, appropriate and proportionate. Mr Mellor concluded that Dr Khan would leave the period of suspension to be imposed in the Tribunal’s hands.

The Tribunal’s Determination on Sanction

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

19. In reaching its decision, the Tribunal has taken account of the relevant sections of the SG. It has borne in mind that the purpose of sanctions is not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect.

20. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Khan’s interests with the public interest.

21. The Tribunal gave careful consideration to the aggravating and mitigating factors present in Dr Khan’s case.

22. In mitigation the Tribunal had regard to the following factors:

- His dishonesty was not sustained or repeated;
- Dr Khan was of previous good character;
- Dr Khan’s full acceptance that he acted wrongly. He had not sought to challenge the allegations found proved;
- His early admission, including to the person the dishonest reference was sent to;
- He acknowledged the effect his behaviour had on confidence in him as a doctor and on public confidence in the profession;
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- Dr Khan had undertaken retraining as part of his remediation with regard to the reference process and this new procedure was embedded in his behaviour.

23. The Tribunal balanced the mitigating factors against what it considered to be the aggravating factors in this case:

- Dr Khan’s lack of respect and casual approach for the reference procedure;
- Dr Khan’s decision to behave dishonestly, rather than take the simple steps open to him to present legitimate references to the Agency;
- The serious extent he departed from GMP.

No action

24. In reaching its decision as to the appropriate sanction, if any, to impose in Dr Khan’s case, the Tribunal first considered whether to conclude the case by taking no action.

25. The Tribunal reminded itself of Mr Mellor’s submissions that taking no action may be a relevant consideration in this case as there were no concerns regarding Dr Khan’s clinical competence. However, the Tribunal determined that there were no exceptional circumstances present to justify such an outcome.

26. The Tribunal determined that, in view of the serious nature of its findings on impairment, it would be neither sufficient, proportionate nor in the public interest to conclude this case by taking no action.

Conditions

27. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Khan’s registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

28. The Tribunal concluded that a period of conditional registration would not be workable or proportionate in this case. The Tribunal was unable to formulate specific, workable conditions in the circumstances of this case given Dr Khan’s insight and remediation. In any event, given the serious departure from GMP the Tribunal found that a conditions order would not be sufficient.

29. The Tribunal therefore determined that it would not be appropriate or sufficient to direct the imposition of conditions on Dr Khan’s registration.

Suspension
30. The Tribunal next considered whether suspending Dr Khan’s registration would be an appropriate and proportionate sanction in this case. It had regard to paragraphs 91 and 92 of the SG, and it was of the opinion that although Dr Khan’s conduct at the material time was serious, it was not completely incompatible with continued registration.

31. The Tribunal then went on to consider paragraphs 93 and 97 of the SG. In their consideration of factors that might indicate that a period of suspension was an appropriate sanction, it reminded itself of Dr Khan’s level of insight and remediation as referred to at paragraphs 31 to 33 of its Determination on Impairment and in particular paragraph 33 where it noted that ‘This was not a case where there were any concerns about Dr Khan’s clinical competence’ and that ‘a risk of a repetition of his dishonest behaviour was very low.’

32. The Tribunal concluded that though a finding of impairment in this case sent a signal to the doctor, the profession and the public that misconduct of this nature would not be tolerated, given the extent that Dr Khan had departed from GMP and in the public interest, a sanction of suspension was appropriate and proportionate.

33. Bearing in mind all of the above, and that the risk of repetition was very low, the Tribunal determined that an order of suspension for a period of one month was the appropriate and proportionate response to Dr Khan’s misconduct.

Review

34. The Tribunal had regard to paragraphs 163-164 of the SG. Given that this is a short suspension it considers a review hearing has no value.

Immediate Order

35. Mr Grundy on behalf of the GMC made no application for an Immediate Order. Given the lack of patient safety concerns, the Tribunal determined that there was no need to make such an order.

Confirmed
Date 03 October 2019

Kim Parsons, Chair
Application to admit further evidence

1. On Day 1 of the hearing, Mr Grundy on behalf of the GMC and with the agreement of Mr Mellor, Counsel for Dr Khan, made a joint application under Rule 34(1) of the Rules to admit further evidence. The evidence consisted of additional defence case papers and a supplemental statement to confirm and clarify Dr Khan’s evidence, along with supplemental statements from Dr A, Dr B and Ms H.

2. Mr Grundy submitted that the GMC witnesses had not had an opportunity to view material that was pertinent and relevant to the evidence they were due to give. Mr Grundy stated that in the interest of fairness and after discussion and agreement with Mr Mellor, rather than this evidence being shown for the first time in the ‘witness box’, it could be shown to the witnesses in advance and a short supplemental statement taken from each of them. Mr Grundy submitted that this would be of benefit to both parties as neither the witnesses nor Dr Khan would be taken by surprise in the ‘witness box’.

3. On behalf of Dr Khan, Mr Mellor apologised for the late submission of the additional evidence. Mr Mellor submitted that it was only on Monday morning that he had discovered that none of GMC witnesses had seen the documentary evidence relied upon for cross-examination and as the additional documents were highly relevant to all three GMC witnesses it would be unfair to present it to them for the first time in the ‘witness box’. Mr Mellor submitted, it was fair to admit the additional documents and supplemental statements.

4. The Tribunal determined that both the additional documentary evidence and the supplementary statements were relevant to the case. The Tribunal was of the view that the content did not constitute new evidence as such, rather it was for the purpose of clarification and it determined to accept it in the interest of fairness.
The Tribunal’s Determination on Rule 17(2)(g) Application of No Case to Answer

1. At the end of the GMC case, Mr Mellor, on Dr Khan’s behalf, 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 relates to paragraphs 1(a), 1(b), 1(d), 1(e), 2(a)(i), 2(a)(ii), 2(b)(i), 2(b)(ii) and 3 (in part).

Submissions on Dr Khan’s behalf

3. Mr Mellor submitted that there was insufficient evidence in respect of the above outstanding paragraphs of the Allegation and they should proceed no further.

4. Mr Mellor stated the test to be adopted when determining whether sufficient evidence had been adduced, was set down in the case of R v Galbraith [1981] 1WLR 1039, namely:

“(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.

(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.

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

(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness’s reliability,
or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury. There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.”

5. Mr Mellor also referred to the case of *R v Shippey* [1988] Crim LR 767, as follows:

“However, taking the prosecution case at its highest did not mean picking out the plums and leaving the duff behind. His Lordship found that he must assess the evidence and if the witnesses’ evidence was self-contradictory and out of reason and all common sense then such evidence is tenuous and suffering from inherent weakness. He did not interpret the judgment in either Galbraith or Barker [a previous authority considered in Galbraith] as intending to say that if there are parts of the evidence which go to support the charge then no matter what the state of the rest of the evidence that is enough to leave the matter to the jury. Such a view would leave part of the ratio of Galbraith tautological. He found that he had to make an assessment of the evidence as a whole. It was not simply a matter of the credibility of individual witnesses or simply a matter of evidential inconsistencies between witnesses, although those matters may play a subordinate role. He found that there were within the complainant’s own evidence inconsistencies of such a substantial kind that he would have to point out to the jury their effect and to indicate to the jury how difficult and dangerous it would be to act upon the plums and not the duff.

... His Lordship found that he could only accept the prosecution submission that the case must be left to the jury when taken at its highest if he were to ignore the inconsistencies which he had earlier outlined .... He could not ignore those inconsistencies and bearing them in mind he found that a jury properly directed could not properly convict.”

Paragraphs 2(a)(ii) and 2(b)(ii) and 3 (in part)

6. Mr Mellor submitted that during their cross-examinations both Dr A and Dr B accepted that they must have dictated the unsigned references addressed to Total Assist, a locum agency, for Dr Khan, dated 5 and 6 March 2012. He said, Ms H, in her evidence, stated that she had typed up these references whilst working from home and had found them on her home computer. Mr Mellor further submitted that
both Dr A and Dr B fully accepted that they had signed their generic undated, unaddressed references and that these were, apart from some minor amendments, the same as the Total Assist references. The generic references were in the same terms as the signed references to Thames Medics dated 8 March 2012.

7. Mr Mellor submitted that, Ms H during her cross-examination accepted she had emailed Dr Khan on 7 March 2012, referring to the generic references and stating “As I said – just change the details as necessary.” Mr Mellor further submitted that on 8 March 2012, Dr Khan responded to her email, attaching amended versions of the references, asking “Could you be so kind as to ask Dr A and Dr B to sign the attached documents… at least that way all I have to do is add a date, address and name anytime anyone asks for a reference. What do you think?” Mr Mellor stated that later that same day Ms H emailed the generic reference requests she had received for Dr Khan to Dr Khan personally, stating “ok Asad get this done.” Mr Mellor submitted that Ms H accepted that she had done this in accordance with the approach that Dr Khan would add the date, the address and the name of the addressee to a signed generic reference, and that she allowed him to do so because she thought that Dr A and Dr B had agreed to that approach.

8. Mr Mellor submitted that when Ms H responded to Dr Khan’s email “just need the signed documents” later on 8 March 2012 with “ok they are ready for you to collect” the only possible and reasonable explanation was that Dr Khan was provided with the signed generic references.

9. Mr Mellor submitted that whether or not Dr A and Dr B had approved that approach or it was, as suggested by Dr A, a misunderstanding between him and Ms H, having been provided with the signed, undated and unaddressed references, it was reasonable for Dr Khan to conclude that this approach had been approved by Dr A and Dr B.

10. Mr Mellor further submitted that far from establishing Dr Khan knew the references were false, the documentary and oral evidence from the GMC witnesses, confirms both doctors signed and provided the respective generic references to Dr Khan at that time.

11. Mr Mellor submitted that there was no evidence to find proved paragraph 2, sub-paragraphs (a)(ii) and (b)(ii) of the Allegation. Mr Mellor reminded the Tribunal of the first limb of R v Galbraith that if there was no evidence, the Allegations along with the Allegation of dishonesty at Allegation 3, should proceed no further and be dismissed.
Paragraph 2(a)(i) and 2(b)(i) and 3 (in part)

12. Mr Mellor stated that insufficient evidence had been adduced on which paragraph 2, sub-paragraphs (a)(i); (b)(i) and paragraph 3 of the Allegation could be proved.

13. Mr Mellor submitted that, when Dr A was taken through his documentary evidence during his cross-examination, he accepted that the only reasonable conclusion was that he had signed the reference for Dr Khan dated 17 February 2011 to Medacs Healthcare and this was in exactly the same terms as the unsigned “To whom it may concern” reference dated 9 February 2011, (which due to a typographical error should have been dated February 2012).

14. Mr Mellor submitted that in his cross-examination Dr B also accepted that he had signed the reference dated 16 February 2011, to Medacs Healthcare in exactly the same terms as the “To whom it may concern” reference dated 9 February 2012.

15. Mr Mellor stated that both Dr A and Dr B accepted that they had signed the generic unaddressed and undated references in March 2012, which were provided approximately one month after the unsigned “To whom it may concern” references sent to Thames Medics.

16. Mr Mellor stated that the GMC witnesses agreed that the references would have needed to be signed to be valid.

17. Mr Mellor submitted that in an email dated 28 February 2012, to Daniel Jorge at Athona Doctor Recruitment, Dr Khan attached the “To whom it may concern” references, referring to them as “sample references”, and added "If you want references addressed to you etc then Dr A and Dr B’s secretary is Miss H ([with her email address]) and telephone number…” Dr B agreed that it appeared Dr Khan was being transparent about what he was doing, as did Ms H during her cross-examination.

18. Mr Mellor stated that given that Dr B has provided a reference in the same terms in February 2011 and another reference in March 2012, no tribunal properly directed could find Dr Khan knew the unsigned reference dated 9 February 2012 was false.

19. Mr Mellor submitted that Dr A had said it was possible the sample approach had been agreed, although unlikely. Mr Mellor repeated his submission that the question was whether Dr Khan genuinely thought Dr A had approved the approach, rather than whether Dr A had agreed to it.

20. Mr Mellor submitted that no properly directed Tribunal could properly find
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Dr Khan knew it was false, for the same reason as given in relation to Dr B.

21. Finally, Mr Mellor stated that when considering Dr A’s evidence in accordance with *R v Shippey* the Tribunal should consider his evidence as a whole. Mr Mellor submitted that it was self-evidently tenuous and inherently unreliable and highlighted examples of the inconsistency in Dr A’s evidence.

22. Mr Mellor submitted firstly, that there is no evidence to properly support the Allegations under limb 1 of *R v Galbraith*. But, in any event, if it was concluded there was some evidence, it should fail under limb 2 of *R v Galbraith*.

GMC Submissions

23. Mr Grundy submitted on behalf of the GMC that he had nothing to add and that the GMC remained neutral on this submission.

24. Mr Grundy stated it followed that if the submission in relation to paragraphs 2(a)(i), 2(a)(ii), 2(b)(i), 2(b)(ii) succeeded, paragraphs 1(a), 1(b), 1(d) and 1(e) would fall away also.

The Tribunal’s Approach

25. The Tribunal accepted the advice of the Legally Qualified Chair.

26. The Tribunal bore in mind that when considering the evidence at this stage of the proceedings, its role is not to make findings of facts but to apply the relevant test(s) set out in *R v Galbraith*. In that regard, the Tribunal was mindful that it should only uphold the application in respect of a particular sub-paragraph where it finds that:

1) There is no evidence and the allegation is therefore incapable of being found proved on the balance of probabilities; or

2) There is some evidence, but the evidence is insufficient for the allegation to be able to be found proved on the balance of probabilities.

27. In respect of the second limb of the test, “insufficient” means that taking the evidence at its highest, it is of such a tenuous character by reason of inherent weakness or vagueness or because it is inconsistent with other evidence, that it could not be relied upon by a properly directed Tribunal.

28. If the answer to the second limb is yes, then the allegation should not proceed under regulation 17(2)(g).
29. But, where the evidence is such that its strength or weakness depends on the view to be taken of a witnesses’ reliability, or other matters which are generally speaking within the province of the Tribunal and where on once possible view of the facts there is evidence on which the Tribunal could properly find the matter proved, then the matter should continue.

**The Tribunal’s Decision**

**Dr A’s evidence**

30. The Tribunal noted that Dr A stated in his initial statement that he would never have provided a reference for Dr Khan in 2011 or 2012 and that he would not have been happy to sign the March 2012 reference.

31. Dr A further stated that he did not write the 9 February 2011 reference as it contained words that he would not use generally and certainly not to describe Dr Khan. He also stated that he had never provided a reference without the address/signature being endorsed.

32. In relation to 8 March 2012 reference, Dr A also stated that it did contain wording that he would generally use, but doubted he wrote the reference as he would never have provided a reference for Dr Khan in 2011-2012 or otherwise, due to concerns about his conduct as a doctor.

33. Before he gave oral evidence, Dr A was shown an original copy of an unaddressed/undated but signed reference (the generic reference) containing the same wording as the 8 March 2012 reference. After this he made a supplemental statement.

34. Dr A signed his supplemental statement on 5 June 2019, (the day he gave oral evidence) to say he had never and would never sign such a letter, (referring to the generic reference) and was horrified that Dr Khan had typed in the addressee details.

35. During cross-examination, Dr A accepted that he had in fact signed the generic reference for Dr Khan, which was unaddressed and undated and contained the same wording as the 8 March 2012 reference.

36. He also accepted, during cross-examination that he must have dictated a reference for Dr Khan in early 2012 to another locum agency, as his secretary had typed this up using her home computer.
37. Dr A also accepted that apart from minor amendments, the reference his secretary typed up earlier in March 2012, was the same as the 8 March 2012 reference to Thames Medics.

38. Dr A accepted in cross-examination, after seeing the emails Dr Khan had produced, that the "only reasonable" conclusion was that he had signed a reference dated 17 February 2011 to Medacs Healthcare. He accepted that this was in the same terms as the unsigned reference dated 9 February 2011.

39. Dr A stated that it was unlikely that he had agreed to an unsigned sample letter going out to locum agencies (based on the 17 February 2011 Medacs reference).

Ms H’s evidence

40. Dr A and B’s secretary, Ms H said in her original statement that she did not provide Dr Khan with references with the date and addressee left blank. Nor did she tell him to complete the date and address himself.

41. Ms H stated she had never provided a reference without the referee’s consent and their signature on it.

42. Ms H stated she recalled receiving reference requests for Dr Khan from Dr B in 2012, but did not recall any from Dr A and did not think these would have been granted. She didn't think Dr A would have provided a reference for Dr Khan.

43. Ms H stated she did not believe the 9 February 2011 reference for Dr A or 9 February 2012 reference for Dr B was typed by her. This was because they were unusual in terms of layout and the words used.

44. In Ms H’s supplemental statement, signed on 5 June 2019 (a day before she gave oral evidence), she did not recall discussing the sample process for providing references with Dr Khan.

45. Ms H did not recall emailing Dr Khan two unsigned references to Total Assist, although from the email thread she accepted it was possible she did send them to him. Ms H accepted she could have allowed Dr Khan to change the date and address if the reference was only a few weeks old, but would still need the consultants to sign the reference. Ms H stated that she would not get copies of unaddressed and undated references signed by a consultant.

46. Ms H had no recollection of Dr Khan collecting open references from her and stated she did not provide him with open references.
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47. Ms H stated in her oral evidence, that she could not recall events over 7 years ago. After seeing a number of emails produced by Dr Khan she accepted that she would have allowed Dr Khan to change the date and addressee on the signed generic reference. She stated that she would have done so believing that Dr A and Dr B had agreed to this approach.

48. Ms H accepted that she had received a reference request from Thames Medics (now HCL) on 8 March 2012. Her email to Dr Khan said "Ok Asad get this done” and that this accorded to the approach referred to in Dr Khan’s earlier email about adding a date, name and address to the generic references.

Dr B’s evidence

49. The Tribunal also received evidence from Dr B, who stated in his original statement that he did not recall the 9 February 2012 reference and it looked a bit odd. He didn’t think he had produced it as it contained words he would not use and the layout looked different to usual. He said he would not have produced a reference without an address or signature.

50. Dr B stated that the 8 March 2012 reference did contain wording he would use and he was happy to recommend Dr Khan. He stated that the signature was his, but he did not recall producing it, but it was possible he could have produced the reference.

51. Dr B stated that his secretary at the time, Ms H always produced references with an address and a date on. If she did not do this he would have considered it unusual.

52. Dr B further stated that he had never provided a reference whereby the addressee and date was to be completed by the doctor at a later date, to Dr Khan or any other doctor. To his knowledge Ms H would not provide a doctor with an unaddressed or undated reference in 2012, or otherwise.

53. Dr B in his supplemental statement stated that it was possible that Dr Khan could have prepared a draft letter and that it came to him via his secretary. He accepted that it was possible the reference to Medacs dated 16 February 2011 was genuine.

54. Dr B also stated that he would not sign an open letter unless tricked into it, perhaps by someone he trusted. Dr B stated that if Dr Khan required a reference, a secretary should have brought this to him to be signed. Anything outside of this was without his knowledge.
55. Dr B accepted in cross-examination that he must have dictated a reference for Dr Khan to Total Assist in early March 2012, which Ms H had typed up at home. Dr B also agreed, save for minor amendments, this reference contained the same wording as the 8 March 2012 reference.

56. Dr B accepted that he had signed an undated and unaddressed reference containing the same wording as the 8 March 2012 reference.

57. Dr B stated that he would not have agreed to the sample reference approach. He agreed in cross-examination, that Dr Khan was being transparent when he told another agency it was a “sample reference” and it could contact Dr B’s secretary if it wanted a reference addressed to the agency.

58. Dr B stated that he could not recall signing a revalidation reference in October 2017, but was not suggesting that this reference was false.

Paragraph 2(a)(ii)

59. The Tribunal concluded that there was no evidence to show that Dr Khan knew the 8 March 2012 reference was not issued by Dr A, or that it was false.

60. The Tribunal noted there were significant inconsistencies in the evidence set out in Dr A’s and Ms H’s witness statements, and that their evidence was self-contradictory when compared to the oral evidence they gave in cross-examination.

61. Contrary to what Dr A had said in his written statements, he accepted during his oral evidence that he had provided Dr Khan with a reference, and seemingly on more than one occasion between 2011 and 2012, doing so via his secretary, Ms H and another secretary, Ms M.

62. This included providing a signed, unaddressed and undated reference, which Dr Khan has been provided with a hard copy of. The content of this generic reference was the same as that provided around the same time to Thames Medics dated 8 March 2012. Dr A also accepted the only reasonable conclusion was that he had issued a reference in February 2011, a reference that used wording he wouldn’t usually use. He accepted the body of the content of the February 2011 reference was the same as the “To whom it may concern” reference in paragraph 1a.

63. Ms H accepted that at busy times she would have allowed Dr Khan to change the date and addressee on the reference, providing it was within a few weeks, which appeared to be the case here. She accepted she was inundated with references for Dr Khan at the material time. The Tribunal noted that Ms H would have only allowed
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this, if she thought Dr A and Dr B had agreed to reference content being re-used in this way.

64. The Tribunal took the view that the GMC had failed to provide evidence to show the 8 March 2012 reference was not, in fact, issued by Dr A. Or that either way, given the arrangement agreed between Ms H and Dr Khan, Dr Khan would have known it was false, if it was, or that Dr A had not agreed this arrangement for processing references.

Paragraph 2(b)(ii)

65. The Tribunal concluded that there was no evidence to show that Dr Khan knew the 8 March 2012 reference was not issued by Dr B, or that it was false. Dr B stated in his supplemental witness statement it was possible he could have produced this reference.

66. The Tribunal noted there were significant inconsistencies in the evidence set out in Dr B’s and Ms H’s witness statements, compared to the oral evidence given in cross-examination, and that their evidence was self-contradictory when compared to the oral evidence they gave in cross-examination.

67. As with Dr A, Dr B also accepted in his oral evidence, he had provided a signed, unaddressed and undated reference. Dr Khan had been provided with a hard copy of this reference. The content of this generic reference was the same as that provided to Thames Medics dated 8 March 2012. He also accepted providing a reference dated February 2011, which used wording he would not normally use. Further Dr B accepted providing a revalidation reference in October 2017, that he couldn’t recall providing, but did not dispute he had.

68. As stated above, Ms H accepted at busy times she would have allowed Dr Khan to change the date and addressee on a reference, providing it was within a few weeks, which appeared to the case with the generic reference. Ms H accepted she was inundated with references for Dr Khan at the time. The Tribunal noted that Ms H would have only allowed this, if she thought Dr A and Dr B had agreed to the reference content being re-used in this way.

69. As with Dr A, the Tribunal took the view that the GMC had failed to provide evidence to show that the 8 March 2012 reference was not, in fact, issued by Dr B. Or that either way, given the arrangements agreed between Ms H and Dr Khan, Dr Khan would have known it was false, if it was, or that Dr B has not agreed this arrangement for processing references.
Paragraphs 2(a)(i) and 2(b)(i)

70. The Tribunal considered that the GMC’s case in respect of these sub-paragraphs, largely turned on Dr A, Dr B and Ms H’s recollection of events about any discussions around sample references. The Tribunal concluded there was some evidence before it, for these sub-paragraphs of the Allegation.

71. The Tribunal therefore went on to consider limb 2 of *R v Galbraith* and whether at its highest this evidence was capable of allowing the sub-paragraphs to be found proved on the balance of probabilities. It had regard to *R v Shippey*, taking into account that it should assess the evidence of each witness as a whole, not picking out the plums and leaving the duff behind.

72. The Tribunal considered that taken as a whole, Dr A, Dr B and Ms H’s recollection of events over seven years ago, was individually, and when taken together, materially and significantly inconsistent and self-contradictory. It was also inconsistent with the contemporaneous email and document trail, which none of them had said was not genuine. The Tribunal was of the view that their evidence was, in the circumstances, inherently weak and tenuous, such that it could not be relied upon by a properly directed Tribunal.

Paragraphs 1(a), 1(b), 1(d) and 1(e)

73. Given that the Tribunal has found no case to answer in respect of paragraphs 2(a)(i), 2(a)(ii), 2(b)(i) and 2(b)(ii), as submitted by both counsels, it follows that paragraphs 1(a), 1(b), 1(d) and 1(e) also fall away.

Paragraph 3

74. Dr Khan has admitted paragraph 3 in relation to Dr A and Dr B’s November 2017 references. As the Tribunal finds no case to answer in respect of paragraphs 2(a)(i), 2(a)(ii), 2(b)(i), and 2(b)(ii), consequently, it also finds that Dr Khan has no case to answer in relation to dishonesty in respect of the 9 February 2011, 9 February 2012 and 8 March 2012 references.

75. Accordingly, the Tribunal concludes that there is no case to answer in respect of paragraphs 1(a), 1(b), 1(d), 1(e), 2(a)(i), 2(a)(ii), 2(b)(i), 2(b)(ii) and 3 (in part).