Record of Determinations – Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 03/06/2019 - 14/06/2019
Medical Practitioner’s name: Dr Bevan Washington HYDER
GMC reference number: 6108171
Primary medical qualification: MD 2004 St George's University
Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome
Suspension, 4 months.
Review hearing directed

Tribunal:

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<tr>
<td>Legally Qualified Chair</td>
<td>Mr Julian Weinberg</td>
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<tr>
<td>Lay Tribunal Member:</td>
<td>Mr John Crawley</td>
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<td>Medical Tribunal Member:</td>
<td>Dr Helen McCormack</td>
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<td>Tribunal Clerk:</td>
<td>Mr Stuart Peachey</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 Matthew Barnes, Counsel, instructed by the MPS</td>
</tr>
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<td>GMC Representative:</td>
<td>Ms Catherine Cundy, 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 Hyder qualified as a Doctor of Medicine at St George’s University School of Medicine in Grenada in 2004. He relocated to the United Kingdom in 2004 and completed his FY1 and FY2 training between 2005 and 2006. He then worked as a SHO in various hospitals. From 2012, Dr Hyder began working in various Locum positions at different hospitals.

2. Dr Hyder worked in the Urgent Treatment Centre ('UTC') as a Locum Staff Specialist at Crawley Hospital, part of the Sussex Community NHS Foundation Trust (SCFT) ('Crawley'), from October 2013 to August 2014. He began a full-time position at Crawley in the UTC on 1 August 2014 and his contract provided for him to work three 12.5 hour shifts per week which included a 30 minute break.

3. Dr Hyder resigned from his position at Crawley on 30 October 2015.

The Outcome of Applications Made during the Facts Stage

4. The Tribunal granted the GMC’s application, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules') to amend the Allegation. This was not opposed by Dr Hyder’s representatives.

5. The Tribunal refused the GMC’s application, made pursuant to Rule 34(1) of the Rules. The Tribunal’s full decision on the application is included at Annex A.

6. The Tribunal refused Dr Hyder’s application, made pursuant to Rule 34(1) of the Rules. The Tribunal’s full decision on the application is included at Annex B.
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7. The Tribunal refused Dr Hyder’s application, made pursuant to Rule 17(2)(g) of the Rules. The Tribunal’s full decision on the application is included at Annex C.

8. The Tribunal refused a further application from Dr Hyder, made pursuant to Rule 34(1) of the Rules. The Tribunal’s full decision on the application is included at Annex D.

9. The Tribunal refused Dr Hyder’s application, made pursuant to Rule 34(11) of the Rules. The Tribunal’s full decision on the application is included at Annex E.

The Allegation and the Doctor’s Response

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

1. You worked or were scheduled to work for Sussex Community NHS Foundation Trust (‘SCFT’) on:
   a. 14 August 2014, 10:00 – 22:30 (‘S1’); To be determined
   b. 12 September 2014, 10:30 – 23:00 (‘S2’); To be determined
   c. 30 September 2014, 10:30 – 23:00 (‘S3’); To be determined
   d. 27 October 2014, 10:30 – 23:00 (‘S4’); To be determined
   e. 6 November 2014, 10:30 – 23:00 (‘S5’);
   f. 24 November 2014, 10:30 – 23:00 (‘S5’); To be determined
   Deleted following successful 17(2)(g) application
   f. 3 December 2014, 09:00 – 22:00 (‘S6’);

2. You worked shifts arranged through Interact locum agency (‘Interact’) on:
   a. 14 August 2014, 22:00 – 15 August 2014, 08:00 at Brighton and Sussex hospital (‘I1’);
      Admitted and found proved
   b. 12 September 2014, 22:00 – 13 September 2014, 08:30 at Guys and St Thomas Hospital (‘I2’);
      Admitted and found proved
c. 30 September 2014, 23:00 – 1 October 2014, 08:00 at Basildon University Hospital (‘I3’);
Admitted and found proved

d. 27 October 2014, 23:00 – 28 October 2014, 08:30 at Basildon University Hospital (‘I4’); Admitted and found proved

e. 6 November 2014, 18:00 – 7 November 2014, 04:00 (‘I5’);

f. 24 November 2014, 22:00 – 25 November 2014, 08:00 at Basildon University Hospital (‘I5’);
Admitted and found proved

g. 3 December 2014, 22:00 – 4 December 2014, 08:30 at Guys and St Thomas Hospital (‘I6’).
Admitted and found proved

3. There is a direct overlap between the SCFT Shifts and the Interact Shifts set out at:

a. S1 and I1; To be determined

b. S2 and I2; To be determined

c. S5 and I5; To be determined

d. S6 and I6.

4. You failed to be present and/or complete a whole shift for one of the two shifts set out at sub-paragraph:

a. 3a; To be determined

b. 3b; To be determined

c. 3c; To be determined

d. 3d.

5. You did not have adequate time to commute between:

a. Crawley Hospital and Basildon University Hospital for the following shifts:

i. S3 and I3; To be determined
ii. S4 and I4; **To be determined**

b. ——Crawley Hospital and Guys and St Thomas Hospital for the shifts S7 and I7. **Deleted following successful 17(2)(g) application**

6. You failed to be present and/or complete a whole shift for one of the two shifts set out at sub-paragraph:

a. 5a 5ai; **To be determined**

b. 5b 5aii; **To be determined**

e. 5c 5b. **Deleted following successful 17(2)(g) application**

7. You did not complete the whole shifts as set out at the following paragraphs when you knew you were obligated to do so:

a. 3a; **To be determined**

b. 3b; **To be determined**

c. 3c; **To be determined**

d. 3d;

d. 5a 5ai; **To be determined**

e. 5b 5aii; **To be determined**

f. 5c 5b. **Deleted following successful 17(2)(g) application**

8. Your actions as described at paragraphs 4 and 6 were dishonest by reason of paragraph 7. **To be determined**

**The Admitted Facts**

11. At the outset of these proceedings, through his counsel, Mr Barnes, Dr Hyder made admissions to Paragraphs 2(a) to (d), (f) and (g) of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules.

12. 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.
Factual Witness Evidence

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

- Dr A, Medical Director at Crawley, in person; a witness statement, dated 10 December 2018; and a supplemental statement, dated 29 January 2019;
- Dr C, Clinical Director at Crawley, in person; and a witness statement, dated 24 January 2019.
- Dr B, Medical Director at Basildon and Thurrock University Hospitals NHS Foundation Trust, in person; and a witness statement, dated 9 November 2018; and
- Mr D, Operations Director at Interact, in person; and a witness statement, dated 5 December 2018.

14. The Tribunal also received in evidence the written statement of Ms E, Temporary Staff Manager at Staff Bank, dated 9 January 2019.

15. Dr Hyder provided his own witness statement, dated 15 May 2019, and also gave oral evidence during these proceedings.

Documentary Evidence

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

- Letter from Dr A to the GMC, dated 27 March 2018;
- Email correspondences from Dr B to the GMC, dated 20 April 2018; 31 October 2018;
- Email correspondence from Mr F to the GMC, dated 20 April 2018;
- Symphony system record results;
- Email correspondence from Mr D to the GMC, dated 27 April 2018;
- Booking sheets;
- Timesheets;
- Spreadsheet of Dr Hyder’s shifts;
- Letter from Ms E to the GMC;
- Booking confirmations;
- Internal SCFT email correspondence with a rota attached, dated 25 August 2014;
- Testimonial from Mr G, Senior Recruitment Consultant at Interact, dated 11 January 2018.

The Tribunal’s Approach
17. 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 Hyder 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.

18. When considering matters of dishonesty, the Tribunal took account of the principles in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. It bore in mind that it should first ascertain, subjectively, the actual state of Dr Hyder’s knowledge or belief as to the facts and should then decide whether his conduct was honest or dishonest by applying the objective standards of ordinary decent people.

The Tribunal’s Analysis of the Evidence and Findings

Dr A and Dr C

19. The Tribunal found both Dr A and Dr C to be measured, consistent and reliable witnesses attempting to tell the Tribunal what they recall of the events of 2014 to the best of their recollection.

Dr B

20. The Tribunal noted that Dr B’s evidence primarily related to Basildon University Hospital. It considered that he was a straightforward and credible witness.

Mr D

21. The Tribunal considered Mr D, a GMC witness, to be a straightforward and informative witness. At times, the evidence that Mr D gave was potentially helpful towards Dr Hyder. However, it considered that the evidence Mr D gave was wholly objective and impartial by way of his explanation regarding Locum shifts.

Dr Hyder

22. The Tribunal considered Dr Hyder to be a less credible and reliable witness. He was at times reluctant to answer questions directly. In addition as set out later in this determination, he gave explanations for events that had not been raised in his recent witness statement despite the fact that such information might have assisted him in his defence. In addition, the Tribunal considered that certain aspects of his evidence were implausible; for example, his insistence that leaving Crawley shifts early posed no risk of harm to patients when he would have been unaware of patients’ needs or the demands of the unit after he had left to go to his Locum shifts.

Findings
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23. 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.

Paragraph 1(a) of the Allegation

24. The Tribunal had regard to Dr A’s letter to the GMC, dated 27 March 2018, in which he stated that Dr Hyder’s scheduled start time for (S1) on 14 August 2014 at Crawley was 10:00, he logged into SystmOne at 10:36 (36 minutes later). His scheduled end time was 22:30 (a 12.5 hour shift), and he had logged out of SystmOne at 21:36 (54 minutes early).

25. The Tribunal noted that Dr A is a Senior Clinician and is the Medical Director at Crawley and undertook some clinical work at the UTC. Dr A had produced the scheduled shift timetables and login/logout times for a number of days. The Tribunal noted that three of the entries accord with the times of the draft rotas, produced by Dr Hyder for those days. Whilst the Tribunal had not been presented with the rota for 14 August 2014, it found Dr A’s evidence of the scheduled and login/logout times on the balance of probabilities, accurate.

26. It also had regard to Dr Hyder’s admission in his witness statement, in which he states at paragraph 36:

   ‘In response to the allegations set out in the Rule 15 charges served by the GMC, I do not dispute that I was scheduled to work at Crawley on the dates alleged’.

27. Therefore, the Tribunal found it was more likely than not that Dr Hyder was scheduled to work for Crawley on 14 August 2014 and for the time periods alleged. The Tribunal therefore found Paragraph 1(a) of the Allegation proved.

Paragraph 1(b) of the Allegation

28. In his letter to the GMC, Dr A stated that Dr Hyder’s scheduled start time for (S2) on 12 September 2014 at Crawley was 10:30. He logged into SystmOne at 11:07 (37 minutes later), his scheduled end time was 23:00 (a 12.5 hour shift). He had logged out of SystmOne at 21:18 (1 hour and 42 minutes early).

29. The Tribunal had not been presented with the rota for 12 September 2014.

30. For the same reasons outlined in respect of Paragraph 1(a) of the Allegation, namely Dr A’s evidence on Dr Hyder’s scheduled Crawley shift start/end times and system login/logout times, the Tribunal found that it was more likely than not that Dr Hyder was scheduled to work for Crawley on 12 September 2014 and for the time period alleged.
31. Therefore, the Tribunal found Paragraph 1(b) of the Allegation proved.

**Paragraph 1(c) of the Allegation**

32. In his letter to the GMC, Dr A stated that Dr Hyder’s scheduled start time for (S3) on 30 September 2014 at Crawley was 10:30. He logged into SystmOne at 11:02 (32 minutes later). His scheduled end time was 23:00 (a 12.5 hour shift), and he had logged out of SystmOne at 22:08 (52 minutes early).

33. For the same reasons outlined in respect of Paragraph 1(a) of the Allegation, namely Dr A’s evidence on Dr Hyder’s scheduled Crawley shift start/end times and system login/logout times, the Tribunal found that it was more likely than not that Dr Hyder was scheduled to work for Crawley on 30 September 2014 and for the time period alleged.

34. Therefore, the Tribunal found Paragraph 1(c) of the Allegation proved.

**Paragraph 1(d) of the Allegation**

35. In Dr A’s supplemental statement, he stated that Dr Hyder’s scheduled start time for (S4) on 27 October 2014 at Crawley was 10:30. He logged into SystmOne at 11:14 (44 minutes late). His scheduled end time was 23:00 (a 12.5 hour shift), and he had logged out of SystmOne at 22:23 (37 minutes early).

36. Based on Dr A’s evidence on Dr Hyder’s scheduled Crawley shift start/end times and system login/logout times, and the rota Dr Hyder exhibited, the Tribunal found that it was more likely than not that Dr Hyder was scheduled to work for Crawley on 27 October 2014 and for the time period alleged.

37. The Tribunal therefore found Paragraph 1(d) of the Allegation proved.

**Paragraph 1(e) of the Allegation**

38. In Dr A’s supplemental statement, he stated that Dr Hyder’s scheduled start time for (S5) on 24 November 2014 at Crawley was 10:30. He logged into SystmOne at 10:47 (17 minutes later). His scheduled end time was 23:00 (a 12.5 hour shift), and he had logged out of SystmOne at 22:43 (17 minutes early).

39. Based on Dr A’s evidence on Dr Hyder’s scheduled Crawley shift start/end times and system login/logout times, and the rota Dr Hyder exhibited, the Tribunal found that it was more likely than not that Dr Hyder was scheduled to work for Crawley on 27 October 2014 and for the time periods alleged.

40. The Tribunal found Paragraph 1(e) of the Allegation proved.
Paragraph 3 of the Allegation

41. Taking into account the Tribunal’s findings at Paragraph 1 of the Allegation as found proved, and Dr Hyder’s admission to the entirety of Paragraph 2 of the Allegation, the Tribunal found that, on the balance of probabilities, that there was a direct overlap between the Crawley shifts and the locum shifts set out at:

- S1 and I1;
- S2 and I2; and
- S5 and I5.

42. Therefore, the Tribunal found Paragraph 3 of the Allegation proved in its entirety.

Paragraph 4 of the Allegation

43. The Tribunal first of all ascertained whether Dr Hyder had permission to leave early from the Crawley shifts to attend the locum posts. Taking account of Dr A’s unchallenged SystmOne data, it noted that Dr Hyder left the relevant shift early at Crawley as follows:

- S1 – 54 minutes early;
- S2 – 1 hour and 42 minutes early; and
- S5 – 17 minutes early.

44. The Tribunal also noted that Dr Hyder was contracted to undertake three 12 hour and 30 minute shifts (with a 30 minute break).

45. Dr C told the Tribunal that a doctor would be able to leave his/her shift early exceptionally, under the premise of a personal emergency or other necessity. He stated that he would not permit a doctor to leave early to undertake a locum shift at another hospital.

46. In his evidence, Dr Hyder’s described to the Tribunal that he had an arrangement with medical colleagues and suggested that on the occasions when he had left early from Crawley, he was not in breach of any condition in his contract of employment as he had permission to leave. He told the Tribunal that he did not simply walk out of the building without people knowing that he had left. Further, he stated that he would message the Nurse in charge, whether she was on duty or not, to ask if he could leave early. Dr Hyder accepted that he did not tell the Nurse in charge why he wanted to leave early. Given the evidence of Dr C the Tribunal did not accept as credible Dr Hyder’s evidence that if he had asked the Nurse in charge to leave early because he wanted to go to a Locum shift, she would have agreed. Had that been the case, the Tribunal did not consider it credible that Dr Hyder would
have withheld that information from the Nurse in charge. The Tribunal noted that it is not Dr Hyder’s case that he had come to an arrangement with Dr C to leave his Crawley shifts early to work Locum shifts elsewhere.

47. Mr Barnes accepted that as a matter of fact, Paragraph 4(c) of the Allegation is accepted because Dr Hyder logged out of his shift at Crawley at 22:43 yet the shift at Basildon University Hospital was due to start at 22:00.

48. Therefore, based on all the evidence before it, its earlier findings, and having concluded that Dr Hyder had not been given informed permission based on the reason why he was leaving early, the Tribunal found that it was more likely than not that Dr Hyder failed to be present and/or complete the whole shifts as alleged in this paragraph.

49. Therefore, the Tribunal found Paragraph 4 proved in its entirety.

**Paragraph 5 of the Allegation**

50. Having found Paragraphs 1(c) and (d) of the Allegation proved, and on the basis of Dr Hyder’s factual acceptance of Paragraphs 2 and 5(a)(ii) of the Allegation, it concluded that it was more likely than not that Dr Hyder did not have adequate time to commute between Crawley and Basildon University Hospital for the shifts set out in Paragraphs 5(a)(i) and (ii) of the Allegation.

51. Therefore, The Tribunal found Paragraph 5(a) of the Allegation proved in its entirety.

**Paragraph 6 of the Allegation**

52. The Tribunal had regard to Mr D’s evidence in which he stated that the Locum agency recognised that a Locum doctor may start their shift late, but that they might still be paid for the full shift regardless of whether the doctor arrives on time. The Tribunal concluded that it could properly be inferred that there was an acceptance that Dr Hyder could be late for a Locum shift. It noted that Dr Hyder had informed the Locum agency on occasions that he would be late for a shift. It considered that it was plausible that there was an informal agreement between Dr Hyder and the Locum agency that turning up late for a Locum shift would still be acceptable.

53. However, in light of the Tribunal’s earlier findings in relation to the relevant shift times, having found Paragraph 5(a) of the Allegation proved, the Tribunal concluded that it was more likely than not that Dr Hyder failed to be present and/or complete a whole shift for one of the two shifts as outlined in Paragraph 6(a) of the Allegation.
54. Therefore, The Tribunal found Paragraph 6 of the Allegation proved in its entirety.

**Paragraph 7 of the Allegation**

55. For the reasons set out above, the Tribunal has accepted Dr A’s evidence regarding Dr Hyder’s login times. The Tribunal accepted that the login times do not necessarily represent the exact time Dr Hyder arrived at work and accepted that a limited amount of time may be spent on other matters, for example patient handover and administration, and other matters prior to logging on to the system.

56. The Tribunal noted that Dr Hyder logged on to the system as follows:

- 14 August 2014 – 36 minutes after the scheduled shift start time;
- 12 September 2014 – 37 minutes after the scheduled shift start time;
- 30 September 2014 – 32 minutes after the scheduled shift start time;
- 27 October 2014 – 44 minutes after the scheduled shift start time; and
- 24 November 2014 – 17 minutes after the scheduled shift start time.

57. The Tribunal accepted Dr C’s evidence that there were issues with Dr Hyder’s timekeeping in that he repeatedly arrived at work late. Dr C told the Tribunal he had raised this with Dr Hyder, there had been some improvement in his time keeping for a short period, but then it lapsed back.

58. It also had regard to Dr Hyder’s Crawley logout times in conjunction with his scheduled shift end time, which demonstrated that Dr Hyder left Crawley early on the following dates:

- 14 August 2014 – 54 minutes early;
- 12 September 2014 – 1 hour and 42 minutes early;
- 30 September 2014 – 52 minutes early;
- 27 October 2014 – 37 minutes early; and
- 24 November 2014 – 17 minutes early.

59. In relation to arriving late at the Locum shifts, the Tribunal was aware that Dr Hyder had been clear with Mr G that he would be attending the shifts late. Mr D stipulated that Dr Hyder would still be paid regardless of whether he arrived on time or late to the Locum shifts. The Tribunal considered that it was more likely than not that Dr Hyder was not attempting to be deceitful by turning up late to the Locum shifts.

60. However, in relation to the Crawley shifts, the Tribunal considered that, in the absence of evidence of a personal emergency or other necessity for which informed permission had been obtained to leave early, Dr Hyder was obliged to complete his shifts at Crawley. It had not been presented with any evidence that Dr Hyder was
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given prior permission to work any times other than those scheduled hours. In the circumstances, and given its earlier determinations in relation to shift times, the Tribunal concluded that Dr Hyder did not complete the whole of the Crawley shifts when obligated to do so for shifts S1, S2, S3 and S4.

61. In relation to Paragraph 7(c) of the Allegation (as it relates to Paragraph 3(c) of the Allegation), the Tribunal accepted Dr A and Dr C’s evidence that a 15 minute delay in starting and/or finishing a shift would be reasonable to take account of any administrative or practical matters on arrival or leaving. In those circumstances, the Tribunal considered that Dr Hyder was on time for his shift at Crawley on 24 November 2014 to which, on the balance of probabilities, he had effectively completed that shift and therefore met his obligation and/or duty in that regard.

62. Therefore, the Tribunal found Paragraphs 7(a), (b), (d) and (e) of the Allegation proved, and Paragraph 7(c) of the Allegation not proved.

Paragraph 8 of the Allegation

63. The Tribunal had regard to the fact that this case raised issues relating to whether Dr Hyder had a right to claim full pay for shifts that he did not complete in their entirety. However, the Tribunal was mindful that the dishonesty alleged relates to the non-completion of the alleged shifts he was obligated to work and not in relation to the financial remuneration that Dr Hyder had claimed for. Therefore, the Tribunal did not make a finding in relation this aspect of the case.

64. In relation to the dishonesty alleged, the Tribunal had regard to all the evidence before it and its earlier findings. Having done so it has applied the test in Ivey v Genting Casinos namely:

‘74 […] When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.’

65. In considering the subjective limb of that test the Tribunal found that Dr Hyder:

1. Knew what his Crawley shift hours were;
2. Knew that he wanted to leave Crawley early to work a Locum post elsewhere and not because of a personal emergency or other necessity;

3. Sought and obtained the agreement of a medical colleague to leave early.

4. Knew that he did not have permission from a Clinical Leader to leave early.

5. Knew that any permission given by the Nurse in charge to leave early (which would have to be given in the absence of permission given by the Clinical Leader) was given on the basis that she had not been informed of the true reason for him wanting to leave early.

6. When he was travelling to, or working at a Locum shift, he knew that he had not been given informed permission to leave Crawley early to attend a Locum shift elsewhere.

66. The Tribunal then went on to consider whether Dr Hyder’s conduct was dishonest by applying the objective standards of ordinary decent people. Having done so, it concluded that ordinary decent people would find that leaving a shift in these particular circumstances, to work elsewhere, and withholding the true reason for leaving Crawley from those individuals authorised to agree to it, would be dishonest.

67. It therefore, it found Paragraph 8 of the Allegation proved, in relation to Paragraphs 4 and 6(a) and (b) of the Allegation.

**The Tribunal’s Overall Determination on the Facts**

68. The Tribunal has determined the facts as follows:

1. You worked or were scheduled to work for Sussex Community NHS Foundation Trust (‘SCFT’) on:

   a. 14 August 2014, 10:00 – 22:30 (‘S1’); Determined and found proved
   
   b. 12 September 2014, 10:30 – 23:00 (‘S2’); Determined and found proved
   
   c. 30 September 2014, 10:30 – 23:00 (‘S3’); Determined and found proved
d. 27 October 2014, 10:30 – 23:00 (‘S4’);
   Determined and found proved

e. 6 November 2014, 10:30 – 23:00 (‘S5’);

e. 24 November 2014, 10:30 – 23:00 (‘S5’);
   Determined and found proved

f. 3 December 2014, 09:00 – 22:00 (‘S6’);
   Deleted following successful 17(2)(g) application

2. You worked shifts arranged through Interact locum agency (‘Interact’) on:

   a. 14 August 2014, 22:00 – 15 August 2014, 08:00 at Brighton and Sussex hospital (‘I1’);
      Admitted and found proved

   b. 12 September 2014, 22:00 – 13 September 2014, 08:30 at Guys and St Thomas Hospital (‘I2’);
      Admitted and found proved

   c. 30 September 2014, 23:00 – 1 October 2014, 08:00 at Basildon University Hospital (‘I3’);
      Admitted and found proved

   d. 27 October 2014, 23:00 – 28 October 2014, 08:30 at Basildon University Hospital (‘I4’);
      Admitted and found proved

   e. 6 November 2014, 18:00 – 7 November 2014, 04:00 (‘I5’);

   f. 24 November 2014, 22:00 – 25 November 2014, 08:00 at Basildon University Hospital (‘I5’);
      Admitted and found proved

   g. 3 December 2014, 22:00 – 4 December 2014, 08:30 at Guys and St Thomas Hospital (‘I6’).
      Admitted and found proved

3. There is a direct overlap between the SCFT Shifts and the Interact Shifts set out at:

   a. S1 and I1; Determined and found proved
b. S2 and I2; **Determined and found proved**

c. S5 and I5; **Determined and found proved**

d. S6 and I6.

4. You failed to be present and/or complete a whole shift for one of the two shifts set out at sub-paragraph:

   a. 3a; **Determined and found proved**

   b. 3b; **Determined and found proved**

   c. 3c; **Determined and found proved**

   d. 3d.

5. You did not have adequate time to commute between:

   a. Crawley Hospital and Basildon University Hospital for the following shifts:

      i. S3 and I3; **Determined and found proved**

      ii. S4 and I4; **Determined and found proved**

   b. Crawley Hospital and Guys and St Thomas Hospital for the shifts S7 and I7.

      **Deleted following successful 17(2)(g) application**

6. You failed to be present and/or complete a whole shift for one of the two shifts set out at sub-paragraph:

   a. 5a 5ai; **Determined and found proved**

   b. 5b 5aii; **Determined and found proved**

   e. 5c **5b. Deleted following successful 17(2)(g) application**

7. You did not complete the whole shifts as set out at the following paragraphs when you knew you were obligated to do so:

   a. 3a; **Determined and found proved**

   b. 3b; **Determined and found proved**
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c. 3c; **Determined and not proved**

d. 3d;

d. 5a 5ai; **Determined and found proved**

e. 5b 5aii; **Determined and found proved**

f. 5c 5b. **Deleted following successful 17(2)(g) application**

8. Your actions as described at paragraphs 4 and 6 were dishonest by reason of paragraph 7. **Determined and found**

**Determination on Impairment - 12/06/2019**

1. Having given its determination on the facts in this case, in accordance with Rule 17(2)(k) of the Rules, the Tribunal has considered whether, on the basis of the facts which it has found proved, Dr Hyder’s fitness to practise is currently impaired by reason of misconduct.

**The Evidence**

2. The Tribunal had regard to all of the evidence, both oral and documentary, adduced during the course of these proceedings.

3. The Tribunal was presented with a defence bundle, which included, but was not limited to:

   - Dr Hyder’s:
     - Curriculum Vitae (‘CV’);
     - Personal Development Plan (‘PDP’);
     - Continuing Professional Development (‘CPD’) certificates in:
       - Maintaining Professional Ethics, dated between 13 and 15 May 2019; and
       - Mastering Professional Interactions, dated 16 April 2019;
     - Personal reflections from CPD learning;
   - Patient and Colleague feedback from 2017;
   - Confirmation of Dr Hyder’s Appraisal Completion, dated 2017, 2018 and 2019; and
Four professional testimonials attesting to Dr Hyder’s medical skills and good character, three from Nurses and one from a Junior doctor.

Submissions

4. The submissions made by Counsel at the close of the impairment stage are a matter of record and the following is a non-exhaustive synopsis of those submissions.

Submissions on behalf of the GMC

5. Ms Cundy submitted that Dr Hyder’s fitness to practise is currently impaired by reason of his misconduct. She directed the Tribunal’s attention to paragraphs 34 and 65 of Good Medical Practice (2013 edition) (‘GMP’) when making its determination.

6. Ms Cundy directed the Tribunal’s attention to the guidance provided by Dame Janet Smith in the Fifth Shipman Report and stated that all four elements are engaged in this case.

7. Ms Cundy submitted that even though there was no evidence of actual harm being caused to patients by Dr Hyder’s actions, they presented an unwarranted risk to the safety of patients at Crawley for whom he was contracted to provide care. She submitted that Dr Hyder accepted during oral evidence that he could not know what problems might present at Crawley in his absence after leaving his shifts early, when there should have been two doctors on shift. Ms Cundy acknowledged Dr Hyder’s statement that he would not leave Crawley unless he was certain it was ‘quiet’. However, she submitted that he made arrangements to leave Crawley early, in considerable advance on the days in question, to take on conflicting duties elsewhere, without seeking permission from the Clinical Lead to do so long before the actual time of his departure. Ms Cundy submitted that, in this regard, Dr Hyder had no way of knowing if he was needed after he had left the premises.

8. Ms Cundy submitted that maintaining trust is one of the key duties of a doctor. It requires a doctor to be open and honest, act with integrity, and never abuse patients’ trust. She stated that paragraph 34 of GMP is engaged in this case. Ms Cundy submitted that Dr Hyder also failed in his contractual obligations at Crawley to complete his shifts and put his own needs above those of patients.

9. Ms Cundy submitted that Dr Hyder’s actions were dishonest and that brought the profession into disrepute thereby breaching a fundamental tenet of the profession. Further, she stated that Dr Hyder’s breaches of GMP, coupled with the Tribunal’s findings of dishonesty, constitute serious misconduct.
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10. By way of current impairment, Ms Cundy stated that in his oral evidence, Dr Hyder placed considerable emphasis on his own abilities to work without fatigue for up to 24 hours without a break. She acknowledged Dr Hyder’s acceptance that his conduct was improper but that it did not occur to him at the time of the events. In all the circumstances, Ms Cundy submitted that Dr Hyder breached all three limbs of the statutory overarching objective.

Submissions on behalf of Dr Hyder

11. Mr Barnes submitted that Dr Hyder has accepted that the Tribunal’s findings on the facts amount to misconduct. However, he submitted that the admitted misconduct does not reveal current impairment when taking all the circumstances into account.

12. Mr Barnes submitted that a finding of dishonesty does not require a finding of current impairment, and asked the Tribunal to take account of the nature of Dr Hyder’s dishonesty, the lapse of time, and the remedial steps Dr Hyder had taken since.

13. Mr Barnes submitted that on four occasions, 14 August 2014, 12 and 30 September 2014 and 27 October 2014, Dr Hyder’s actions fell below the standards required of him. He stated that it is important to take account of the fact that Dr Hyder had been at Crawley for a period of 22 months and those four occasions took place over a few months. Further, Mr Barnes stated that these events occurred over five years ago and there has been no evidence of repetition of Dr Hyder’s conduct.

14. Mr Barnes submitted that Dr Hyder had made some effort, even if it was a dishonest effort, to contact the Nurse in charge to seek permission to leave the Crawley shifts early. Further, he stated that the staff at Crawley had been aware that Dr Hyder was leaving early.

15. Mr Barnes submitted that Dr Hyder found the process of giving oral evidence before this Tribunal stressful. He submitted that the Tribunal could be reassured that Dr Hyder was taking his evidence seriously. However, Mr Barnes stated that this stress can have an impact on how a doctor presents their evidence faced with questioning.

16. Mr Barnes submitted that in hindsight, Dr Hyder recognised that there could have been a risk to patients by leaving Crawley early. He directed the Tribunal’s attention to Dr Hyder’s reflective notes and submitted that he has learned from his mistakes and demonstrated genuine remorse for his actions.

17. Mr Barnes submitted that there is evidence before the Tribunal that Dr Hyder is a skilled, hardworking and effective doctor, both in the UTC and in the Accident and Emergency ('A&E') department.
Mr Barnes took the Tribunal through the numerous testimonials from nurses who attested to Dr Hyder’s good character. Further, he directed the Tribunal’s attention to Dr Hyder’s appraisal feedback and CPD that he has undertaken since the events which demonstrated that he is a competent doctor.

The Relevant Legal Principles

In approaching its decision, the Tribunal was mindful of the two-stage process to be adopted: first, whether the facts as found proved amounted to serious misconduct and secondly, whether the doctor’s fitness to practise is currently impaired by reason of that misconduct.

The Tribunal had regard to the advice given by the Legally Qualified Chair as a matter of record.

At both stages of the process, the Tribunal was mindful of the overarching objective of the GMC set out in section 1 of the Medical Act 1983 (as amended) to:

a. Protect, promote and maintain the health, safety and well-being of the public,

b. Promote and maintain public confidence in the medical profession, and

c. Promote and maintain proper professional standards and conduct for members of that profession.

Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the Fifth Shipman Report adopted by the High Court in CHRE v NMC and Paula Grant [2011] EWHC 297 Admin. In particular, the Tribunal considered whether its findings of fact showed that Dr Hyder’s fitness to practise is impaired in the sense that he:

a. ‘Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

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

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

d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future.’
23. The Tribunal bore in mind that it must determine whether Dr Hyder’s fitness to practise is currently impaired by reason of misconduct, taking into account his conduct at the time of the events and any other relevant factors such as any development of insight, whether the matters are remediable or have been remedied and the likelihood of repetition.

24. The Tribunal also bore in mind the observations of Mrs Justice Cox in the *Fifth Shipman Report* that ‘in determining whether a practitioner’s fitness to practise is impaired by reason of misconduct, the relevant Tribunal should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances’.

**Misconduct**

25. In determining whether Dr Hyder’s fitness to practise is currently impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amounted to misconduct.

26. The Tribunal considered the paragraphs of GMP which set out the standards that a doctor must continue to meet throughout their professional career. The Tribunal had particular regard to paragraphs 1, 34, 65 and 68 of GMP that state:

   1 ‘Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.’

   34 ‘When you are on duty you must be readily accessible to patients and colleagues seeking information, advice or support.’

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

   68 ‘You must be honest and trustworthy in all your communication with patients and colleagues [...]’

The Tribunal applied these standards to the facts found proved.

27. The Tribunal was of the view that doctors occupy a position of privilege and trust in society and are expected to uphold proper standards of conduct. Members of the public are entitled to place complete reliance upon doctors’ honesty. The relationship between the profession and the public is based on the expectation that medical practitioners will act at all times with integrity. Dishonesty, even where it
does not result in actual harm to patients, is particularly serious because it can undermine the public’s trust and confidence in the medical profession.

28. The Tribunal noted that whilst Dr Hyder’s dishonest behaviour took place during what was only a 3 month period in a 22 month employment at Crawley, it was in the context of a work setting and it had the potential to adversely impact on patient safety.

29. The Tribunal concluded that, taking account of all the circumstances in this case, Dr Hyder’s dishonest conduct fell far below the standards expected and was contrary to the GMP guidance and breached a fundamental tenet of the medical profession namely that of honesty and integrity. This conduct adversely impacts on public confidence in the medical profession and as stated above, had the potential to adversely impact on patient safety.

30. The Tribunal therefore determined that Dr Hyder’s actions amounted to misconduct.

**Impairment by reason of Misconduct**

31. Having found that the facts found proved amounted to misconduct, the Tribunal went on to consider whether, as a result of this, Dr Hyder’s fitness to practise is currently impaired by reason of his misconduct. It concluded that in relation to those factors identified at paragraph 21 above in relation to the case of Grant, that all four limbs were engaged.

32. In determining whether a finding of current impairment of fitness to practise is necessary, the Tribunal looked for evidence of insight and remediation, and the likelihood of repetition and balanced against the three elements of the overarching statutory objective. The Tribunal considered that insight is important in order for a doctor to recognise areas of their practice and behaviour that require improvement and to take appropriate and relevant steps to address them, thus reducing the likelihood of repetition.

33. The Tribunal had regard to Dr Hyder’s reflective statement, the general tenor of which was that he understood his failings and the reasons for them and that they would not be repeated. The Tribunal noted that Dr Hyder had sought to address his misconduct though formulating a PDP and undertaking CPD courses.

34. However, despite the above, the Tribunal had residual concerns as to the level of insight that Dr Hyder had demonstrated because his reflective statement was in a number of respects, inconsistent with the robust and unequivocal evidence that he gave in the following respects:
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a. In his reflective statement, Dr Hyder stated ‘the primary purpose of the extra work was that my family was growing and we needed extra space. I was in the process of extending our house. I have four children [...]’ and that he was ‘... trying to have more funds available to help my family so they would be proud of me as any father should’. However, in his evidence, Dr Hyder forcefully and repeatedly stated that his motivation for working the locum shifts was not financial but was for altruistic reasons.

b. The tenor of Dr Hyder’s reflective statement was that his failings resulted from a failure to communicate clearly and to adequately record those communications. However, this is not in essence a case about poor communication, rather it relates to dishonest communication. Dr Hyder’s reflections do not therefore, in the Tribunal’s opinion adequately address the fundamental nature of his misconduct.

c. In his reflective statement which he had written prior to giving oral evidence, he stated that in relation to the potential impact on patient safety ‘If I were working constantly with insufficient break, there could be an impact on the level care [sic] I provided to patients’. This superficially suggest that Dr Hyder had developed material insight in identifying that working a 12 hour shift without a break posed a risk of unwarranted harm to patients. However, in his oral evidence, Dr Hyder was adamant and unequivocal in insisting that in not taking breaks, his behaviour posed no risk of harm to patients. The Tribunal noted that Dr Hyder emphasised that he had gone to considerable lengths to ensure that he had strict fitness regime that meant that he would not have suffered any fatigue.

35. In the circumstances, the Tribunal concluded that contrary to Dr Hyder’s assertions, he had developed limited insight into his failings.

36. The Tribunal accepted that, as a matter of fact, Dr Hyder is highly unlikely to work overlapping or rebutting shifts in the future. However, given Dr Hyder’s limited insight, the Tribunal concluded that Dr Hyder has not sufficiently demonstrated that he has remediated his failings such that the Tribunal can confidently conclude that his misconduct is highly unlikely to be repeated.

37. The Tribunal has had regard to the testimonial evidence received which attests to Dr Hyder’s good character and clinical skills. The Tribunal accepted that there are no questions or doubts about Dr Hyder’s clinical abilities.

38. However, paragraph 1 of GMP makes it clear that honesty and trustworthiness, acting with integrity and within the law are cornerstones of the
profession and the public expect doctors to meet these standards. A failure to be honest with colleagues and hence putting patients at risk of harm is a serious breach of the standards expected of a doctor and inevitably brings the medical profession into disrepute. The Tribunal was also satisfied that, given that Dr Hyder had dishonestly left shifts early to work elsewhere, public confidence in the profession and in the GMC as its regulator would be undermined if a finding of impairment were not made in all the circumstances.

39. Therefore, the Tribunal determined that in order to:

   a. Protect, promote and maintain the health, safety and well-being of the public,

   b. Promote and maintain public confidence in the medical profession, and

   c. Promote and maintain proper professional standards and conduct for members of that profession.

It found that Dr Hyder’s fitness to practise is currently impaired by reason of misconduct both on public protection and on public interest grounds.

**Determination on Sanction - 14/06/2019**

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

**The Evidence**

2. The Tribunal has taken into account evidence received during the hearing and previous findings from the earlier stages in reaching a decision on sanction.

**Submissions**

3. The submissions made by Counsel at the close of the sanction stage are a matter of record and the following is a non-exhaustive synopsis of those submissions.

**Submissions on behalf of the GMC**

4. Ms Cundy submitted that the appropriate and proportionate sanction in Dr Hyder’s case is suspension. She directed the Tribunal’s attention to the Sanctions Guidance (February 2018 edition) (‘SG’) when making its determination.
5. Ms Cundy submitted that the Tribunal found that Dr Hyder has limited insight into his misconduct and that he has not sufficiently demonstrated that he has remediated the identified failings. She submitted that Dr Hyder made partial admissions to the Allegation and there have been some inconsistencies in his evidence.

6. Ms Cundy submitted that Dr Hyder was not acting in the best interest of patients by leaving his shift at Crawley early, he failed to seek appropriate and informed consent to undertake further work, and those actions amounted to dishonest conduct.

7. Ms Cundy submitted that taking no action or imposing an order of conditions on Dr Hyder’s registration would not be appropriate, given the circumstances of this case. She submitted that Dr Hyder’s misconduct relating to personal and professional probity is not amenable to resolution by retraining, supervision or other safeguards provided by the framework of conditions.

Submissions on behalf of Dr Hyder

8. Mr Barnes stated that Dr Hyder is working as a Locum Consultant in A&E at Ipswich, where he undertakes three to four shifts a week on day or night shifts. He submitted that Dr Hyder no longer works any overlapping shifts and there is a reasonable gap between each shift.

9. Mr Barnes submitted that the misconduct in this case amounted to four shifts, on four occasions over a 3 month period. He stated that this took place approximately 4 years and 8 months ago and there has been no evidence that Dr Hyder has repeated his actions. Mr Barnes submitted that Dr Hyder has undertaken remediation in that he has reflected on his mistakes and attended courses. He submitted that Dr Hyder gave a heartfelt apology to the Tribunal and the GMC. Further, Mr Barnes submitted that the evidence demonstrates that Dr Hyder is a hardworking, skilled and effective doctor.

10. Mr Barnes submitted that the Tribunal having determined that there is no risk of repetition of working overlapping or abutting shifts, its determination that Dr Hyder was dishonest would be sufficient to mark that behaviour.

11. Mr Barnes submitted that conditions placed on Dr Hyder’s registration would be the appropriate sanction in this case, if the Tribunal was minded to take action. He submitted that it would allow Dr Hyder to continue to work providing an environment where patients would be protected and giving him the opportunity to develop his insight and remediate his failings. Mr Barnes suggested, by way of conditions, that the Tribunal could impose a condition whereby Dr Hyder could work shifts no less than 6 to 12 hours apart proving a substantial break in between the shifts. Mr Barnes also suggested that a condition could be formulated where at the
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end of every fortnight, Dr Hyder would present his workplace supervisor with a rota
of the work he had undertaken. Further, he stated that a condition on his
registration could include that of Dr Hyder having a mentor.

12. Mr Barnes submitted that Dr Hyder provides a valuable service to patients and
other staff in his current position at Ipswich. He asked the Tribunal to take account
of Dr Hyder’s supporting testimonials.

13. Mr Barnes submitted that if the Tribunal was minded to impose an order of
suspension on Dr Hyder’s registration, he suggested that a short period of
suspension would be sufficient to mark the misconduct in this case.

The Relevant Legal Principles

14. The Tribunal took into account all of the submissions, its findings and the
documentary evidence adduced during the course of these proceedings.

15. The Tribunal had regard to the advice given by the Legally Qualified Chair
which is a matter of record.

16. The decision as to the appropriate sanction is a matter for this Tribunal’s own
independent judgement. In reaching its decision the Tribunal took into account the
SG and the statutory overarching objective, which includes: protecting and
promoting the health, safety and wellbeing of the public, promoting and maintaining
public confidence in the profession and promoting and maintaining proper
professional standards and conduct.

17. The Tribunal recognised that the purpose of a sanction is not to be punitive,
although it may have a punitive effect. Throughout its deliberations, the Tribunal
applied the principle of proportionality, balancing Dr Hyder’s interests with the public
interest.

The Tribunal’s Determination on Sanction

Aggravating and Mitigating Factors

Mitigating Factors

18. The Tribunal has identified the following mitigating factors:

- The misconduct identified occurred over a period of a few months in
  an otherwise lengthy unblemished career;
- The length of time since the events without any repetition of
  misconduct;
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- Dr Hyder made partial admissions to the Allegation at the outset of these proceedings;
- Dr Hyder has apologised to the GMC and the Tribunal for inappropriate behaviour;
- Dr Hyder actively engaged with the regulatory proceedings; and
- There is evidence that Dr Hyder is otherwise a clinically competent and well regarded doctor.

Aggravating Factors

19. The Tribunal balanced those mitigating factors with the following aggravating factors:

- Repeated acts of dishonesty which had the potential to adversely impact on patient safety which the Tribunal considered to be of particular importance in considering which sanction to impose; and
- Dr Hyder’s limited insight into his failings.

The Tribunal’s Decision

20. In deciding what sanction, if any, to impose, the Tribunal reminded itself that it must consider each of the sanctions available, starting with the least restrictive, to establish which is appropriate and proportionate in this case.

No Action

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

22. The Tribunal was satisfied that there were no exceptional circumstances in Dr Hyder’s case which would justify taking no action. It determined that given the seriousness of the actions that led to a finding of misconduct, taking no action would be inappropriate, inadequate and would not address the public protection or public interest concerns identified.

Conditions

23. The Tribunal then considered whether imposing an order of conditions on Dr Hyder’s registration would be appropriate. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. The Tribunal had regard to paragraphs 80, 81 and 82 of the SG.

24. The Tribunal concluded that a period of conditional registration would not be appropriate because it considered that it could not formulate practicable and workable conditions that address the dishonest behaviour identified. As such it
concluded that imposing conditions on Dr Hyder’s registration would not adequately protect the public nor would it be sufficient to maintain public confidence in the medical profession or maintain proper professional standards for members of the profession.

25. In reaching its decision, the Tribunal rejected Mr Barnes’ submission regarding proposed suitable conditions as whilst this would address the practicalities of timekeeping in general, such conditions would not address Dr Hyder’s underlying dishonest behaviour.

Suspension

26. The Tribunal went on to consider whether a period of suspension would be an appropriate and proportionate sanction to impose on Dr Hyder’s registration. The Tribunal noted the SG, specifically paragraphs 91, 92, 97(a)(f) which it considered are relevant in this case:

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

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

97(a)(f) ‘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.

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

The Tribunal applied these guidelines to the facts found proved.

27. The Tribunal considered the seriousness of the dishonesty found proved and concluded that Dr Hyder’s dishonesty was at the more serious end of the spectrum. It noted that Dr Hyder’s dishonesty was in a clinical environment and that he had breached paragraph 1 of GMP in that he did not act with honesty and integrity. Dr Hyder withheld important information from a colleague in leaving a shift early for his own benefit which had the potential to have an adverse impact on patient safety.

28. Whilst the Tribunal acknowledged that Dr Hyder has not repeated his actions since the events, and has started the process of re-evaluating his behaviour, it has identified in its determination on impairment that dishonesty in relation to withholding information from colleagues and putting patients at unwarranted risk of harm is serious. This conduct, the Tribunal concluded necessitated a strong signal that such behaviour cannot be tolerated both to protect the reputation of the medical profession and uphold proper professional standards.

29. The Tribunal considered suspension to be the appropriate sanction in this case. It is necessary in order to reflect the gravity of his misconduct and to satisfy the overarching statutory objective. No lesser sanction would adequately protect the public and serve the public interest in maintaining public confidence and upholding proper professional standards.

30. The Tribunal considered whether to erase Dr Hyder’s name from the medical register. It determined that to do so would be disproportionate, given the circumstances of this case and the suitability of imposing an order of suspension.

Duration of Suspension

31. In determining the duration of Dr Hyder’s suspension, the Tribunal took into account its earlier findings and paragraphs 101 and 102 of the SG. Having done so, it determined that a period of 4 months would be an appropriate period in all the circumstances of this case. The Tribunal acknowledged that a sanction of suspension would deprive the public of an otherwise competent doctor.

32. The Tribunal gave careful consideration to the question of whether a longer period of suspension was required to uphold the overarching objective. However, the Tribunal concluded that 4 months was the appropriate period of time that would meet this objective. This would reflect the gravity of his conduct and send out a clear signal to Dr Hyder, the profession and the wider public. At the same time it would allow Dr Hyder sufficient time to further reflect and learn from his failings whilst not depriving the public of a competent doctor for any longer a period than necessary.
Review Hearing Directed

33. The Tribunal has directed that, shortly before the end of the period of Dr Hyder’s suspended registration, his case will be reviewed by a Medical Practitioners Tribunal. This Tribunal considered that a future reviewing Tribunal would be assisted by:

- Evidence of developing insight; and
- Further statement of reflection.

It is also open to Dr Hyder to provide any other evidence he considers helpful.

**Determination on Immediate Order - 14/06/2019**

1. Having determined that Dr Hyder’s registration is to be suspended for a period of 4 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

**Submissions**

2. The submissions made by Counsel at the close of the immediate order stage are a matter of record and the following is a non-exhaustive synopsis of those submissions.

3. Ms Cundy, Counsel, on behalf of the GMC submitted that an immediate order would not be necessary given the circumstances of this case. Mr Barnes, Counsel, endorsed Mr Cundy’s submission.

**The Tribunal’s Decision**

4. In reaching its decision, the Tribunal has exercised its own judgment, and has taken account of the principle of proportionality. The Tribunal has borne in mind that it may impose an immediate order where it is satisfied that it is necessary for the protection of members of the public or otherwise in the public interest, or is in the best interests of the practitioner. It has also borne in mind the guidance given in the relevant paragraphs of the SG relating to immediate orders.

5. The Tribunal had regard to the SG. The 4 month suspension imposed by the Tribunal marks the seriousness of Dr Hyder’s misconduct. Given all the circumstances of the case and that Dr Hyder has been working for 4 years and 8 months without any repetition of his conduct, it therefore does not meet the test for necessity to impose an immediate order in order to protect the public. Further, the Tribunal determined that the public interest does not require an immediate order of
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suspension; the substantive sanction being sufficient to satisfy the overarching objective.

6. The substantive direction for suspension will take effect 28 days from when the written notice is deemed to have been served upon Dr Hyder, unless an appeal is lodged in the interim.

7. That concludes this case.

Confirmed
Date 14 June 2019

Mr Julian Weinberg, Chair
Application under Rule 34(1) – 03/06/2019

1. Ms Catherine Cundy, Counsel, on behalf of the General Medical Council (‘GMC’) made an application under Rule 34(1) of the GMC (‘Fitness to Practise’) Rules 2004 (as amended) (‘the Rules’), to adduce paragraph 6 of Dr C’s witness statement, which is currently redacted in the written evidence before the Tribunal.

Submissions

2. The submissions made by Counsel are a matter of record and the following is a non-exhaustive synopsis of those submissions.

Submissions on behalf of the GMC

3. Ms Cundy submitted that Dr C is giving evidence about his lack of contact with Dr Hyder at the end of his contract at Sussex Community NHS Foundation Trust (SCFT) (‘Crawley’). She submitted that Dr Hyder did not inform Dr C of XXX.

4. Ms Cundy stated that her case would rely on the combination of Dr Hyder’s understanding of:

   • what his working arrangements were;
   • whether he reached agreements with staff; and
   • at what level at either of the hospitals where he was working.

5. Ms Cundy submitted that Dr Hyder’s evidence on what he had said to Dr C about his absence from the shifts is relevant to the Tribunal’s determination. Further, she submitted that it would be unfair to the GMC’s case to exclude this evidence from the Tribunal in that it is evidence of Dr Hyder’s failure to communicate with Dr C.

Submissions on behalf of Dr Hyder

6. Mr Matthew Barnes, Counsel, submitted that the reason paragraph 6 of Dr C’s witness statement has been redacted is in relation to a criticism made by the GMC in respect of arrangements which were made regarding XXX. He stated that those criticisms are not being pursued and it is purely a residual piece of evidence. He submitted that the GMC seeks to use this evidence for an alternate purpose to attack Dr Hyder’s failure to communicate with Dr C.

7. Mr Barnes submitted that Dr Hyder was employed at Crawley for 15 months, from August 2013 and the Tribunal does not have the date when Dr Hyder was absent XXX. However, he submitted that it can be inferred that it was around
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October 2015. Mr Barnes stated that this post dates the Allegation in this case by approximately 10 months.

The Tribunal’s Determination

8. The Tribunal noted Rule 34(1) of the Rules, which states:

   '34.
   (1) The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.'

9. The Tribunal first considered arguments in favour of admissibility. The Tribunal took account of the wide discretion granted by the above Rule and that, as a professional body, it would ordinarily be regarded as able to assess and attach appropriate weight to evidence placed before it.

10. The Tribunal considered that paragraph 6 of Dr C’s witness statement is evidence of a tenuous nature. It noted the submission that it relates to a different element of Dr Hyder’s working practice with arose 10 months following the events in question. It is not therefore in the Tribunal’s view relevant to the issues to be determined and therefore concluded that this evidence was not admissible.

11. Therefore, the Tribunal did not accede to Ms Cundy’s application under Rule 34(1).

ANNEX B – 03/06/2019

Application under Rule 34(1) – 03/06/2019

1. Mr Matthew Barnes, Counsel, on behalf of Dr Hyder made an application under Rule 34(1) of the General Medical Council’s (‘GMC’) (‘Fitness to Practise’) Rules 2004 (as amended) (‘the Rules’) to redact paragraph 16 from Dr B’s witness statement.

Submissions

2. The submissions made by Counsel are a matter of record and the following is a non-exhaustive synopsis of those submissions.

Submissions on behalf of Dr Hyder

3. Mr Barnes submitted that paragraph 16 of Dr B’s witness statement should be redacted in its entirety. He stated that Dr B gives evidence in relation to Paragraphs 2(c), (d) and (e) of the Allegation.
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4. Mr Barnes submitted that there is no Allegation that Dr Hyder left Basildon University Hospital early so his views are not relevant and he could not comment on what took place at Crawley. Therefore, he submitted that this evidence should be redacted and not go before the Tribunal.

Submissions on behalf of the GMC

5. Ms Catherine Cundy, Counsel, acknowledged that it could be ‘potentially’ unfair for paragraph 16 of Dr B’s statement to remain. However, she submitted that Dr B gives evidence on the issue of doctor’s leaving shifts early and that evidence is relevant on the issue of whether it was common practice for the shifts that Dr Hyder undertook.

The Tribunal’s Determination

6. The Tribunal noted Rule 34(1) of the Rules, which states:

'34.
(1) The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.'

7. The Tribunal first considered arguments in favour of admissibility. The Tribunal took account of the wide discretion granted by the above Rule and that, as a professional body, it would ordinarily be regarded as able to assess and attach appropriate weight to evidence placed before it.

8. The Tribunal considered that paragraph 16 does have some relevance as a generic view regarding doctor’s finishing shifts early. It therefore concluded that it would be relevant and fair for paragraph 16 of Dr B’s witness statement to remain in evidence. Further, the Tribunal will determine the appropriate and necessary weight to attach to this evidence in due course.

ANNEX C – 06/06/2019

Application under Rule 17(2)(g) – 06/06/2019

1. Mr Matthew Barnes, Counsel, on behalf of Dr Hyder made an application under Rule 17(2)(g) of the General Medical Council (‘GMC’) (‘Fitness to Practise’) Rules 2004 (as amended)(‘the Rules’).

Submissions
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2. The submissions made by Counsel are a matter of record and the following is a non-exhaustive synopsis of those submissions.

Submissions on behalf of Dr Hyder

Preliminary

3. Mr Barnes submitted that firstly, it is the GMC’s obligation to prove the case and it is not enough to leave gaps that the defence ‘may or may not then fill’. He submitted that the GMC have to adduce evidence that proves their case. Secondly, Mr Barnes submitted that if there are gaps in the evidence, whether because the case has not been appropriately investigated or because of the passage of time, then those gaps are not left to be filled by the defence.

4. Mr Barnes submitted that there are gaps in the documentary and witness evidence that is essential to the GMC case. He stated that the passage of time has resulted in evidence not being available, such as the absence of rotas for a number of the dates on which Allegations are based.

5. Mr Barnes stated that his primary submission is that, as result of an evidential gap, the GMC is not in a position where they can prove either Dr Hyder left Sussex Community NHS Foundation Trust (SCFT) (‘Crawley’) early without permission to do so or that he arrived at his Locum shifts late. Therefore, he submitted the case ultimately falls.

Primary Submission

6. Mr Barnes submitted that it is not good enough to simply show that Dr Hyder left Crawley early. The GMC have to go further and show that he left Crawley early without permission. The reason for that is that it was made perfectly clear in Dr C’s oral evidence, that staff would be permitted to leave early on occasions both by himself, and the Nurse responsible for the shift. He submitted that the difficulty the GMC has, is that Dr C was not present at the end of any of the shifts, save for the 24 November 2014. Mr Barnes submitted that in respect of all the other shifts, Dr C was not present. The person who granted the permission would have been the Staff Nurse, and it cannot be assumed that she did not grant permission. He stated that the GMC are in a position where they can prove that Dr Hyder left early, but the GMC cannot prove that Dr Hyder left early without permission.

7. Mr Barnes accepted that in relation to the 24 November 2014 shift, there is evidence that Dr Hyder, Dr C and Dr A were all present during their respective shift times of 10:30 to 23:00, 08:00 to 20:30 and 18:00 to 22:00 respectively. There is evidence that Dr Hyder logged out at 22:43. However, he submitted that on this single occasion, the GMC has not demonstrated the necessary evidence to show that Dr Hyder left without permission 13 minutes early. Mr Barnes submitted that on the
evidence the Tribunal has heard, it is not unreasonable to finish a shift 13 minutes early.

8. Mr Barnes submitted that in order to establish the case in respect of the Locum shifts, the GMC needs to demonstrate that Dr Hyder turned up late to his shifts, put in time sheets that failed to record that, and that that was improper conduct. He stated that there is no witness evidence that goes to this issue. He submitted that the difficulty with the GMC case is that it is flawed as a result of the evidence it heard from Mr D. He was asked about the circumstances in which it might be acceptable for someone to turn up late for their shift but to put in a timesheet showing the planned start time. Mr D stated that ‘it was the responsibility of the hospital staff members signing the form to confirm the hours’. He further stated that it was an accepted practice that ‘on occasions the way it would work shifts booked late the hospital would agree to accept someone who would arrive late and pay them for the whole shift’.

9. Mr Barnes submitted that Mr D’ evidence that Locum doctors would be paid for the entire shift even if they started late was crucial.

10. Mr Barnes submitted that there is no evidence to show that Dr Hyder completed his timesheets in an inappropriate way. Dr Hyder never sought to hide from anyone that he was turning up late to a shift. Mr Barnes submitted that the Tribunal will bear in mind the point made by Mr D that it was for the staff member to ascertain what hours had been worked and the timesheet had been filled out appropriately. Mr Barnes submitted that Dr Hyder did not fall foul of the financial arrangement the agency had with the hospitals.

11. Mr Barnes submitted that for those two reasons in respect of Crawley and the Locum shifts, the GMC cannot prove their case.

Secondary Submission

12. Mr Barnes directed the Tribunal’s attention to the following dates:

   • 3 December 2014;
   • 14 August 2014;
   • 12 September 2014; and
   • 30 September 2014.

13. In relation to 3 December 2014, Mr Barnes submitted that the rota reveals three slots which were undertaken by Dr I, Dr J and Dr B. He stated that Dr Hyder was not listed to work on 3 December 2014. Mr Barnes directed the Tribunal’s attention to Dr A’s letter to the GMC where he inaccurately stated that Dr Hyder’s start time was 09:00 and the end time was 22:00, which would amount to a 13 hour shift. He stated that Dr C was absolutely clear that 13 hour shifts were not arranged.
14. In relation to 14 August 2014 and 12 September 2014, Mr Barnes submitted that there is no rota or timesheet available, and that the GMC relies on Dr A’s table in his letter to the GMC, dated 27 March 2018. He stated that if Dr A’s statement about 3 December 2014 is inaccurate, then 14 August 2014 could also be inaccurate and unreliable. Mr Barnes submitted that the Tribunal has no reliable evidence as to when Dr Hyder was due to leave Crawley.

15. In relation to 30 September 2014, Mr Barnes submitted that there is a rota. However, he stated that the rota does not include Dr Hyder for that day. He submitted that the Tribunal is left in the position where the only evidence available to it is in relation to Dr A’s letter to the GMC which, as previously stated, cannot be relied upon because of its patent unreliability in showing that Dr Hyder had undertaken a 13 hour shift on 3 December 2014.

Submissions on behalf of the GMC

16. Ms Catherine Cundy stated that she is not instructed to make a Rule 17(2)(g) submission regarding 3 December 2014. However, she submitted that it would be appropriate for the Tribunal to consider the evidence in respect of that date and reach a conclusion during the facts stage of the proceedings.

17. Ms Cundy submitted that the Tribunal is not in the situation where there is no evidence to support the remainder of the Allegation. She stated that the Tribunal is dealing with an assessment of the evidence it has in accordance with the second limb of the Galbraith test. She stated that there is evidence, when taken at its highest, that means those matters should not be stayed at this stage. Taking that evidence at its highest, she submitted that ultimately, the GMC need not prove an Allegation beyond reasonable doubt, but that it needs to prove an Allegation on the balance of probabilities.

18. Ms Cundy stated that Mr Barnes’ submissions first flowed from the evidence of Dr C that there was a degree of flexibility in operation in relation to shift finishing times. Doctors on the urgent care unit could leave early on their shift if agreed by the Nurse in charge. She said that it was submitted by Mr Barnes that in the absence of evidence of any or all Nursing staff of the relevant shifts at Crawley, that the GMC could not establish that Dr Hyder left those shifts early without permission.

19. Ms Cundy stated that Mr Barnes’ second overarching submission flowed from Mr D’s oral evidence, that it was not uncommon in 2014 for hospitals to pay a doctor from the start of a Locum shift, even if the doctor was not present at the time as an incentive to take on the rest of the shift.

20. Ms Cundy submitted that the Tribunal must consider the totality of the evidence when determining the impact on Mr Barnes’ submissions on this case.
21. Ms Cundy submitted that the Tribunal firstly has to consider the evidence of doctors leaving Crawley early before the end of their shifts. Whilst Drs A and C said that some flexibility was applied as to when doctors can leave, Dr C stated that it was not acceptable for one doctor to be on shift when two were scheduled to work on a particular period. Staffing levels were arranged on the anticipated busy times on the unit. In respect of the Crawley shifts in the Allegation, Ms Cundy submitted that, whilst a second doctor would be present from 20:30, those overlaps were intended to deal with busy times on the unit. She submitted that leaving a shift early in order to undertake a Locum shift, was ‘plainly’ not sanctioned by Dr C as the Clinical Lead of the unit. Ms Cundy stated that Dr C said that he was not aware of doctors leaving early to do Locum shifts and if he had known, he would not have allowed it. Ms Cundy submitted that there was no evidence that Dr Hyder had sought authority from Dr C to leave early or for any purpose. Further, Ms Cundy stated that it was Dr A’s evidence that it was common knowledge that, on occasions, Dr Hyder arrived late and left early from the unit.

22. On the issue of whether Nurses could give permission for doctors to leave early, Ms Cundy submitted that Dr A said doctors could leave approximately 10 minutes early if it was not busy and it was agreed with the Nurse that this would be acceptable. However, she said that Dr A’s evidence is that leaving an hour early would not be acceptable and would leave the shift without adequate medical cover. Dr A also commented on the imbalance of power between a nurse and a doctor seeking to leave early for their own purposes. Dr A said that Dr C or the nurse in charge could consent to a doctor leaving early for a good reason such as an emergency. However, Ms Cundy submitted that the Tribunal is aware that when leaving Crawley on the relevant dates, Dr Hyder was always going straight on to a Locum shift and that he did not have a family emergency or other good reason for leaving early.

23. Ms Cundy submitted that The Tribunal should consider the evidence as a whole in respect of the Crawley shifts, and the transitional period at the end of the Crawley shifts and start of the Locum shifts. She said that Dr Hyder has admitted undertaking Locum shifts (Paragraph 2 of the Allegation). She submitted that the Tribunal’s attention has been drawn to the absence of a rota or Dr Hyder’s name on 14 August 2014, 12 and 30 September 2014. Ms Cundy submitted that the Tribunal heard evidence from Dr A and Dr C on the changes that could take place on the rotas, but it was quite apparent from the accompanying emails relating to the rotas that shifts were advertised as available and/or doctors were provisionally allocated to cover individual shifts. She submitted that Dr Hyder was contracted to do three 12 and half hour shifts per week.

24. Ms Cundy submitted that Dr A’s evidence derived from SystmOne, which gave a clear indication on when Dr Hyder logged in and out of the system at Crawley. Further, she submitted that a doctor could not deal with patients without being
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logged into the system. This provided details of the shift start and finish times. Further, the Tribunal heard evidence from Dr A and Dr C that they did not expect a doctor to remain on a unit for any material period of time after they had logged out of the system.

25. Ms Cundy submitted that the logout time is an important point of closure in the shifts at Crawley. She noted that there is a transitional period from the Crawley shifts ending and Locum shifts starting. She directed the Tribunal’s attention to Dr A’s letter to the GMC on 27 March 2018 where he retrieved information from SystmOne regarding the logout times. She stated that the Tribunal should take account of the time Dr Hyder logged in and out when making its determination on this issue.

26. Ms Cundy invited the Tribunal to consider the totality of the evidence adduced at this stage, including the login and logout times at Crawley in conjunction with the exhibited rota. She stated that Dr Hyder was contracted to work 12 and a half hour shifts at Crawley and that he would therefore have had insufficient time to get from Crawley to his Locum shifts. She stated that when those matters are considered in their totality it is sufficient to take the decision to the next stage.

The Tribunal’s Approach

27. The Tribunal has borne in mind that its role at this stage of proceedings is not to make findings of fact; it has to decide whether sufficient evidence has been adduced on the relevant allegation such that it could find the facts proved.

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

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

29. In reaching its decision the Tribunal heard and accepted the advice of the Legally Qualified Chair, who invited it to adopt the approach set out in the case of Galbraith which can be summarised as follows:

1. It must first ask itself whether there is any evidence to support the Allegation in question; if there is none, then that paragraph of the Allegation must be dismissed under Rule 17(2)(g).

2. When there is some evidence, but it is of a tenuous character, for example because of inherent weakness of vaigness or because it is inconsistent with other evidence the test to be applied is whether the
evidence – taken at its highest – is such that a Tribunal, properly directed, could properly find the matter proved.

30. If it finds that there is sufficient evidence, then at the end of the fact finding stage it will have to decide in the light of all the evidence before it, whether the Allegation has been found proved or not.

**The Tribunal’s Decision**

**Paragraph 1(a) of the Allegation**

31. The Tribunal had regard to Dr A’s letter to the GMC, dated 27 March 2018, in which he stated that Dr Hyder’s scheduled start time on 14 August 2014 at Crawley was 10:00, he logged into SystmOne at 10:36, his scheduled end time was 22:30 (a 12.5 hour shift), and he had logged out of SystmOne at 21:36. The Tribunal has not been presented with any evidence to contradict Dr A’s statement.

32. Whilst the Tribunal had not been presented with the rota for 14 August 2014, the Tribunal found that there is sufficient evidence which, if accepted, could enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of this paragraph, there is a case to answer.

The Rule 17(2)(g) application is therefore not upheld in relation to Paragraph 1(a) of the Allegation

**Paragraph 1(b) of the Allegation**

33. For the same reasons outlined in respect of Paragraph 1(a) of the Allegation above, namely Dr A’s evidence on Dr Hyder’s scheduled Crawley shift start/end times and system login/logout times, the Tribunal found that there is sufficient evidence which, if accepted, could enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of this paragraph, there is a case to answer.

The Rule 17(2)(g) application is therefore not upheld in relation to Paragraph 1(b) of the Allegation

**Paragraph 1(c) of the Allegation**

34. For the same reasons outlined in respect of Paragraph 1(a) of the Allegation above, namely Dr A’s evidence on Dr Hyder’s scheduled Crawley shift start/end times and system login/logout times, the Tribunal found that there is sufficient evidence which, if accepted, could enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of this paragraph, there is a case to answer.
The Rule 17(2)(g) application is therefore not upheld in relation to Paragraph 1(c) of the Allegation

**Paragraph 1(d) of the Allegation**

35. In his supplementary statement, Dr A stated:

‘I can confirm that on 27 October 2014 Dr Hyder’s shift start time was 10:30 and he logged in at 11:14. His shift end time was 23:00 and he logged out at 22:23.’

36. The Tribunal considered that Dr A’s evidence was not inherently inconsistent with other evidence that it had received during the course of these proceedings. Therefore, the Tribunal found that there is sufficient evidence which, if accepted, could enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of this paragraph, there is a case to answer.

The Rule 17(2)(g) application is therefore not upheld in relation to Paragraph 1(d) of the Allegation

**Paragraph 1(e) of the Allegation**

37. In his supplementary statement, Dr A stated:

‘On 24 November 2014 Dr Hyder’s shift start time was 10:30 and he logged in at 10:47. His shift end time was 23:00 and he logged out at 22:43.’

38. For the same reasons outlined in Paragraph 1(d) of the Allegation above, the Tribunal found that there is sufficient evidence which, if accepted, could enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of this paragraph, there is a case to answer.

The Rule 17(2)(g) application is therefore not upheld in relation to Paragraph 1(e) of the Allegation

**Paragraph 1(f) of the Allegation**

39. The Tribunal noted Dr Hyder’s contractual hours and the evidence of Dr C who stated that 13 hour rotas were not allocated. In noting Dr A’s letter, dated 27 March 2018, making reference to what amounts to a 13 hour shift, the Tribunal concluded that such a shift would be inconsistent with the entry in the rota, Dr C’s evidence and Dr Hyder’s contractual obligations.
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40. In the circumstances, the Tribunal found that, adopting the second limb of the *Galbraith* test, there is insufficient evidence which, even if accepted, could enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of this paragraph, there is not a case to answer.

The Rule 17(2)(g) application is therefore upheld in relation to Paragraph 1(f) of the Allegation

**Paragraph 2 of the Allegation**

41. Following admissions by Dr Hyder, the Tribunal found Paragraph 2 of the Allegation admitted and found proved in its entirety.

**Paragraph 3 of the Allegation**

42. Having found that there is a case to answer in relation to S1, S2 and S5 (Paragraphs 1(a), (b) and (d) respectively) above, based on the timing of Dr Hyder’s shift, and the admitted shift times in Paragraph 2 of the Allegation, the Tribunal found that there is sufficient evidence which, if accepted, could enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of Paragraphs 3(a), (b) and (c), there is a case to answer.

The Rule 17(2)(g) application is therefore not upheld in relation to Paragraph 3 of the Allegation in its entirety.

**Paragraph 4 of the Allegation**

43. The Tribunal had regard to Mr Barnes’ submission regarding the GMC’s failure to produce any evidence that Dr Hyder did not have permission to leave his shifts at Crawley early. It was presented with some evidence that there could be circumstances in which a doctor might be given permission to leave his shift early but this would only arise when, for example, there was a personal emergency or some other justifiable reason. Dr C stated that there were no circumstances in which he would give consent for a doctor to leave his shift early to enable him to go on to do a locum shift elsewhere. The Tribunal has also had regard to the fact that on each occasion when Dr Hyder logged on some time after the scheduled start of his shift and logged off some time prior to the end of his shift, he went on to a locum shift.

44. The Tribunal concluded that in the circumstances there was sufficient evidence before it to conclude that a properly directed Tribunal could find that Dr Hyder had an obligation to complete the whole shifts but did not do so.

**Paragraph 4(a) of the Allegation**
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45. The Tribunal had regard to the evidence that Dr Hyder logged in at 10:36 when the scheduled start time of his scheduled shift was 10:00. He logged out of SystmOne at Crawley at 21:36 when the end time of his scheduled shift was 22:30. It noted Dr Hyder’s timesheet which stated that he was due to start his Locum position at 22:00. The Tribunal is mindful that there is no evidence before it as to when Dr Hyder arrived to start his locum post. However, given the scheduled shift times and login/logout times in relation to shift S1 the Tribunal found that there is sufficient evidence which, if accepted, could enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of Paragraphs 4(a), there is a case to answer.

The Rule 17(2)(g) application is therefore not upheld in relation to Paragraph 4(a) of the Allegation.

Paragraph 4(b) of the Allegation

46. The Tribunal had regard to the evidence that Dr Hyder logged in at 11:07 when the scheduled start time of his scheduled shift was 10:30. He logged out of SystmOne at Crawley at 21:18 when the end time of his scheduled shift was 23:00. It noted Dr Hyder’s timesheet which stated that he was due to start his Locum position at 22:00. The Tribunal is mindful that there is no evidence before it as to when Dr Hyder arrived to start his locum post. However, given the scheduled shift times and login/logout times in relation to shift S2 the Tribunal found that there is sufficient evidence which, if accepted, could enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of Paragraphs 4(b), there is a case to answer.

The Rule 17(2)(g) application is therefore not upheld in relation to Paragraph 4(b) of the Allegation.

Paragraph 4(c) of the Allegation

47. The Tribunal had regard to the evidence that Dr Hyder logged in at 10:47 when the scheduled start time of his scheduled shift was 10:30. He logged out of SystmOne at Crawley at 22:43 when the end time of his scheduled shift was 23:00. It noted Dr Hyder’s timesheet which stated that he was due to start his Locum position at 22:00. The Tribunal is mindful that there is no evidence before it as to when Dr Hyder arrived to start his locum post. However, given the scheduled shift times and login/logout times in relation to shift S5 the Tribunal found that there is sufficient evidence which, if accepted, could enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of Paragraphs 4(c), there is a case to answer.

The Rule 17(2)(g) application is therefore not upheld in relation to Paragraph 4(c) of the Allegation.
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Paragraphs 5(a)(i) and (ii) of the Allegation

48. The Tribunal had regard to the evidence before it referred to above in relation to the scheduled start and end times in relation to the following shifts:

- S3 and I3; and
- S4 and I4.

49. Noting those times, the Tribunal found that there is sufficient evidence which, if accepted, could enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of Paragraphs 5(a)(i) and (ii), there is a case to answer.

The Rule 17(2)(g) application is therefore not upheld in relation to Paragraphs 5(a)(i) and (ii) of the Allegation.

Paragraph 5(b) of the Allegation

50. Given the Tribunal’s finding in relation to shift S6 and Paragraph 1(f) above, the Tribunal found that there is insufficient evidence to enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of Paragraphs 5(b), there is not a case to answer.

The Rule 17(2)(g) application is therefore upheld in relation to Paragraph 5(b) of the Allegation.

Paragraph 6(a) of the Allegation

51. The Tribunal had regard to the evidence that Dr Hyder logged in at 11:02 when the scheduled start time of his scheduled shift was 10:30. He logged out of SystmOne at Crawley at 22:08 when the end time of his scheduled shift was 23:00. It noted Dr Hyder’s timesheet which stated that he was due to start his Locum position at 23:00. The Tribunal is mindful that there is no evidence before it as to when Dr Hyder arrived to start his locum post. However, given the scheduled shift times and login/logout times in relation to shift S3 the Tribunal found that there is sufficient evidence which, if accepted, could enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of Paragraphs 6(a), there is a case to answer.

The Rule 17(2)(g) application is therefore not upheld in relation to Paragraph 6(a) of the Allegation.

Paragraph 6(b) of the Allegation
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52. The Tribunal had regard to the evidence that Dr Hyder logged in at 11:14 when the scheduled start time of his scheduled shift was 10:30. He logged out of SystmOne at Crawley at 22:23 when the end time of his scheduled shift was 23:00. It noted Dr Hyder’s timesheet which stated that he was due to start his Locum position at 23:00. The Tribunal is mindful that there is no evidence before it as to when Dr Hyder arrived to start his locum post. However, given the scheduled shift times and login/logout times in relation to shift S4 the Tribunal found that there is sufficient evidence which, if accepted, could enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of Paragraphs 6(b), there is a case to answer.

The Rule 17(2)(g) application is therefore not upheld in relation to Paragraph 6(b) of the Allegation.

Paragraph 6(c) of the Allegation

53. Given the Tribunal’s finding in relation to shift S6 and Paragraph 1(f) above, the Tribunal found that there is insufficient evidence to enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of Paragraphs 6(c), there is not a case to answer.

The Rule 17(2)(g) application is therefore upheld in relation to Paragraph 6(c) of the Allegation.

Paragraphs 7(a), (b), (c), (d), (e) of the Allegation

54. Based on the Tribunal’s findings at Paragraphs 3(a)(b)(c) and 5(a)(i)(ii) of this determination, the Tribunal found that there is a case to answer as to whether Dr Hyder may not have completed the whole shifts at:

- S1 and I1;
- S2 and I2;
- S3 and I3;
- S4 and I4; and
- S5 and I5;

55. The Tribunal therefore found that there is sufficient evidence which, if accepted, could enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of Paragraphs 7(a), (b), (c), (d), (e), there is a case to answer.

The Rule 17(2)(g) application is therefore not upheld in relation to Paragraphs 7(a), (b), (c), (d), (e) of the Allegation.

Paragraph 7(f) of the Allegation
56. Given the Tribunal’s finding in relation to shift S6 and Paragraphs 1(f) and 5(b) above, the Tribunal found that there is insufficient evidence to enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of Paragraphs 7(f), there is not a case to answer.

The Rule 17(2)(g) application is therefore upheld in relation to Paragraph 7(f) of the Allegation.

Paragraph 8 of the Allegation

57. Given the rationale for the Tribunal’s findings in relation to there being a case to answer in respect of Paragraphs 4 and 6(a) and (b), it follows that by failing to conclude those shifts to attend locum posts, a properly directed Tribunal could find that Dr Hyder acted dishonestly. Whether or not this is the case can only be determined having considered Dr Hyder’s defence in light of the test for dishonesty as set out in the case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67.

58. The Tribunal therefore found that there is sufficient evidence which, if accepted, could enable a properly directed Tribunal to find the facts proved. It therefore finds that in respect of Paragraph 8, there is a case to answer.

The Rule 17(2)(g) application is therefore not upheld in relation to Paragraph 8 of the Allegation.

ANNEX D – 06/06/2019

Application under Rule 34(1) – 06/06/2019

1. Mr Matthew Barnes, Counsel, on behalf of Dr Hyder made an application under Rule 34(1) of the General Medical Council’s (‘GMC’) (‘Fitness to Practise’) Rules 2004 (as amended) (‘the Rules’) to adduce text message evidence between Dr Hyder and Dr C.

Submissions

2. The submissions made by Counsel are a matter of record and the following is a non-exhaustive synopsis of those submissions.

Submissions on behalf of Dr Hyder

3. Mr Barnes submitted that the text message evidence has been produced to demonstrate that, in 2013, it shows occasions where shifts were shorter than 12.5 hours.
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Submissions on behalf of the GMC

4. Ms Catherine Cundy, Counsel, did not object to the text message evidence being adduced.

The Tribunal’s Determination

5. The Tribunal noted Rule 34(1) of the Rules, which states:

'(1) The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.'

6. The Tribunal first considered arguments in favour of admissibility. The Tribunal took account of the wide discretion granted by the above Rule and that, as a professional body, it would ordinarily be regarded as able to assess and attach appropriate weight to evidence placed before it.

7. The Tribunal noted that the text message evidence, adduced after the closure of the GMC case, related to 2013 and not in relation to the factual Allegation before this Tribunal. As a result the Tribunal concluded that such evidence was not relevant to the matters before it. On that basis, the Tribunal refused Mr Barnes’ application under Rule 34(1).

ANNEX E – 06/06/2019

Determination under Rule 34(11) – 06/06/2019

Submissions

1. The submissions made by Counsel are a matter of record and the following is a non-exhaustive synopsis of those submissions.

Submissions on behalf of Dr Hyder

2. Mr Matthew Barnes, Counsel, requested permission to ask Dr Hyder further questions which arose from other evidence which was given earlier in these proceedings, over and above Dr Hyder’s evidence in chief.

3. Mr Barnes submitted that Rule 34(11) of the General Medical Council ('GMC') ('Fitness to Practise') Rules 2004 (as amended)('the Rules') is designed for a completely different purpose.
Submissions on behalf of the GMC

4. Ms Catherine Cundy, Counsel, directed the Tribunal’s attention to Rule 34(11) of the Rules. She stated that those parts of the Rules were introduced to curtail lengthy oral evidence and that is why statements are served by both parties before the hearing. Ms Cundy submitted that if there are omissions in the witness statement, it is something both parties have to deal with.

5. Ms Cundy submitted that the newness of issues constrains both parties. She stated that, had she, when adducing the evidence in chief with any of the Council’s witnesses sought to adduce evidence which was not in their statements, and hence was not disclosed to ‘the other side’, she would have been ‘stopped in her tracks’.

6. Ms Cundy submitted that Rule 34(11) should not be ignored by the Tribunal and Mr Barnes should not be granted permission to ask the further questions during his evidence in chief.

The Tribunal’s Determination

7. Rule 34(11) states:

'(11) A Committee or Tribunal must receive into evidence a signed witness statement containing a statement of truth as the evidence-in-chief of the witness concerned, unless—

(a) the parties have agreed; 

(b) a Case Manager has directed; or

(c) the Committee or Tribunal decides, upon the application of a party or of its own motion, that the witness concerned, including the practitioner, is to give evidence-in-chief by way of oral evidence;’

8. The Tribunal was mindful that this evidence related to a new matter which emerged in response to questions from the Tribunal and impacts upon the Allegation and concluded that it was fair that Dr Hyder be asked to comment on it.

9. The Tribunal determined in the interests of fairness, Mr Barnes should be given the opportunity to explore this new evidence with Dr Hyder during his oral evidence in chief.