Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 06/01/2020 - 10/01/2020
Medical Practitioner’s name: Dr Muhammad Hamid KHAN
GMC reference number: 6161293
Primary medical qualification: MB BS 1986 University of Karachi
Type of case
New - Misconduct
Outcome on impairment
Not Impaired

Summary of outcome
No action (warning not considered)

Tribunal:

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
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<tbody>
<tr>
<td>Legally Qualified Chair</td>
<td>Mr Robert Ward</td>
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<tr>
<td>Lay Tribunal Member:</td>
<td>Mrs Carol Douglas</td>
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<tr>
<td>Medical Tribunal Member:</td>
<td>Dr Aine McGeary</td>
</tr>
<tr>
<td>Tribunal Clerk:</td>
<td>Ms Jeanette Close</td>
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Attendance and Representation:

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<tr>
<th>Role</th>
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<tr>
<td>Medical Practitioner:</td>
<td>Present and represented</td>
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<tr>
<td>Medical Practitioner’s Representative:</td>
<td>Mr Christopher Mellor, Counsel, instructed by the Medical Protection Society</td>
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<tr>
<td>GMC Representative:</td>
<td>Mr David Toal, Counsel, instructed by the GMC</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.
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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 - 10/01/2020

Background

1. Dr Khan qualified in 1986 from the University of Karachi and obtained full GMC registration in 2007. At the time of the events Dr Khan was practising as a long-term Locum Consultant at East and North Hertfordshire NHS Trust ("the Trust"). In addition, Dr Khan worked with Newmedica on an ad hoc basis, as an independent ophthalmology provider. Dr Khan also provided 3 or 4 weeks per year locum cover at Sligo Hospital, Ireland.

2. The allegation that has led to Dr Khan’s hearing can be summarised as on 13 December 2018, Dr Khan exchanged emails with Newmedica, in which he was asked to clarify that an investigation launched by the GMC did not relate to him. The GMC alleged that Dr Khan had informed Newmedica that its investigation related to a different doctor and that Dr Khan was simply providing information as part of that investigation.

3. It is further alleged that Dr Khan knew that he was under investigation by the GMC and that he provided Newmedica with false information, and in doing so it is alleged that he acted dishonestly.

4. On the 17 January 2019 Mr B, the Reporting Officer for Newmedica, received an email from the GMC confirming that Dr Khan was under investigation and that Dr Khan had been aware of this since November 2018.

The Outcome of Applications Made during the Facts Stage

5. The Tribunal refused the GMC’s application, made pursuant to Rule 34 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ("the Rules"), to adduce further evidence. The Tribunal’s full decision on the application is included at Annex A.

6. The Tribunal granted Mr Mellor’s application to hear the evidence of Mr D by videolink. The Tribunal’s full decision on the application is included at Annex B.

The Allegation and the Doctor’s Response
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7. The Allegation made against Dr Khan is as follows:

1. The GMC:
   a. wrote to you on 20 November 2018 to advise an investigation into your fitness to practise had been initiated; **Admitted and Found Proved**
   b. confirmed via telephone call with you that you were under investigation on:
      i. 21 November 2018; **Admitted and Found Proved**
      ii. 22 November 2018. **Admitted and Found Proved**

2. On 13 December 2018, you exchanged emails with your employer, Newmedica, in which you were asked to clarify that the GMC’s investigation did not relate to you and you replied that:
   a. it related to a different doctor; **To be determined**
   b. you had been asked by the GMC to provide information only, or words to that effect. **Admitted and Found Proved**

3. You knew that the:
   a. GMC was investigating your fitness to practise; **Admitted and Found Proved**
   b. information you provided as at paragraph 2 was false. **To be determined**

4. Your conduct as described at paragraph 2 was dishonest by reason of paragraph 3. **To be determined**

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

The Admitted Facts

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

The Facts to be Determined
9. In light of Dr Khan’s response to the Allegation made against him, the Tribunal is required to determine whether Dr Khan informed Newmedica that the GMC’s investigation did not relate to him but to another doctor, whether Dr Khan knew the information he provided to Newmedica was false and by providing it, his conduct was dishonest.

**Factual Witness Evidence**

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

   - Ms G, Investigation Adviser, GMC, in person, together with her witness statement dated 12 July 2019 and her supplemental statement dated 30 August 2019;

11. The Tribunal also received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

   - Mr B, Clinical Director and Responsible Officer, at Newmedica, witness statement dated 28 August 2019;
   - Ms H, Human Resources Manager, at Newmedica, witness statement dated 11 September 2019;

12. Dr Khan provided his own witness statements dated 12 December 2019 and 13 December 2019 and also gave oral evidence on day 3 of the hearing. In addition, the Tribunal received evidence from the following witnesses on Dr Khan’s behalf:

   - Mr D, Consultant Ophthalmologist, via videolink, together with his witness statement dated 1 December 2019;
   - Mr F, Management Consultant, in person together with his witness statement dated 11 December 2019.

13. The Tribunal also received a number of testimonials on behalf of Dr Khan from various colleagues:

   - Mr J, Service Coordinator;
   - Mr K, Associate Ophthalmologist;
   - Ms L, Registered Nurse;
   - Ms M, Clinical Nurse Specialist;
   - Mr N, Senior Service Manager;
Documentary Evidence

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

- Various correspondence between Dr Khan and the GMC;
- Various correspondence between Dr Khan and Newmedica;
- Telephone notes between Dr Khan and Ms G, dated 21 and 22 November 2018;
- Dr Khan’s email to the Irish Medical Council, dated 29 November 2019 and their undated response;
- Email report from GMC Expert witness, Dr C, dated 2 October 2018;
- Letter from the Medical Protection Society, dated 29 November 2018;
- Dr Khan’s CV;
- 360 degree Colleague Feedback Summary Report, March 2019;

The Tribunal’s Approach

15. 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 Khan 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.

16. The Tribunal also reminded itself of the test for dishonesty as set out in the case law of Ivey v Genting Casinos (UK) Limited [2017] UKSC 67. That test is as follows:

"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."
The Tribunal’s Analysis of the Evidence and Findings

17. 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 2a

18. In reaching its decision, the Tribunal had regard to the series of correspondence and telephone calls between Dr Khan, Newmedica, the Irish Medical Council (IMC) and the GMC. The Tribunal also had regard to a letter dated 20 November 2018 sent to Dr Khan from Ms G, Investigation Adviser at the GMC, informing him of the GMC’s investigation. The Tribunal also took into account the notes of two telephone conversations Dr Khan had with Ms G on 21 and 22 November 2018.

19. The Tribunal bore in mind that telephone notes from 21 and 22 November 2018 showed that Ms G had confirmed to Dr Khan that he only had to complete and return a Work Details Form (WDF) at that stage. When Dr Khan asked Ms G if he was able to continue to work during the investigation, Ms G had told Dr Khan that there were no restrictions to stop him from working and that he could continue to work during the investigation.

20. The Tribunal noted that although Ms G’s oral evidence was limited in scope to the two telephone conversations with Dr Khan, it considered that she was able to give some clarity to those conversations. The Tribunal considered Ms G to be a credible witness.

21. On 29 November 2018 Dr Khan emailed the IMC and the Human Resources (HR) Department at Newmedica to inform them that he was under investigation by the GMC. Dr Khan then received an email from Mr E, HR Advisor at Newmedica, which stated:

“|I will need to ask you to write to Ms H, HR Manager, and Mr B, Clinical Director, outlining the allegations being made and the status to date”.

22. On 2 December 2018, Dr Khan emailed Ms H and Mr B in exactly the same terms informing them of the GMC’s investigation. Those two witnesses could not find their emails dated 2 December 2018, but the GMC did not dispute that Dr Khan had sent them, therefore the Tribunal recognised that Dr Khan would be responding on 13 December 2018 in the belief that Newmedica knew the contents of those emails.

23. The Tribunal noted that on 13 December 2018 at 15:20 hours Ms H emailed Dr Khan:
“I understand that you have written to us to advise that that the GMC have opened an investigation regarding you. Can you please, as requested by Mr E last week confirm what the investigation is regarding?”

Dr Khan replied on the same day at 18:47 hours:

“the GMC conducting an investigation about a doctor and have included my name. GMC only asked me to provide the information about my work places. I have not been hold (sic) for any action.”

24. The Tribunal noted that Dr Khan’s response to Ms H could be construed as him implying that the GMC’s investigation did not relate to him at all, but to a different doctor entirely. The Tribunal considered that although Dr Khan’s response to Ms H was not very clear or well written, it noted that at that time no allegations had been drafted against Dr Khan as the GMC’s investigation was still ongoing. In Dr Khan’s oral evidence, he stated his belief in December 2018 was that he was under investigation but that no allegations had been made against him. It also noted that Dr Khan’s response to Ms H was based upon the information that he had received during his telephone conversations with Ms G and the letter dated 20 November 2018 from the GMC. The Tribunal determined that Dr Khan had answered Ms H’s question truthfully.

25. The Tribunal also noted that in his email to Ms H, Dr Khan had stated that the GMC had asked him to provide information regarding his work places but that no action had been taken against him at that point. It further noted that Dr Khan had also stated that the GMC had told him to carry on with his responsibilities, which included his appraisal in March 2019 and his revalidation in October 2019.

26. The Tribunal gave consideration to Dr Khan’s response to Ms H when she asked him in her email:

“Just to confirm – the investigation the GMC are conducting is not regarding you, but another doctor?”

Dr Khan had replied:

“Yes, GMC investigating about a doctor who is a lead paediatrician and included my name to provide, if any information required to GMC... As I told you I have not been asked to do anything You Don’t worry I will keep you updated.”

27. The Tribunal considered that if Dr Khan had intended to imply that the doctor being investigated by the GMC was not him, but another doctor, then he would not have provided any other information in his email response other than a simple “Yes”.
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The Tribunal noted that instead Dr Khan had provided further information and had given a reassurance to Ms H that he would keep her informed of any progress.

28. The Tribunal also noted that when giving oral evidence, Dr Khan had often started a sentence with the word “Yes”, using it as a preface before going on to answer the question he had been asked, rather than as an affirmative answer. The Tribunal further noted that at times Dr Khan had not communicated well whilst giving his oral evidence, but it considered that this was not because Dr Khan was being evasive or untruthful. It considered that although Dr Khan thought he was communicating effectively and that he knew what he meant, this did not always translate well to those he was communicating with.

29. The Tribunal took into account that Dr Khan had voluntarily informed his employers and Newmedica of the GMC’s investigation, even though Ms G had informed him that it was not necessary to do so as the GMC would be contacting them. The Tribunal considered that Dr Khan was not shying away from or trying to hide the GMC’s investigation from his employers. Indeed, Dr Khan would not have known on 13 December 2018 that the GMC had not already contacted Newmedica.

30. The Tribunal determined that the GMC had not discharged its burden of proof in relation to allegation 2a. The Tribunal therefore found paragraph 2a of the Allegation not proved.

Paragraph 3b

31. The Tribunal next considered whether the information Dr Khan had supplied to Newmedica was false and that he knew it was false.

32. The Tribunal had regard to the evidence before it and gave careful consideration to the information Dr Khan had supplied to Newmedica. It had regard to the letter dated 20 November 2018 from the GMC where Dr Khan was informed that an investigation had been opened and that he was required to complete a WDF. The Tribunal noted that in a telephone conversation between Ms G and Dr Khan on 21 November 2018, Ms G had confirmed to Dr Khan that the WDF was the only thing the GMC required Dr Khan to do. It also noted that Dr Khan had completed and returned the WDF to the GMC promptly.

33. The Tribunal determined that Dr Khan had not tried to hide the fact that he was under investigation by the GMC. It also noted that Newmedica was aware of the GMC’s investigation into Dr Khan before the GMC contacted them about it on 17 January 2019, because Dr Khan had informed them himself in November 2018, albeit Newmedica had a mistaken impression from the emails of 13 December 2018. It also noted that Dr Khan had informed Newmedica that he had completed a WDF.
34. The Tribunal determined that when Dr Khan had told Newmedica that he was being investigated by the GMC, Dr Khan had also confirmed that he was able to continue to work whilst the investigation continued. The Tribunal had regard to the notes of a telephone conversation between Ms G and Dr Khan on 22 November 2018 where Ms G had confirmed this to Dr Khan. It considered that the information Dr Khan had supplied to Newmedica was both factual and truthful.

35. The Tribunal considered Mr Toal’s submissions, on behalf of the GMC, that Dr Khan’s account of his belief on 13 December 2018 has varied during the investigation. Mr Toal drew the Tribunal’s attention to Dr Khan’s legal representatives’ letter dated 4 April 2019. In this letter Dr Khan accepted that his 13 December 2018 emails stated that the GMC investigation related to a different doctor and that he did not know that he was under investigation at that time. Mr Toal contrasted this with Dr Khan’s denial that he said in the 13 December 2018 emails that it was a different doctor and his assertion in his recent statement, and his oral evidence, that he knew he was under investigation from 21 November 2018. The Tribunal took into account the confusing situation he found himself in from late 2018 to late 2019, being a witness against another doctor, being investigated in relation to a patient care issue (which was not subject to proceedings), and being investigated concerning the 13 December 2018 emails, culminating in the current proceedings. Mr Toal also drew the Tribunal’s attention to other discrepancies between Dr Khan’s account in the Rule 7 letter and his admissions in the proceedings. In relation to these, the Tribunal accepted Dr Khan’s oral evidence that he was confused as to the meaning of the word ‘conduct’, which he misconstrued to relate only to his clinical care rather than to his honesty.

36. The Tribunal therefore found paragraph 3b of the Allegation not proved.

Paragraph 4

37. In view of the findings above, the Tribunal was left to determine whether Dr Khan was dishonest in relation to his emails to Newmedica on 13 December 2018 stating that he had been asked to provide information only by the GMC; and that he knew that the GMC was investigating him.

38. The Tribunal noted that the first Newmedica and the IMC knew of the GMC investigation into Dr Khan was from Dr Khan himself on 29 November 2018. He was under no duty to provide such information to them. He was also aware, from his telephone calls with Ms G, that the GMC would be informing his employers of the investigation. In view of these facts, the dishonest conduct alleged against Dr Khan seemed highly unlikely.

39. The Tribunal noted that Dr Khan had informed his main employer, the Trust, and another subsidiary employer, the IMC, of the investigation. The Tribunal felt it unlikely that Dr Khan would have any motive to be untruthful only to the locum agency for which he worked 1 to 2 shifts per month.
40. The Tribunal gave some consideration to the fact that Dr Khan could have protracted the GMC’s investigation by ‘dragging his feet’ and taking his time in responding to queries and requests for information from the GMC and Newmedica. The Tribunal noted that Dr Khan had co-operated and provided information when requested to do so. The Tribunal formed the view that this did not support the allegations of Dr Khan having acted dishonestly.

41. The Tribunal had regard to the testimonials from Dr Khan’s colleagues and friends and the character witness evidence of Mr D and Mr F. It reminded itself that Mr D, in his oral evidence and testimonial, had described Dr Khan as an “honest and straightforward person”. It also noted that Mr F had stated that “I have travelled this country and worked with hundreds of clinicians and can honestly say that he is at the top in terms of honesty, integrity and trustworthiness”. The Tribunal also had regard to the 360 degree feedback from the patients and colleagues of Dr Khan, which scored him highly for probity.

42. The Tribunal reminded itself of the test to be applied when considering dishonesty as set out in the case of *Ivey v Genting Casinos*. It determined that ‘ordinary decent people’ would not consider Dr Khan’s actions to be dishonest because his emails on 13 December 2018 to Newmedica were not false.

43. On the basis of the evidence before it the Tribunal determined that Dr Khan had not acted dishonestly by providing the information he did to Newmedica. It further determined that the information he provided was truthful and factual.

44. The Tribunal therefore find paragraph 4 not proved.

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

45. The Tribunal has determined the facts as follows:

1. The GMC:
   a. wrote to you on 20 November 2018 to advise an investigation into your fitness to practise had been initiated; **Admitted and Found Proved**
   b. confirmed via telephone call with you that you were under investigation on:
      i. 21 November 2018; **Admitted and Found Proved**
      ii. 22 November 2018. **Admitted and Found Proved**
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2. On 13 December 2018, you exchanged emails with your employer, Newmedica, in which you were asked to clarify that the GMC’s investigation did not relate to you and you replied that:
   a. it related to a different doctor; Found not Proved
   b. you had been asked by the GMC to provide information only, or words to that effect. Admitted and Found Proved

3. You knew that the:
   a. GMC was investigating your fitness to practise; Admitted and Found Proved
   b. information you provided as at paragraph 2 was false. Found not Proved

4. Your conduct as described at paragraph 2 was dishonest by reason of paragraph 3. Found not Proved

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

46. Following the Facts Determination being handed down, Mr Toal, on behalf of the GMC, confirmed that the GMC did not seek to proceed to the impairment stage because no findings of fact of culpability had been made against Dr Khan. Mr Toal also confirmed that there was no interim order in place. The Tribunal ceased the proceedings without proceeding to the impairment stage.

Confirmed
Date 10 January 2020

Mr Robert Ward, Chair

ANNEX A – 07/01/2020
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Application on the admissibility of evidence

On behalf of the GMC

1. On day one of the hearing, Mr David Toal, Counsel, on behalf of the General Medical Council (GMC), made an application to adduce further evidence in the form of a Determination from a previous Tribunal relating to Doctor A, in which Dr Khan gave evidence for the GMC.

2. Mr Toal stated that the evidence was relevant as it went towards Dr Khan’s credibility and honesty. Mr Toal submitted that it would be fair and reasonable for the Determination in those proceedings, relating to the honesty and credibility of Dr Khan, to be admitted as evidence in these proceedings. Mr Toal stated that the opinion of the previous Tribunal, which was aware that Dr Khan was facing his own fitness to practise proceedings in relation to dishonesty, was made clear in its written Determination. The Determination had only recently been made available to GMC Counsel.

3. Mr Toal submitted that Dr Khan was the sole witness in Dr A’s proceedings and that his evidence had been relied upon entirely by the GMC. Mr Toal stated that, at the close of the GMC’s case, the Defence counsel made an application of no case to answer on the basis that Dr Khan’s credibility was such that the previous Tribunal could not rely upon it. He further stated that the previous Tribunal’s opinion was that Dr Khan’s evidence was fundamentally unreliable, was frequently deliberately evasive and that Dr Khan had provided answers to questions he knew to be untrue. The previous Tribunal concluded that it was unable to place any weight on Dr Khan’s evidence and, in turn, granted the Defence application of no case to answer.

4. Mr Toal stated that whilst these are not criminal proceedings, the Criminal Justice Act 2003, in particular section 101(1)(f), sets out the framework for considering bad character evidence. He further stated that it was reasonable and fair to admit the Determination as evidence of Dr Khan’s character in these proceedings.

5. Mr Toal stated that Dr Khan had provided the Tribunal with a large number of good character testimonials as part of his evidence. For the Tribunal to be provided with the extensive good character evidence but not be made aware of the findings of the previous Tribunal, so that it could take these into account when making findings in relation to Dr Khan’s honesty and credibility, would be wrong, unfair and misleading.

6. Mr Toal submitted that it was entirely a matter for the Tribunal to determine what weight it should give to the evidence once adduced. Mr Toal invited the Tribunal to admit the written Determination from Dr A’s proceedings into evidence.
On behalf of Dr Khan

7. Mr Christopher Mellor, Counsel on behalf of Dr Khan, opposed the GMC’s application. He stated that it would not be appropriate to admit the written Determination of a previous Tribunal. He questioned whether it was bad character evidence because it was not a finding of an offence having been committed nor of reprehensible behaviour. He submitted that even if the Tribunal determined that it was potentially relevant it would be unfair and prejudicial to Dr Khan to admit it.

8. Mr Mellor stated that the fact that Dr Khan had been a witness at Dr A’s hearing did not mean the Determination of the previous Tribunal was relevant. He submitted that entering the Determination into evidence as proof of Dr Khan’s bad character should not be considered as the Determination constituted the opinion of another Tribunal. Mr Mellor referred to research he had undertaken using Archbold (the criminal text book) and stated that he could find no case law of a Determination of this type (containing no evidence of a caution or conviction, nor a finding of misconduct) being admitted in any other proceedings.

9. Mr Mellor reminded the Tribunal that Dr Khan did not face any allegations at Dr A’s hearing, he was in attendance as a witness and as such was not represented. He further stated that the Legally Qualified Chair at Dr A’s hearing had warned Dr Khan that his responses could be used against him by the GMC and that it now appeared that the GMC was seeking to rely not on those responses but on the Determination in that case.

10. Mr Mellor stated that Dr Khan had no right to appeal the Determination of the previous Tribunal as his attendance at that hearing was as a witness only, he was not a party to the proceedings.

11. Mr Mellor submitted that the previous Tribunal had questioned whether Dr Khan had suffered from a “language or communication problem” and that this Tribunal may also be asked to consider it as a factor. He stated that it would therefore be inappropriate for another Tribunal’s opinions on such matters to be admitted into evidence in this case.

12. Mr Mellor submitted that the Determination of the previous Tribunal was not relevant and that it would be unfair to Dr Khan to admit it into these proceedings.

13. In answer to Tribunal questions, both Counsel confirmed that Dr A’s Tribunal had not deemed Dr Khan to be dishonest.

The Tribunal’s Approach

14. The Tribunal considered Rule 34(1) of the Rules:
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"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."

15. The Tribunal reminded itself that its overriding objective was to ensure that cases are dealt with fairly and justly. The Tribunal was satisfied that it was entitled to form its own conclusions as to what evidence was relevant and come to its own conclusions as to the appropriate weight to attach to any evidence presented to it.

16. The Tribunal had regard to the submissions made by both parties and noted that it was being asked to make a decision as to admissibility of the opinion of a previous Tribunal whose decision was based on a different set of facts. The Tribunal reminded itself that it had not been given sight of the Determination of the previous Tribunal and it did not know the context of that case, therefore it was unclear on what its findings were based. In these circumstances, this Tribunal determined that the previous Tribunal’s opinion of Dr Khan’s evidence carried so little weight that it would not affect its decision-making. For this reason, it deemed the previous Tribunal’s determination not to be relevant to the current proceedings.

17. The Tribunal noted that when Dr Khan gave witness evidence at Dr A’s hearing, he was not facing any allegations himself and as a witness he was unrepresented, with no opportunity to make submissions or to challenge any of the other evidence in that case. It also noted that Dr Khan had no right of redress to appeal the Determination, or the opinions expressed in it, made by the previous Tribunal.

18. The Tribunal reminded itself that Dr Khan had given witness evidence at Dr A’s hearing on behalf of the GMC and that it appeared that the GMC was now attempting to use the previous Tribunal’s opinion as evidence against him. It determined that if the GMC considered Dr Khan’s evidence to be a cause of concern, then it should have taken misconduct proceedings, rather than to rely on it now to bolster its case.

19. The Tribunal bore in mind that the Determination of the previous Tribunal was the opinion formed by that Tribunal and that it was not a finding of fact against Dr Khan.

20. On the information available to this Tribunal, it determined that it would be unfair for the previous Tribunals findings in relation to Dr A to be used in Dr Khan’s case. The Tribunal therefore rejected the GMC’s application on the basis that it was not relevant and that it would be unfair to Dr Khan to allow it.

ANNEX B – 10/01/2020
Application to hear witness evidence by videolink

1. Mr Christopher Mellor, Counsel on behalf of Dr Khan, made an application to hear Mr D’s evidence by videolink under Rule 34(13) of the General Medical Council (‘GMC’) (Fitness to Practise) Rules 2004, as amended (the Rules).

2. Mr Mellor stated that due to clinical commitments in Hertfordshire, Mr D was unable to attend the proceedings in person. He stated that Mr D was a character witness for Dr Khan and hearing his evidence by video link would not prejudice the GMC’s case in any way.

3. On behalf of the GMC, Mr Toal did not oppose the application.

The Tribunal’s Approach

4. The Tribunal considered Rule 34(13) and (14) which state:

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

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

5. The Tribunal was mindful that the preference was to hear witness evidence in person. It took account of the submissions made by Mr Mellor.

6. The Tribunal was of the view that due to the distance, it would be unreasonable to expect Mr D to appear in person to provide character evidence in Dr Khan’s defence. Given that Mr D’s evidence was limited to testimony in relation to Dr Khan’s character, the Tribunal determined that it would be relatively brief in nature. The Tribunal therefore concluded that it would be in the interests of justice to allow Mr D to give evidence via videolink.

7. In reaching its decision, the Tribunal gave consideration to Mr Mellor’s submissions, that Mr Toal did not oppose the application, the importance of the witness evidence to the proceedings and fairness to all parties. The Tribunal
determined that there would be no injustice in hearing Mr D’s evidence via videolink and it therefore granted Mr Mellor’s application.