Record of Determinations – Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 21/10/2019 - 29/10/2019

Medical Practitioner’s name: Dr Sudip CHOWDHURY

GMC reference number: 7075626

Primary medical qualification: MB BS 2004 University of Calcutta

Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome
Suspension, 9 months
Review hearing directed

Tribunal:

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<tr>
<td>Legally Qualified Chair</td>
<td>Mr Sean Ell</td>
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<tr>
<td>Lay Tribunal Member:</td>
<td>Mr Geoffrey Brighton (21/10/2019 – 28/10/2019)</td>
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<td>Mr William Hoskins (29/10/2019)</td>
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<td>Medical Tribunal Member:</td>
<td>Dr Joanne Topping</td>
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Tribunal Clerk: Miss Evelyn Kramer

Attendance and Representation:

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<tr>
<td>Medical Practitioner:</td>
<td>Not present and not represented</td>
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<tr>
<td>Medical Practitioner’s Representative:</td>
<td>N/A</td>
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<tr>
<td>GMC Representative:</td>
<td>Mr Peter Atherton, Counsel, instructed by GMC Legal</td>
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Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.
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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 - 24/10/2019**

**Background**

1. Dr Chowdhury qualified in 2004 from the University of Calcutta. At the time of the events which are the subject of this hearing, Dr Chowdhury was a student on the Postgraduate Diploma in Child Health accredited by the University of Leeds.

2. The allegation that has led to Dr Chowdhury’s hearing can be summarised as follows: it is alleged that on 19 March 2018, Dr Chowdhury submitted an assignment to the University of Leeds which he knew was not his own work. It is further alleged that prior to his Annual Review Competence Progression ('ARCP') meeting Dr Chowdhury failed to declare on his Form R that he had been investigated and found guilty of plagiarism. It is alleged that Dr Chowdhury had acted dishonestly by submitting the plagiarised work and failing to declare that he had been found to have done so on his Form R. It is further alleged that due to his dishonest conduct, Dr Chowdhury’s fitness to practise is impaired.

3. On 4 July 2018, at the Academic Integrity meeting Dr Chowdhury attended, he was advised to refer himself to the GMC. On 30 July 2018, Dr Chowdhury referred himself to the GMC regarding the outcome of the plagiarism investigation conducted by the University of Leeds.

**The Outcome of Applications Made during the Facts Stage**

4. The Tribunal granted the GMC’s application, made pursuant to Rule 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), for the Tribunal to proceed to consider Dr Chowdhury’s case in his absence. The Tribunal’s full decision on the application is included at Annex A.

**The Allegation and the Doctor’s Response**

5. The Allegation made against Dr Chowdhury is as follows:

   That being registered under the Medical Act 1983 (as amended):
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1. On 19 March 2018, you submitted an assignment (the ‘Assignment’) to the University of Leeds (the ‘University’) purporting to be your own work which was untrue.
   To be determined

2. You knew that:
   a. the Assignment contained work that had been plagiarised;
      To be determined
   b. you should not submit plagiarised work.
      To be determined

3. Your action as at paragraph 1 was dishonest by reason of paragraph 2.
   To be determined

4. On 11 July 2018, for the purpose of your Annual Review of Competence Progression (‘ARCP’) meeting, you submitted Form R in which you failed to declare that the University had:
   a. investigated you for plagiarising the Assignment;
      To be determined
   b. found you guilty of plagiarism.
      To be determined

5. You knew you should have declared the information at paragraph 4a-b on Form R.
   To be determined

6. Your actions at paragraph 4a-b were dishonest by reason of paragraph 5.
   To be determined

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

6. In light of Dr Chowdhury’s absence from these proceedings and therefore the absence of any formal response to the Allegation at this hearing, the Tribunal is required to determine the entirety of the Allegation made against Dr Chowdhury.
Factual Witness Evidence

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

- Dr A, Consultant in Paediatric Respiratory Medicine, in person. Witness statement dated 28 March 2019 and supplementary statement dated 15 May 2019;
- Dr B, Lecturer in Pathology at the University of Leeds at the time of events, in person. Witness statement dated 5 June 2019;
- Ms C, Programme Administrator for the Postgraduate Diploma in Child Health programme at the University of Leeds, by telephone link. Witness statement dated 9 April 2019;
- Ms D, Programme Support Administrator at Health Education England, by telephone link. Witness statement dated 16 April 2019 and supplementary statement dated 30 May 2019;
- Dr E, Consultant Paediatrician at Barnsley Hospital, by telephone link. Witness statement dated 26 April 2019;
- Dr F, Consultant in Paediatric Intensive Care at Sheffield Children’s Hospital, by telephone link. Witness statement dated 23 May 2019;
- Dr H, Consultant in Paediatric Emergency Medicine and General Paediatrics at Sheffield Children’s Hospital, by telephone link. Witness statement dated 17 April 2019.

Documentary Evidence

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

- Police Report submitted by Dr Chowdhury, dated 19 March 2018 and corresponding originality report from Turnitin;
- Court Report submitted by Dr Chowdhury, dated 19 March 2018 and corresponding originality report from Turnitin;
- Police Report Proforma and screenshot of proformas on Minerva (Virtual Learning Environment);
- Letter from Dr A, University of Leeds to Dr Chowdhury, dated 7 June 2018;
- Form R (Part B) completed by Dr Chowdhury, dated 6 May 2018;
- Email chain between Dr Chowdhury and Ms D, with updated Form R completed by Dr Chowdhury, dated 6 May 2018;
- Minutes of the meeting attended by Dr B, Dr G, Dr A, Ms C and Dr Chowdhury, dated 4 July 2018;
- Letter from Dr B to Dr Chowdhury, dated 4 July 2018;
- Various email correspondence between attendees of 12 July meeting, dated 14 July 2018;
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• Annual Review of Competence Progression ('ARCP') Minutes dated 12 July 2018 and ARCP outcome form dated 12 July 2018;
• Panel findings sent to Dr Chowdhury by letter, dated 17 July 2018;
• Exception exit report, dated 18 July 2018;
• Email from Ms I to Dr A, dated 19 July 2018;
• Training overview of Academic Integrity Training and slides;
• Dr Chowdhury's academic integrity declaration, dated 14 September 2016;
• Email correspondence between Dr F and Dr Chowdhury, dated 16 August 2018;
• Childhood Gastroenterology, Endocrine and Nutrition Module submitted by Dr Chowdhury, dated 13 December 2017 and corresponding originality report from Turnitin;
• Email correspondence between Dr A and Dr Sudip Chowdhury, dated 10 January 2018;
• Email from Ms C to Dr Chowdhury dated 1 May 2018;
• Rule 7 response from Dr Chowdhury to GMC, dated 7 January 2019;
• Email from Mr J, who attended the ARCP meeting on 12 July 2018, to GMC, dated 24 May 2019.

The Tribunal’s Approach

9. 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 Chowdhury 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.

10. In respect of the allegations that Dr Chowdhury acted dishonestly, the Tribunal bore in mind the test laid down by the Supreme Court in Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67, namely that the Tribunal should first ascertain subjectively the actual state of Dr Chowdhury’s knowledge or belief as to the facts before then determining whether his conduct was dishonest applying the objective standards of ordinary decent people.

The Tribunal’s Analysis of the Evidence and Findings

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

12. The Tribunal noted that all the witnesses it heard from did their best to assist it, in particular accepting the limitations of their recollections where appropriate. It took into account the evidence of the witnesses at the ARCP meeting on 12 July 2018, who said that whilst the minutes did not provide a complete record of the meeting, they were more likely to be an accurate record of what occurred than their individual recollections. The Tribunal concluded the witnesses were all credible.
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Paragraph 1

On 19 March 2018, you submitted an assignment (the ‘Assignment’) to the University of Leeds (the ‘University’) purporting to be your own work which was untrue.

13. The Tribunal had regard to both the Police Report and the Court Report bearing Dr Chowdhury’s full name and digital signature which he submitted to the University of Leeds on 19 March 2018. It also had regard to the corresponding originality reports from Turnitin which, for the Police Report, identified a 75 per cent similarity to another student’s assignment from the University of Leeds. For the Court Report, a similarity of 85 per cent with another student’s assignment was identified.

14. The Tribunal bore in mind Dr Chowdhury’s own Rule 7 response to the GMC. His response is dated 7 January 2019 and relates to an earlier iteration of the Allegation brought in this case. In his email, Dr Chowdhury states:

In 2018 you were a student on the Postgraduate Diploma in Child Health accredited by the University of Leeds (‘the University’) - Agree

On 19 March 2018, you submitted an assignment (‘the Submission’) for assessment in relation to Module CPCH5003M Child Protection. - Agree

The Submission contained work that was not your own - Agree.

The Tribunal were of the view that Dr Chowdhury’s response to the Rule 7 notification was relevant to its consideration of the Allegation before it. It noted that the correspondence showed a clear acceptance from Dr Chowdhury that on the 19 March 2018 he submitted an assignment to the University of Leeds for the Child Protection Module which was not his own work. This followed the acceptance by Dr Chowdhury at the Academic Integrity meeting on 4 July 2018 that the Assignment he had submitted was not his own work.

15. Taking into account all of the evidence before it, the Tribunal was satisfied that on 19 March 2018, Dr Chowdhury submitted an assignment to the University of Leeds purporting to be his own work which was untrue. It therefore found paragraph 1 of the Allegation proved.

Paragraph 2a

You knew that:

a. the Assignment contained work that had been plagiarised
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16. The Tribunal again had regard to Dr Chowdhury’s own Rule 7 response, in which Dr Chowdhury stated:

At the time of the Submission, you knew that it contained work that was not your own- Agree

...

I completely agree that I had committed plagiarism offence in my March 2018 submission [sic].

17. The Tribunal considered the explanation given by Dr Chowdhury to the Academic Integrity meeting on 4 July 2018 about his submission of work that was not his own. According to the minutes of the meeting, Dr Chowdhury told the Academic Integrity Panel that the version of the Police Report and Court Report he submitted had been in error. He said that he had been using a proforma provided by another student via WhatsApp to assist him because he had failed the assignment when he first submitted it in January. He said that he had ‘started to work on this document but didn’t really like it and decided to make his own reports which he felt were better and quite different. However he uploaded the wrong reports in error.’ Later on in the meeting Dr Chowdhury showed the Academic Integrity Panel his laptop with multiple windows open and many files with similar names. Dr Chowdhury explained that it was the similarity between the front pages of the Reports and the names of the files which had confused him and had resulted in him submitting two reports which were not his own work.

18. The Tribunal noted that the evidence from minutes of the 4 July 2018 Academic Integrity meeting which was consistent with the evidence of both Dr A and Dr B who had both been in attendance. Considering the minutes of the 4 July 2018 meeting, and his oral and written evidence, Dr B maintained that Dr Chowdhury’s explanation that the two reports had been uploaded in error lacked credibility. He said that this was a ‘very common defence’ from students who are questioned about plagiarism and noted that it would be highly unlikely for a student to have made the same uploading error in submitting the incorrect report to Turnitin for two separate documents.

19. The Tribunal noted that Dr Chowdhury accepted that his actions in submitting the work of another student amounted to plagiarism. The Tribunal reminded itself that Dr Chowdhury’s explanation throughout both the Academic Integrity and the ARCP Panel meetings was that he had submitted the reports of another student in error. However, the Tribunal concluded that Dr Chowdhury knew when he submitted the Assignment that it contained work that was not his own. The Tribunal agreed with Dr B that it would be highly unlikely for Dr Chowdhury to have made the same uploading error in respect of two separate documents. Therefore, the Tribunal was satisfied that paragraph 2a of the Allegation was proved.
Paragraph 2b

You knew that:

b. you should not submit plagiarised work.

20. In considering Dr Chowdhury’s knowledge of plagiarism, the Tribunal had regard to Dr Chowdhury’s confirmation at the Academic Integrity meeting that he had attended an Academic Integrity talk and had completed an Academic Integrity quiz. The Tribunal had regard to the Academic Integrity declaration all students are required to sign as part of the registration process at the University of Leeds. This declaration includes:

*I promise that in all submissions I will not present anyone else’s work in whole or in part, as my own and I will not collude with others in the preparation of any work.*

The Tribunal had sight of the Declaration of Academic Integrity which Dr Chowdhury signed on 14 September 2016.

21. Further, the Tribunal bore in mind that the meeting on 4 July 2018 was not the first time concerns were raised with Dr Chowdhury about plagiarism. The Tribunal had regard to the email sent by Dr A on 10 January 2018 which warned Dr Chowdhury that his submission for the Growth and Nutrition Module was ‘extremely close to the threshold for a Plagiarism investigation’. Dr A went on to say that ‘It is important that you take note of this warning very carefully, as the penalties for any student found to have committed plagiarism are severe.’

22. In his response to Dr A’s email, Dr Chowdhury said:

*Thanks for your email. I have made the report after going through online resources. I generally tend to make a draft with various resources I have gathered and then future edit it. It could be that sufficient quotation marks were not inserted in some cases and that could have been a concern.*

*I will ensure that I am more careful in the future regarding my draft.*

The Tribunal noted that Dr Chowdhury acknowledged the concern raised by Dr A in his email dated 10 January 2018 and his assurance that he would be more careful in the future.

23. The Tribunal noted that in the Academic Integrity meeting on 4 July 2018, Dr Chowdhury was asked if he knew what plagiarism was. The Tribunal was of the view
that the definition Dr Chowdhury provided, as detailed in the minutes of the meeting, showed a satisfactory understanding of the definition of plagiarism.

24. The Tribunal accepted that Dr Chowdhury knew what constituted plagiarism and that he should not submit plagiarised work. Therefore, it found paragraph 2b of the Allegation proved.

Paragraph 3

Your action as at paragraph 1 was dishonest by reason of paragraph 2

25. Although accepting the conclusion of the Academic Integrity panel meeting, Dr Chowdhury has throughout maintained that the submission of the Assignment was a genuine mistake. The Tribunal has already determined that Dr Chowdhury knew he had submitted plagiarised work on 19 March 2018.

26. The Tribunal noted Dr B’s evidence regarding his questioning of Dr Chowdhury at the Academic Integrity meeting on 4 July 2018, as follows:

I questioned him as to why the document was so complete. Someone had gone through the document and finalised it to a degree inconsistent with its being used for guidance or as a template. I informed him that I did not find it credible that he has accidentally uploaded the documents.

The Tribunal also had regard to the minutes of the 4 July 2018 meeting, which note:

[Dr B] wondered why [Dr Chowdhury] would spend time editing someone else’s work if he did not plan to use it. [Dr B] also highlighted that the type of edits that had been made such as the addition of the name 'Ben', deletion of the word 'lovely' and the correction of a grammatical error. He commented that the number and level of edits did not fit with using the document for structure and guidance.

27. The Tribunal also noted that when Dr Chowdhury showed the Academic Integrity Panel the documents he said he had intended to submit on his laptop, Dr B reviewed the metadata for them. According to the minutes of the meeting from 4 July 2018, Dr B identified through the documents’ metadata that they had been created by the author of the Police and Court Report proformas. Dr A told the Tribunal in his oral evidence that these proformas will have been made available to all students on the Child Health programme after the first submission deadline for this assignment in January 2018. Dr Chowdhury told the Academic Integrity Panel that no examples of reports were available to him after he failed his first submission and said that this was why he asked a fellow student for a template and guidance on report writing.
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28. The Tribunal accepted Dr A’s evidence that students, including Dr Chowdhury, who were resubmitting this assignment, would have access to the templates from the Virtual Learning Environment. It also noted that according to Dr B’s examination of the metadata, that Dr Chowdhury appeared to have accessed the pro formas made available to students as the author of the document Dr Chowdhury said he intended to submit was the person who had created the pro formas for the course.

29. Considering the evidence before it, the Tribunal did not find Dr Chowdhury’s explanation of his error in submitting the wrong documents to be plausible or credible. It accepted the evidence of both Dr A and Dr B that it was highly unlikely that Dr Chowdhury would have made the submission error twice. Having narrowly failed the assessment the first time and having struggled with the assignment, the Tribunal concluded that Dr Chowdhury had intended to submit an assignment he knew to be plagiarised from another student’s work. The Tribunal accepted that it was not credible for Dr Chowdhury to suggest that he submitted the two separate reports in error. Nor did it accept that the amendments he had made were consistent with using the documents as a proforma example. Dr Chowdhury’s action in submitting an assignment he knew to be plagiarised would be considered by ordinary decent people to be dishonest. The Tribunal therefore determined that Dr Chowdhury had acted dishonestly by submitting work he knew to be plagiarised on 19 March 2018. For these reasons, the Tribunal found paragraph 3 of the Allegation proved.

Paragraphs 4a and 4b

On 11 July 2018, for the purpose of your Annual Review of Competence Progression (‘ARCP’) meeting, you submitted Form R in which you failed to declare that the University had:

   a. investigated you for plagiarising the Assignment;
   b. found you guilty of plagiarism

30. The Tribunal accepted that to find paragraphs 4a and 4b of the Allegation proved, the GMC must have established that Dr Chowdhury had a duty to declare on Form R the outcome of the University of Leeds Academic Integrity meeting.

31. The Tribunal heard from both Dr F and Ms D that trainees are expected to keep Form R up to date. The Tribunal had particular regard to Dr F’s evidence, who as the chair of Dr Chowdhury’s ARCP panel said in her evidence that she would expect a trainee’s Form R to be accurate up to the day of the ARCP meeting taking place. Ms D explained to the Tribunal that as there could be a three month gap between the Form R being uploaded and the meeting it was important that students continued to keep the Form R up to date, noting any new matters that arose before the meeting. Ms D informed the Tribunal that Dr Chowdhury would have been given
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at least two months notice of the ARCP panel meeting. Ms D also told the Tribunal that a request to complete Form R and attach it to the eportfolio would have been included in the notification of the ARCP meeting sent to Dr Chowdhury.

32. On the 11 July 2018, Dr Chowdhury was asked in an email from Ms D to send a copy of his Form R directly to her. The Tribunal heard from Ms D that it was her preference to be sent a copy of Form R directly so that she could print it for the ARCP panel to review. The Tribunal noted Dr Chowdhury’s response to Ms D on 11 July 2018 which states ‘I had uploaded the form R in the ARCP folder in my eportfolio’. In his Rule 7 response, Dr Chowdhury states that he had uploaded the original Form R to his eportfolio on 9 May 2018. When Dr Chowdhury was asked to send Form R to Ms D on 11 July 2018, he sent a copy of the same form submitted on 9 May 2018. The Tribunal noted that in her evidence, Dr F said that if any incidents were to occur between the trainee’s deadline to upload their eportfolio for the ARCP panel and the ARCP meeting itself, that Form R must be updated accordingly. Dr F stated that Dr Chowdhury by July 2018 was not a new Specialist Trainee, and while she could not recall whether he joined the Child Health programme as a Fourth Year Specialist Trainee or a First Year Specialist Trainee that she would have expected him to understand the requirement to submit an up to date Form R as the purpose of an ARCP meeting was to review a trainee’s academic competency at that point.

33. The Tribunal therefore accepted the evidence of Ms D and Dr F, that Dr Chowdhury would have known that the ARCP meeting was coming up and that he would be required to provide an up to date Form R for the ARCP panel’s consideration, including that he had been investigated and found guilty of plagiarism.

34. The Tribunal concluded that Dr Chowdhury had failed to declare on Form R that he had been investigated and found guilty of plagiarism. Therefore, it found paragraph 4 of the Allegation proved in its entirety.

Paragraph 5

You knew you should have declared the information at paragraph 4a-b on Form R.

35. Having determined that Dr Chowdhury had failed to declare that he had been investigated and found guilty of plagiarism in Form R, the Tribunal went on to consider whether Dr Chowdhury knew he should have declared the information.

36. The Tribunal was of the view that on 11 July 2018, Dr Chowdhury had an opportunity to submit an up to date Form R, which included a declaration about his being investigated and found guilty of plagiarism by the University of Leeds on 4 July 2018. It noted that Form R itself makes clear in Section 5: New declaration since
your previous Form R Part B of the expectation to declare any relevant investigation findings. It states in its descriptive guidance for the section that trainees should include details of the following:

**Significant Event:** The GMC state that a significant event (also known as an untoward or critical incident) is any unintended or unexpected event, which could or did lead to harm of one or more patients. This includes incidents which did not cause harm but could have done, or where the event should have been prevented. All doctors as part of revalidation are required to record and reflect on Significant events in their work with the focus on what you have learnt as a result of the event/s. Use non-identifiable patient data only.

**Complaints:** A complaint is a formal expression of dissatisfaction or grievance. It can be about an individual doctor, the team or about the care of patients where a doctor could be expected to have had influence or responsibility. As a matter of honesty & integrity you are obliged to include all complaints, even when you are the only person aware of them. All doctors should reflect on how complaints influence their practice. Use non-identifiable patient data only.

**Other investigations:** Any on-going investigations, such as honesty, integrity, conduct, or any other matters that you feel the ARCP panel or Responsible Officer should be made aware of. Use non-identifiable patient data only.

Further, trainees are required to tick or cross one box in Section 5 of Form R which state:

- I do NOT have anything new to declare since my last ARCP/RITA/Appraisal
- I HAVE been involved in significant events/complaints/other investigations since my last ARCP/RITA/Appraisal

The Tribunal noted that the Form R submitted by Dr Chowdhury indicated he did NOT having anything new to declare.

37. The Tribunal noted the evidence of Dr A and Dr Chowdhury both of whom recall that Dr Chowdhury asked about and was told of the need to inform the ARCP of the University’s findings in respect of the plagiarism investigation.

38. The Tribunal considered the evidence before it and the clear directions provided within Form R, which it noted Dr Chowdhury had previously completed and uploaded on 9 May 2018. It was satisfied that Dr Chowdhury was aware that he
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should have declared that he had been found guilty of a plagiarism offence on his Form R. Therefore, it found paragraph 5 of the Allegation proved.

Paragraph 6

Your actions at paragraph 4a-b were dishonest by reason of paragraph 5.

39. Having determined that Dr Chowdhury was aware of the duty to declare on Form R that he had been investigated and found guilty of plagiarism, the Tribunal went on to consider whether his actions, in failing to declare this information were dishonest.

40. The Tribunal bore in mind Dr Chowdhury’s explanation for not updating Form R, in his Rule 7 response, he said:

In the Form R submitted on 11 July 2018, ahead of your ARCP meeting, you failed to declare the University’s investigation into the Submission- Agree, but there was a misunderstanding on my part. I had submitted the original Form R in the ARCP folder of my eportfolio on May 9th 2018 (form signed on 6th May 2018), when I had no idea that the University was considering a Plagiarism investigation. I had asked the chair (Dr A) at the end of the meeting on 4th July 2018 about letting the ARCP panel know, as my face-face meeting was scheduled on 12th July 2018. To this, Dr A had mentioned that I should let the panel know when I meet them even if I had not self-referred at that point. I had made a reflection about my Plagiarism offence in my eportfolio on 11th July (a day prior to the meeting), and had clearly mentioned about the investigation from Leeds University. As I had already uploaded the Form R on 9th May 2018, I did not change the form (as I thought that it would be inappropriate to change a form once uploaded). My understanding was that someone is called for an ARCP face-face after the panel has gone through the eportfolio and to address any concerns that may have been there. My form R must have been assessed by the team in the past and uploading a changed version before the meeting would not be appropriate.

41. The Tribunal had regard to the documentary evidence before it. This included an entry Dr Chowdhury uploaded to his Development Log about the plagiarism finding against him on 11 July 2018, the day before his ARCP panel meeting. In her oral evidence, Dr F informed the Tribunal that having considered the minutes of the 12 July 2018 meeting, though incomplete, that it appeared that Dr Chowdhury had first raised the issue of being found guilty of plagiarism himself in the meeting. Dr F said that the suggestion come from a member of the panel, their initials, not those of Dr Chowdhury would have been attributed to the statement. The Tribunal accepted the evidence of Dr F that it was Dr Chowdhury who raised the matter of plagiarism at the ARCP meeting. It further noted that Dr Chowdhury contacted the
panel by email on the same day to correct the record made in the ARCP outcome form which had stated that he was ‘not found guilty’ of plagiarism.

42. The Tribunal concluded that although Dr Chowdhury would have been aware of the need to update the Form R, he believed it would be sufficient for him to inform the ARCP panel of the plagiarism at the meeting itself; which is what he did. Dr Chowdhury raised the investigation into plagiarism in his reflective note of 11 July 2018, informed the ARCP meeting himself that he had been investigated and was aware that Dr A would be writing to both his educational supervisor and the Deanery about the investigation. Dr Chowdhury also knew that he must self-refer the matter to the GMC. The Tribunal determined that Dr Chowdhury believed that his actions were sufficient in raising the issue of his plagiarism offence in the way that he did without also amending his Form R. Having made the ARCP aware of the plagiarism, albeit not on Form R, the Tribunal considered that an ordinary decent person would not view Dr Chowdhury’s failure to note the plagiarism on Form R as being dishonest. It therefore determined, that his actions, in failing to declare the finding of plagiarism against him in Form R was not dishonest. The Tribunal found paragraph 6 of the Allegation not proved.

The Tribunal’s Overall Determination on the Facts

43. The Tribunal has determined the facts as follows:

1. On 19 March 2018, you submitted an assignment (the ‘Assignment’) to the University of Leeds (the ‘University’) purporting to be your own work which was untrue.
   Determined and found proved

2. You knew that:

   a. the Assignment contained work that had been plagiarised;  
      Determined and found proved

   b. you should not submit plagiarised work.  
      Determined and found proved

3. Your action as at paragraph 1 was dishonest by reason of paragraph 2. 
   Determined and found proved

4. On 11 July 2018, for the purpose of your Annual Review of Competence Progression (‘ARCP’) meeting, you submitted Form R in which you failed to declare that the University had:

   a. investigated you for plagiarising the Assignment;  
      Determined and found proved
b. found you guilty of plagiarism.  
**Determined and found proved**

5. You knew you should have declared the information at paragraph 4a-b on Form R.  
**Determined and found proved**

6. Your actions at paragraph 4a-b were dishonest by reason of paragraph 5.  
**Determined and found not proved**

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

**Determination on Impairment** - 25/10/2019

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

**The Evidence**

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. No further evidence was adduced at this stage of proceedings.

**Submissions**

3. On behalf of the GMC, Mr Atherton, Counsel, submitted that Dr Chowdhury’s fitness to practise is impaired by reason of his misconduct. Mr Atherton referred the Tribunal to the University of Leeds’ own Academic Integrity presentation, which is delivered to new students, that states ‘Plagiarism is serious: Penalties are very severe’ and that plagiarism is a ‘serious academic offence’. He reminded the Tribunal that it had found that Dr Chowdhury had dishonestly committed plagiarism. Mr Atherton submitted that Dr Chowdhury had been given clear guidance and warnings about plagiarism but these had been ignored. Mr Atherton submitted that such actions pass the threshold for a finding of serious misconduct.

4. Mr Atherton referred the Tribunal to General Medical Council and Medical Schools Council’s *Professional behaviour and fitness to practise: guidance for medical schools and their students* (2016 edition). He drew the Tribunal’s attention to paragraph 60, as follows:
60 In some situations, such as where there is an allegation of plagiarism, it may be appropriate to consider the case under both academic and fitness to practise procedures. In these circumstances, medical schools should conduct the academic process first and conclude it before beginning the fitness to practise process. This will avoid the student facing simultaneous disciplinary procedures for the same allegation.

Mr Atherton asked the Tribunal to consider the question set out following paragraph 80 of the same guidance regarding the threshold for considering a student’s fitness to practise, which asks:

*Has a student behaved dishonestly, fraudulently or in a way designed to mislead or harm others?*

Deliberate dishonesty or fraudulent behaviour will call into question a student’s fitness to practise, especially if there is a pattern of this kind of behaviour. Examples may include plagiarism, cheating, dishonesty in reports and logbooks or forging the signature of a supervisor.

5. Mr Atherton submitted that Dr Chowdhury had breached multiple paragraphs of *Good Medical Practice* (2013 edition) (‘GMP’), as set out below.

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

67 You must act with honesty and integrity when designing, organising or carrying out research, and follow national research governance guidelines and our guidance.

He also reminded the Tribunal of the relevant sections of *Sanctions Guidance* (February 2018 edition) which refer to considering dishonesty if a finding of impairment is made.

6. In considering impairment, Mr Atherton referred the Tribunal to the test set out in *CHRE v NMC and Grant* [2011] EWHC 927 (Admin). He submitted that in determining whether Dr Chowdhury’s fitness to practise is currently impaired, the Tribunal must consider whether Dr Chowdhury:

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
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d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.

7. Mr Atherton submitted that regarding Dr Chowdhury’s insight, the Tribunal, in the doctor’s absence, may wish to consider his Rule 7 response and the information he has provided about his own remediation and a copy of his multi-source feedback. Mr Atherton submitted that the difficulty in accepting the feedback provided by Dr Chowdhury is that it is unattributed and unverified. He urged caution in attributing appropriate weight to Dr Chowdhury’s documentation. He further submitted that most significantly, Dr Chowdhury has not attended these proceedings which has prevented the Tribunal from making an informed assessment of the genuineness of Dr Chowdhury’s acceptance of the finding of dishonesty.

8. Mr Atherton submitted that it is evident from the documentation that Dr Chowdhury has maintained that he was not dishonest. That his actions in submitting false pieces of work and making false representations that they were his own were the result of carelessness and error. Mr Atherton submitted that the Tribunal has inadequate evidence to show that Dr Chowdhury has developed appropriate insight or reflection to satisfy it that such actions would not be repeated. Mr Atherton further submitted that a finding of impairment in this case was required to uphold proper professional standards and maintain public confidence in the profession.

The Relevant Legal Principles

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

10. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct, and that the misconduct was serious and then whether the finding of that misconduct which was serious could lead to a finding of impairment. The Tribunal bore in mind that a finding of impairment does not automatically follow a finding of serious misconduct.

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

12. In considering the dishonesty in this case, the Tribunal was mindful that it can be difficult to demonstrate remediation where a finding of dishonesty has been made. It also bore in mind the judgment in the case of GMC v Nwachuku [2017] EWHC 2085 (Admin), which found that it would be an unusual case where dishonesty is not found to impair a doctor’s fitness to practise.
The Tribunal’s Determination on Impairment

13. The Tribunal considered the over-arching objective throughout its deliberations on impairment. It bore in mind the paragraphs of GMP cited by Mr Atherton but considered that paragraphs 1, 65 and 71 were most relevant.

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.

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

71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.

   a You must take reasonable steps to check the information is correct.

   b You must not deliberately leave out relevant information.

Misconduct

14. The Tribunal first considered whether the facts found proved constitute serious misconduct, that is, a serious breach of the standards of conduct and behaviour expected of a doctor which would be regarded as deplorable by fellow practitioners.

15. In considering the evidence before it, the Tribunal had particular regard to the email sent to Dr Chowdhury by Dr A on 10 January 2018. In that email, Dr Chowdhury was warned about work he had submitted being ‘extremely close to the threshold for a Plagiarism investigation’ and was given specific guidance about how to avoid further concerns about plagiarism. Despite Dr A’s clear advice, Dr Chowdhury disregarded it. The Tribunal has already found that Dr Chowdhury had knowingly submitted an Assignment which included another student’s work claiming it as his own and therefore had acted dishonestly. It noted that such actions could not be considered trivial or inconsequential.

16. The Tribunal accepted the University of Leeds’ own assessment of plagiarism as a ‘serious academic offence’ that has ‘very severe’ penalties. The Tribunal was of the view that Dr Chowdhury’s actions would be considered deplorable by fellow practitioners. It concluded that Dr Chowdhury breached fundamental tenets of the profession by dishonestly committing plagiarism and that such actions fell so far
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short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct that was serious.

Impairment

17. The Tribunal having found that the facts found proved amounted to misconduct that was serious, went on to consider whether Dr Chowdhury’s fitness to practise is currently impaired.

18. In its consideration of impairment, the Tribunal had regard to the chronology of events and Dr Chowdhury’s responses. It noted that:

- In response of Dr A’s email on 10 January 2018 warning Dr Chowdhury about plagiarism, Dr Chowdhury told Dr A:

  *I have made the report after going through online resources. I generally tend to make a draft with various resources I have gathered and then future edit it. It could be that sufficient quotation marks were not inserted in some cases and this could have been a concern.*

  *I will ensure that I am more careful in the future regarding my draft.*

- On 19 March 2018 Dr Chowdhury submitted the Assignment.

- On 7 June 2018, Dr Chowdhury was sent a letter from the University of Leeds that there were concerns that the work he submitted on 19 March 2018 ‘may be an offence of academic malpractice (plagiarism).’

- At the Academic Integrity meeting on 4 July 2018, Dr Chowdhury told the committee that he had submitted another student’s reports in error but accepted that by the University’s definition of plagiarism, his actions amounted to academic malpractice.

- On 11 July 2018, Dr Chowdhury wrote a reflective note about the investigation into plagiarism and uploaded it to his eportfolio for consideration by the ARCP panel. In this entry, Dr Chowdhury responded as follows:

  *How did I react?*
  *Very ashamed at my carelessness. In the future would need to be more vigilant.*

  *What is my analysis of the event?*
  *During assignment writing, we tend to work on multiple windows in our personal computer. It is important to be vigilant about your own assignment, and ensure that whatever we pen down should be our own language.*
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I made an error in being less careful, and thus have to resubmit the assignment despite having it ready.

- Following the direction of the ARCP panel chair to declare the University of Leeds’ plagiarism investigation and findings, Dr Chowdhury resubmitted an amended Form R. In completing the Form R, Dr Chowdhury incorrectly entered his comments about the plagiarism investigation in the section headed ‘Compliments’, potentially giving a false impression to the reader. Dr Chowdhury wrote:

Honesty and Integrity:
I had been implicated for plagiarism in the University of Leeds while submitting an assignment for PG Diploma in Child Health. Though unintentional, I had inadvertently submitted an assignment which had close resemblance to the work of another fellow student. University of Leeds had organized a formal investigation for this and I was found guilty. As this was my first offence and it was unintentional, I was given a warning and told to resubmit my assignment. The ARCP panel was made aware of this situation during the face to face meeting on 12th July 2018.

- In his Rule 7 response, Dr Chowdhury said:

3. The Submission contained work that was not your own- Agree.

4. At the time of the Submission, you knew that it contained work that was not your own- Agree

... 

7. I completely agree that I had committed plagiarism offence in my March 2018 submission. That was my first ever offence and I have since submitted a fresh assignment of acceptable quality which was an original piece and also completed the plagiarism training from Leeds University (reference Dr B’s letter to GMC dated 11th September 2018).

19. The Tribunal noted that Dr Chowdhury has maintained since 4 July 2018 that his actions in submitting the work of another student as his own, were accidental and not dishonest. This is in spite of the findings made by the Academic Integrity Panel. The Tribunal was of the view that Dr Chowdhury’s communications show a lack of acknowledgement of responsibility regarding his plagiarism offence. It was concerned that Dr Chowdhury has not acknowledged that his actions were deliberately dishonest.

20. The Tribunal noted that Dr Chowdhury repeated the assurance that he would be more ‘careful’ about his work regarding plagiarism in January 2018 and again in
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July 2018. However, it noted that having completed the required Academic Integrity training again, after being found guilty of a plagiarism offence, there was no evidence before the Tribunal of Dr Chowdhury’s reflections or learnings from the training. Indeed, Dr Chowdhury continued to refer to the need to be ‘very careful’ in his Rule 7 response. The Tribunal took into account that Dr Chowdhury said he was ‘ashamed’ of the plagiarism findings against him but that must be seen in the context of his expression of having carelessly submitted the wrong Assignment. The Tribunal concluded that Dr Chowdhury has very limited insight into his misconduct.

21. The Tribunal considered the remediation Dr Chowdhury said he had undertaken in his Rule 7 response and reviewed the multi-source feedback he provided. The Tribunal noted that the multi-source feedback provided is selective in its sample and cannot be verified. Of particular concern was the lack of confirmation from those completing the feedback, that they were aware both of the plagiarism investigation and findings but also these fitness to practise proceedings. It further noted that the feedback did not really assist the Tribunal in assessing the matters relating to Dr Chowdhury’s honesty, integrity and probity. Therefore the Tribunal attributed little weight to this evidence in its deliberations.

22. The Tribunal concluded that Dr Chowdhury has very limited insight into his dishonesty and the submission of plagiarised work. There is little evidence of any real or relevant remediation by Dr Chowdhury before the Tribunal. The Tribunal was of the view that it could not be assured that Dr Chowdhury would not repeat his actions in the future.

23. The Tribunal determined that Dr Chowdhury’s dishonest misconduct and his lack of insight and remediation warranted a finding of impairment. Further, a finding of impairment was necessary to promote and maintain proper professional standards of conduct of members of the profession and maintain public confidence in the profession. Therefore, Dr Chowdhury’s fitness to practise is currently impaired by reason of his misconduct.

Determination on Sanction - 29/10/2019

1. Due to unforeseen circumstances, the Tribunal was unable to resume at sanction stage as planned on 28 October 2019. On day six of this hearing, the lay member of this Tribunal, Mr Geoffrey Brighton was replaced by Mr William Hoskins for the remainder of the hearing.

2. Having determined that Dr Chowdhury’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.
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The Evidence

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

Submissions

4. On behalf of the GMC, Mr Atherton, Counsel, reminded the Tribunal that in deciding whether to impose a sanction on Dr Chowdhury’s registration, it will do so exercising its own independent judgement considering all of the evidence before it alongside its previous determinations.

5. Mr Atherton adopted his previous submissions including the references he provided to the Tribunal from GMP and the Sanctions Guidance (2018 edition) (“the SG”), including paragraphs 120 to 128 on ‘Considering dishonesty’. He also adopted the paragraphs of GMP that the Tribunal noted as relevant in its previous determination on impairment.

6. Mr Atherton submitted that in the absence of Dr Chowdhury, the Tribunal has no evidence available to it regarding mitigation. He submitted that the main aggravating factor in this case was that Dr Chowdhury repeated his plagiarism despite the clear warning he previously received.

7. Mr Atherton submitted that it would be inconsistent with the objectives of imposing a sanction as well as the over-arching objective, should the Tribunal determine to take no action in this case. He further submitted that in this case, there had been findings of dishonesty and a lack of remediation, there was therefore no basis on which it could be concluded that conditions could be workable or proportionate.

8. Mr Atherton submitted that a period of suspension in this case was an appropriate and proportionate sanction. He referred the Tribunal to paragraph 92 of the SG, set out below. He submitted that suspension was appropriate because Dr Chowdhury’s misconduct was serious but fell short of being fundamentally incompatible with continued registration.

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 sanction (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).
9. Mr Atherton submitted that the Tribunal should bear in mind that Dr Chowdhury had not made a full acknowledgement of fault and that his Rule 7 response framed his actions as carelessness and error, not deliberate dishonesty. He referred the Tribunal to the relevant paragraphs of the SG relating to determining the appropriate length of suspension. Mr Atherton submitted, considering the guidance, it would be appropriate to direct a review in this case.

10. Mr Atherton reminded the Tribunal of the multi-source feedback provided by Dr Chowdhury. He noted the Tribunal’s comments about the deficiencies in this evidence but submitted that the feedback appears to suggest that Dr Chowdhury, in a clinical environment, has conducted himself without criticism of his capabilities. It was a matter for the Tribunal what weight, if any, to attach to the feedback. Following a period of suspension, Dr Chowdhury may be able to provide useful service as a member of the medical profession.

The Tribunal’s Determination on Sanction

11. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken account of the SG, together with the over-arching objective.

12. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish or discipline doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Chowdhury’s interests with the public interest.

Mitigating and Aggravating Factors

13. The Tribunal has already set out its decision on the facts and impairment which it took into account during its deliberations on sanction. Before considering what action, if any, to take in respect of Dr Chowdhury’s registration, the Tribunal considered and balanced the mitigating and aggravating factors in this case.

14. The Tribunal considered that as a consequence of not attending these proceedings, Dr Chowdhury had limited the Tribunal’s consideration of matters which may be considered to be mitigating in this case. It was of the view that without information from Dr Chowdhury about his actions at the time of events or following them, it could identify no mitigation to consider in its deliberations.

15. The Tribunal then went on and considered the aggravating factors in this case to be:
   - Dr Chowdhury received a warning about plagiarism from Dr A on 10 January 2018. However, he disregarded this warning and on 19 March
2018, knowingly submitted an Assignment which included another student’s work claiming it as his own;

- In Dr Chowdhury’s communications, any acknowledgement of fault or apology has been about a careless error, not an intentional dishonest act;
- Dr Chowdhury has limited insight into his actions and the nature of his dishonesty;
- Dr Chowdhury has not completed any relevant remediation regarding his dishonesty.

16. The Tribunal bore in mind the aggravating factors in this case when considering the appropriate and proportionate sanction, if any, to impose. The Tribunal considered each sanction in ascending order of severity, starting with the least restrictive.

No action

17. The Tribunal first considered whether to conclude the case by taking no action. Taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that there are no exceptional circumstances in this case and that, given the seriousness of its findings, it would not be sufficient, proportionate, or in the public interest to conclude this case by taking no action.

Conditions

18. The Tribunal next considered whether to impose conditions on Dr Chowdhury’s registration. The Tribunal noted that in cases of dishonesty, it will be difficult to identify any conditions that could be appropriate, proportionate, workable, and measurable. It further considered that imposing conditions requires co-operation and that by absenting himself from these proceedings, the Tribunal could not be assured that Dr Chowdhury would co-operate with any conditions it might impose.

19. In any event, the Tribunal was of the view that imposing conditions on Dr Chowdhury’s registration would not sufficiently mark the seriousness of his dishonest conduct.

Suspension

20. The Tribunal next considered whether it would be appropriate and proportionate to suspend Dr Chowdhury’s registration. The Tribunal bore in mind that suspension from the medical register has a punitive effect, in that Dr Chowdhury would be prevented from practising medicine during any period of suspension, although this is not the intended effect of such a sanction. The Tribunal acknowledged that a sanction of suspension does have a deterrent effect and can be
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used to send a signal to Dr Chowdhury, the profession, and the public about what is regarded as behaviour unbefitting a registered medical practitioner.

21. The Tribunal considered the findings of the Academic Integrity Panel at the University of Leeds on 4 July 2018. Whilst a first plagiarism offence was considered to be serious academic malpractice, it did not result in Dr Chowdhury’s permanent exclusion from the University as Dr Chowdhury was permitted to continue on the Child Health Programme. It noted the evidence of Dr A that the only incident of plagiarism considered by an Academic Integrity Panel was in respect of the Assignment submitted 19 March 2018. The Tribunal did not accept Mr Atherton’s submission that there had been repeated plagiarism by Dr Chowdhury.

22. The Tribunal had regard to paragraph 92 of the SG, set out above and also considered paragraph 97a and 97f.

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

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

f No evidence of repetition of similar behaviour since incident.

The Tribunal concluded that Dr Chowdhury’s actions in committing plagiarism did amount to a serious breach of GMP, but they were not fundamentally incompatible with continued registration on the medical register. Whilst dishonesty can be difficult to remediate, it is not impossible to do so. The Tribunal noted that there was no evidence before it to suggest that Dr Chowdhury had repeated his dishonest conduct in relation to plagiarism since these events in March 2018.

23. The Tribunal considered that notwithstanding that Dr Chowdhury had not attended these proceedings, had demonstrated only limited insight in his communications with both the University of Leeds and the GMC and had not completed any relevant remediation, suspension would be the appropriate and proportionate sanction. The Tribunal was satisfied that a period of suspension was the proportionate sanction to mark the serious nature of Dr Chowdhury’s dishonest conduct.

24. The Tribunal was of the view that during a period of suspension, Dr Chowdhury would have the time and opportunity to develop his insight and remediate his misconduct. The Tribunal noted that it had received no evidence regarding concerns about Dr Chowdhury’s clinical practice. The Tribunal considered
that imposing a sanction of erasure would be disproportionate given the facts of this case.

25. Having considered the sanctions in ascending order of restrictiveness the Tribunal went on to consider the length of the period of suspension for Dr Chowdhury. The Tribunal determined to suspend Dr Chowdhury’s registration from the medical register for a period of nine months. It was satisfied that such a period marked the seriousness of Dr Chowdhury’s dishonesty and upheld the over-arching objective to maintain public confidence in the profession and uphold proper professional standards. The Tribunal concluded that a suspension of this length would provide Dr Chowdhury with an opportunity to develop insight into his dishonesty and remediate appropriately.

26. The Tribunal determined to direct a review of Dr Chowdhury’s case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, it will be Dr Chowdhury’s responsibility to demonstrate how he has addressed this Tribunal’s concerns. It therefore may assist the reviewing Tribunal if Dr Chowdhury provides:

- A written reflective statement on his dishonest conduct;
- Evidence and reflections on any remediation and learning;
- Evidence that Dr Chowdhury has maintained his clinical skills and that his CPD is up to date;
- Testimonials from colleagues;
- Any further evidence which may assist the Tribunal.

Determination on Immediate Order - 29/10/2019

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

Submissions

2. On behalf of the GMC, Mr Atherton, Counsel, submitted that an immediate order would not be necessary in this case.

The Tribunal’s Determination

3. The Tribunal had regard to paragraphs 172 and 178 of the SG. It took account of the guidance, Mr Atherton’s submission and the specific basis upon which the Tribunal reached its determination on sanction.

4. It determined that the substantive order upholds the overarching objective in maintaining public confidence in the profession and that in the absence of any
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concerns about patient safety, an immediate order would not be necessary in this case.

5. The Tribunal therefore determined not to impose an immediate order of suspension on Dr Chowdhury’s registration.

6. This means that Dr Chowdhury’s registration will be suspended from the Medical Register 28 days from when notice of this decision is deemed to have been served upon him, unless he lodges an appeal. If Dr Chowdhury does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

7. There is no interim order to revoke.

8. That concludes the case.

Confirmed
Date 29 October 2019

Mr Sean Ell, Chair
Service of Notice of the Hearing

1. Dr Chowdhury is neither present nor represented at this hearing.

2. Mr Atherton, Counsel, on behalf of the GMC, provided the Tribunal with documents regarding service of these proceedings on Dr Chowdhury. This included a copy of the GMC Notice of Allegation letter sent to Dr Chowdhury’s email address, dated 9 September 2019. The Tribunal was given a copy of the Medical Practitioners Tribunal Service (MPTS) Notice of Hearing letter, dated 11 September 2019, which was posted to Dr Chowdhury’s registered address by Royal Mail Special Delivery on the same day. Royal Mail Track and Trace documentation confirmed that the Notice of Hearing letter was delivered back to sender on 2 October 2019. The Tribunal was also provided with Dr Chowdhury’s two email responses regarding these proceedings, which included confirmation from him that he is out of the country and cannot attend this hearing.

3. The Tribunal had regard to the service bundle provided by the GMC, as well as Mr Atherton’s submissions. Having considered all of the evidence before it, particularly noting Dr Chowdhury’s own reply to the GMC email with the subject ‘Chowdhury – Notice of allegation and Rule 34.9 letter plus indexed draft bundles’, the Tribunal was satisfied that notice of the hearing had been served in accordance with Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) (‘the Rules’) and paragraph 8 of Schedule 4 to the Medical Act 1983 (as amended).

Proceeding in Dr Chowdhury’s absence

4. The Tribunal went on to consider whether it would be appropriate to proceed with this hearing in Dr Chowdhury’s absence pursuant to Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with appropriate care and caution, balancing the interests of the doctor with the wider public interest.

5. Mr Atherton invited the Tribunal to proceed in Dr Chowdhury’s absence. Mr Atherton submitted that Dr Chowdhury is aware of these proceedings and while he did have legal representation at one point, he informed the GMC on 9 September 2019 that he no longer does. Mr Atherton submitted that Dr Chowdhury has not sought to engage with this process further and has therefore voluntarily absented himself from these proceedings. Mr Atherton submitted that there was no indication that an adjournment would be of benefit to these proceedings as Dr Chowdhury’s engagement with the GMC has been limited. He further submitted that an adjournment could lead to a significant delay before this case could be heard again.
with no indication that Dr Chowdhury would attend on a future date and that such a delay may cause witnesses’ memories of events to deteriorate.

6. Mr Atherton accepted that by proceeding in absence, there is an inherent disadvantage to Dr Chowdhury as he cannot present his own account of the events which are the subject of this hearing. However, Mr Atherton submitted that this disadvantage is self-inflicted but that it can be somewhat assuaged by the Rule 7 response Dr Chowdhury provided on 7 January 2019. Mr Atherton submitted that there is a strong public interest in proceeding with this hearing today. He submitted that the Tribunal had now been assembled, and that in the absence of any opposition from Dr Chowdhury, witnesses had been contacted and their attendance at these proceedings confirmed.

7. The Tribunal had regard to the case law referenced by Mr Atherton and the Legally Qualified Chair (LQC) in its deliberations. It bore in mind that it must exercise discretion in determining whether to proceed in the doctor’s absence. It noted that fairness to Dr Chowdhury was the prime consideration, although it noted that fairness to the GMC and the public interest should also be taken into account as set out in General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 162.

8. The Tribunal was of the view that an adjournment would serve no purpose in this case as Dr Chowdhury stated in his email of 9 September 2019 that he cannot attend this hearing and there is no evidence that he would be more likely to attend this hearing if it were held at a later date.

9. The Tribunal considered Dr Chowdhury’s email responses from both 9 and 30 September 2019 and was satisfied that Dr Chowdhury was aware of the investigation process. He provided a clear response to the allegations in the Rule 7 notification sent by the GMC and he responded to emails about these proceedings. He has not made any requests to postpone this hearing. The Tribunal accepted that the GMC was ready to proceed with the hearing today and that witnesses had made themselves available. It was satisfied that Dr Chowdhury had voluntarily absented himself from these proceedings. Considering the public interest in these matters, the Tribunal accepted that it was in public interest to proceed with this hearing today.

10. Therefore, in accordance with Rule 31, the Tribunal has determined to proceed in Dr Chowdhury’s absence.