PUBLIC RECORD

Dates: 30/09/2024 – 25/10/2024; 02/06/2025 - 20/06/2025

Doctor:	Dr Prashant JINDAL
GMC reference number:	6061373
Primary medical qualification:	MB BS 1997 University of Mumbai

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment not found proved	Consideration of impairment not reached

Summary of outcome

Case concluded

Tribunal:

Legally Qualified Chair	Mr Stephen Gowland 30/09/2024 – 25/10/2024; Miss Annie Hockaday 02/06/2025 - 20/06/2025
Lay Tribunal Member:	Mr George Ritchie
Registrant Tribunal Member:	Dr John Moriarty

Tribunal Clerk:	Miss Maria Khan – 30/09/2024 – 11/10/2024 Mr Joel Taylor-Garratt 15/10/2024 – 25/10/2024 Mr Andrew Ormsby 02/06/2025 – 20/06/2025

Attendance and Representation:

Doctor:	Present, represented
Doctor's Representative:	Mr Talbir Singh KC, instructed by Twinwood Law Practice Limited
GMC Representative:	Mr Terence Rigby, Counsel

Attendance of Press / Public

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

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 17(2)(g) application - 20/06/2025

1. The Tribunal will announce in public its decision about the outcome of this application. A redacted version will be published at the close of the hearing.

Introduction

2. The GMC closed its case on day 23 of the hearing, 5 June 2025. Mr Singh KC, counsel on behalf of Dr Jindal, informed the Tribunal that he intended to make an application under Rule 17(2)(g) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to submit that the GMC had adduced insufficient evidence to prove the allegations and to invite the Tribunal to decide that the hearing should go no further. This is a submission of 'no case to answer'.

3. Mr Singh applied under Rule 41(2) for the Tribunal to use its discretion to exclude the public from the hearing of his 'no case to answer' application. He submitted that wholly exceptional circumstances were present in this case and were sufficient to justify hearing the submissions in private. Mr Rigby, counsel on behalf of the GMC, opposed exclusion of the public from the hearing. The Tribunal heard submissions on the public/private issue.

4. The Tribunal wished to emphasise that it is normal and proper for an application under Rule 17(2)(g) to be heard in public, but this was a case with wholly exceptional circumstances. The Tribunal was satisfied that it was necessary and proportionate for the fair administration of justice and in the interests of justice to hear the 'no case to answer' submissions in private. The Tribunal granted Mr Singh's application under Rule 41(2) and

determined to hear the 'no case to answer' submissions in private, on the basis that the outcome would be announced publicly (the full reasons are set out in Annex G).

5. Counsel for the parties provided skeleton arguments and the Tribunal heard oral submissions on the 'no case to answer' application on 10 and 11 June 2025, sitting in private. Mr Singh invited the Tribunal to decide that the GMC had adduced insufficient evidence on which a reasonable Tribunal could properly find the allegations proved. Mr Rigby opposed the application.

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

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

Background to the Rule 17(2)(g) application

7. Dr Jindal qualified in 1997 from the University of Mumbai. He moved to the UK in 2005 and gained full registration with the GMC in 2006. Since 2008, Dr Jindal has been performing laser eye surgeries. Dr Jindal is a consultant ophthalmic surgeon who specialises in laser eye surgery. At the relevant time (September 2011 and December 2016), Dr Jindal did surgical work at clinics operated by Accuvision Limited ("Accuvision"). Accuvision is owned by Mr C who has a son, Mr D.

8. The background to the GMC bringing these proceedings against Dr Jindal is as follows:
   a. Patient A complained to the GMC in December 2012 about his experience as a customer of Accuvision, stating that his complaint had *'nothing to do with his recovery'*. He named Mr C as *'involved with his issues'*. The GMC closed the matter as Mr C did not hold registration with the GMC;
   b. On 22 November 2017, Patient A made a new complaint to the GMC to raise *'an issue with how my surgery was conducted'* and alleged that Dr Jindal let an unqualified person operate on his eyes;
   c. On 27 June 2018, Patient B complained to the GMC that his medical records showed Dr Jindal as his operating surgeon but he had never met Dr Jindal.

9. In summary, the allegations against Dr Jindal are that:

a. He did not carry out the surgical procedure on Patient A at the Accuvision Solihull clinic on 22 September 2011 but signed or completed documentation as though he had carried out the procedure, and this was dishonest;
b. He did not meet with Patient B to discuss his consent form and did not carry out the surgical procedure on Patient B at the Accuvision London clinic on 28 December 2016 but signed or completed documentation as though he had consented Patient B and had carried out the procedure, and this was dishonest.

10. Dr Jindal's case, in summary, is that he did consent both Patient A and Patient B and did carry out both procedures as surgeon.

11. These proceedings began on 30 September 2024. A brief history of applications made by the parties during the facts stage, prior to the making of this application about the sufficiency of the GMC evidence, is set out in Appendix One. On 24 October 2024 (day 18) the Legally Qualified Chair (LQC) recused himself and the Tribunal became inquorate. The proceedings were adjourned part-heard to appoint a new LQC and to schedule a date to continue. A new LQC was empanelled and on 2 June 2025 (day 20) the proceedings resumed.

The Admitted Facts

12. The allegations in paragraphs 1 and 7, that Dr Jindal signed consent forms for Patient A and for Patient B, which indicated that he would be the surgeon to carry out the procedure, were admitted on behalf of Dr Jindal under Rule 17(2)(d). In accordance with Rule 17(2)(e), the Tribunal announced these paragraphs of the Allegation as admitted and found proved.

13. Mr Singh's application relates to the sufficiency of the GMC evidence to prove all remaining paragraphs, namely paragraphs 2-6 in relation to Patient A and paragraphs 8-12 in relation to Patient B, as set out below.

The Allegation and the Doctor's Response

14. The Allegation made against Dr Jindal is as follows:

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

Patient A

1. On 22 September 2011, you signed a consent form ('Form 1') for Trans-Epithelial laser vision correction surgery ('Procedure 1') in respect of Patient A which indicated that you would be the surgeon to carry out Procedure 1.

Admitted and found proved

2. When signing Form 1, you knew that you would not be carrying out Procedure 1.
To be determined

3. Your actions as described at paragraph 1 were dishonest by reason of paragraph 2.
To be determined

4. Following completion of Form 1, on the same date, you indicated that you were the surgeon who carried out Procedure 1 on a:

    a. Treatment Report;
    To be determined

    b. Surgery Report. To be determined

5. When completing the Treatment and Surgery Reports, you knew that you were not the surgeon who carried out Procedure 1. To be determined

6. Your actions as described at paragraph 4 were dishonest by reason of paragraph 5.
To be determined

Patient B

7. On 28 December 2016, you signed a consent form ('Form 2') for Advanced Surface Laser Surgery / trans-epithelial surgery ('Procedure 2') in respect of Patient B which indicated that you:

    a. had:

        i. discussed the contents of Form 2 with Patient B;
        Admitted and found proved

        ii. given Patient B the opportunity to discuss any aspects of the proposed procedure with you;
        Admitted and found proved

    b. were to be the surgeon who would carry out Procedure 2.
    Admitted and found proved

8. When signing Form 2, you knew that:

    a. you had not met with Patient B to discuss the matters set out at paragraph 7a;
    To be determined

    b. you would not be carrying out Procedure 2.
    To be determined

9. Your actions as described at paragraph 7 were dishonest by reason of paragraph 8.
    To be determined

10. Following completion of Form 2, on the same date, you indicated that you were the surgeon who carried out Procedure 2 on a:

    a. Treatment Report;
    To be determined

    b. Surgery Report.
    To be determined

11. When completing the Treatment and Surgery Reports, you knew that you were not the surgeon who carried out Procedure 2.
    To be determined

12. Your actions as described at paragraph 10 were dishonest by reason by paragraph 11. 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

15. The task of the Tribunal is to assess the sufficiency of the GMC evidence. Dr Jindal has not yet adduced evidence or called witnesses. The Tribunal will take into account all the evidence adduced by the GMC in the form of witness statements, oral evidence and documents provided to the Tribunal. There was common ground between the parties that the Tribunal may consider documents that were put to GMC witnesses during their oral evidence, even if the document is in a bundle provided by the defence.

Witness Evidence from the GMC

16. The Tribunal received oral witness evidence on behalf of the GMC from:

a. Patient A, in person and by video link, across 4 days. Patient A had provided a witness statement dated 17 May 2019 and a supplementary statement dated 26 November 2020;
b. Patient B, via video link, across six days. Patient B had provided a witness statement dated 11 January 2019 and a supplementary statement dated 9 November 2020. Patient B also put forward, as part of his evidence-in-chief in these proceedings, his witness statement dated 5 December 2022 in support of his clinical negligence claim in the XXX County Court against Accuvision and Dr Jindal for financial compensation ("Patient B's Civil Claim");
c. Ms E, former partner of Patient B, via video link, across two days. Ms E had provided a witness statement dated 17 October 2020. Ms E also put forward, as part of her evidence-in-chief in these proceedings, her witness statement dated 5 December 2022 in support of Patient B's Civil Claim (with a clarification of paragraph 24).

Expert witness evidence from the GMC

17. The GMC put forward expert witness evidence from Mr L, FRCS FRCOphth Consultant Ophthalmic Surgeon. Mr L has provided expert medico-legal advice for over 20 years. He holds the Expert Witness Certificate from Cardiff University as well as being as member of the Expert Witness Institute.

18. Mr L assisted the Tribunal in its understanding of the surgical procedure that was carried out on Patient A and Patient B. He gave oral evidence via video link and provided:

- His expert report in relation to Patient A dated 17 October 2019;
- His expert report in relation to Patient B dated 9 September 2019, with further reports dated 12 November 2019 and 13 May 2020;
- A briefing note 'Laser refractive surgery'.

19. The Tribunal had regard to the documentary evidence provided by the GMC and documents that were put to GMC witnesses during their oral evidence, including:

Patient A

- Consent Form, Surgery Report and Treatment Report, all dated 22 September 2011;
- Patient A's email correspondence with Accuvision 2012-2014;

- Patient A's handwritten complaint to the General Ophthalmic Council ('GOC') dated 24 February 2013 about an Accuvision optometrist, Mr M;
- Patient A's complaint to the GMC dated 18 December 2012 and related emails;
- Patient A's emails to the Police and to the Care Quality Commission ("CQC") in late 2016;
- Patient A's statement for the GOC dated 2 October 2017 in support of his complaint about four optometrists;
- Patient A's complaint to the GMC dated 22 November 2017 and related emails.

Patient B

- Consent Form, Surgery Report, Treatment Report and an Ophthalmic Medical Consultation Note, all dated 28 December 2016;
- Letter from Accuvision to Patient B, 11 September 2017 enclosing scans;
- List of Patient B's appointments at Accuvision from 14 November 2016 to 20 October 2017;
- Letter from 'Centre for Sight' to Patient B, 13 October 2017;
- Patient B's statement for the Police (unsigned and undated), based on a video interview, late 2017 or early 2018;
- Patient B's complaint to the GMC, 27 June 2018;
- Report of Dr Q for Patient B's Civil Claim, 21 March 2020;
- Timeline produced by Patient B for his Civil Claim, 5 December 2022;
- Audio recordings made by Patient B and Ms E during meetings at the London clinic of Accuvision on 20 October 2017, with transcripts;
- A video showing Patient B and Ms E walking away from the clinic on 20 October 2017.

Submissions on the Rule 17(2)(g) application

Submissions on behalf of Dr Jindal

20. Mr Singh submitted that the GMC bears the burden of proving the allegations to the civil standard. He submitted that the GMC had presented its case on a firm footing, that Mr C performed the surgery in respect of Patient A and Mr D performed the surgery in respect of Patient B.

21. Mr Singh stated that the central question(s) is, has the GMC proved to the requisite standard:

a) that it is more likely than not that Mr C performed surgery upon Patient A on 22/9/11?

b) that it is more likely than not that Mr D performed surgery upon Patient B on 28/12/16?

22. Mr Singh referred to the 'no case to answer' test set down in *R v Galbraith* (1981) 1 WLR 1039 as applied in regulatory proceedings and to a practice note issued by the HCPTS dated 22 March 2017. He noted the distinction between suspicion and evidence relying on *Soni v GMC* [2015] EWHC 364 (Admin).

23. Regarding Patient A, Mr Singh submitted that the GMC had produced no evidence in respect of paragraphs 4, 5, and 6 of the Allegation.

24. In relation to the allegations in paragraphs 2 and 3 about the consent form, Mr Singh submitted that the evidence was so unsatisfactory that no reasonable tribunal properly directed could conclude that there was a case to answer. Further, he stated that the GMC evidence was inherently weak in respect of these allegations and as such the reliability test has failed.

25. Mr Singh submitted that the allegation in relation to the consent form is drafted in such a manner that it allows the Tribunal to conclude that it was signed by Dr Jindal pre-surgery and, as such, introduced a 'foreseeability test'. He stated that this resulted in the GMC needing to prove on a balance of probability that Dr Jindal foresaw that he would not be performing surgery.

26. Mr Singh submitted that there was good evidence that Dr Jindal may have performed the surgery. He also stated that the GMC had to prove a state of mind when Dr Jindal signed the relevant consent form. He argued that this would be difficult to prove. Patient A says that Dr Jindal was in theatre, but did not carry out the surgery. Dr Jindal may have intended to conduct surgery when signing the form but decided not to when he entered theatre.

27. Further, Mr Singh stated that the GMC had not provided any evidence in relation to Mr C. Mr L had given his expert opinion that the procedures were performed to an adequate standard and of the surgical skills required.

28. Mr Singh emphasised that Patient A could not see who conducted his surgery. Patient A had asserted that he could see Dr Jindal before and after the surgery and that Dr Jindal had not moved. Mr Singh asserted that Patient A was 'plainly wrong' as Dr L had 'made plain'. He

stated that Patient B's evidence about the state of his eyes after his procedure fortified the point.

29. Mr Singh suggested that Patient A was a 'habitual complainer' and then pointed out that not once did Patient A complain to Accuvision in a manner that would lead one to conclude that Mr C was his surgeon.

30. In relation to Patient B, Mr Singh submitted that the GMC had failed to prove to the requisite standard that it is more likely than not that Mr D was responsible for the surgery on Patient B.

31. Mr Singh stated that his submissions in relation to Dr L's expert evidence in relation to Patient A applied equally to Patient B.

32. He submitted that Patient B had asserted that he *'thought* [Mr D] *had something to do with the surgery'*. He asserted that this was a long way from claiming that Mr D had carried out the surgery.

33. Further, Mr Singh submitted that there had been cases of mistaken identity made by Patient B in respect of others who he asserted had been present on the day.

34. Mr Singh argued that there was a considerable body of evidence before the Tribunal, which confirms that Dr Jindal and not Mr D was responsible for the surgery and there was '*absolutely nothing at all to contradict this*'.

35. Mr Singh stated that all the Tribunal was left with was suspicion and/or assumptions and not evidence which could satisfy a Tribunal on the balance of probabilities.

36. Mr Singh developed his written submissions orally and concluded by asserting that the evidence adduced by the GMC is not of a satisfactory nature to permit the Tribunal to find, in respect of any allegation, that there was a case to answer.

Submissions on behalf of the GMC

37. Mr Rigby referred to the test in *Galbraith* as applied in the regulatory context, as set out in *R(Sharaf) v General Medical Council* [2013] EWHC 3332. He submitted that the correct approach is to ask, in relation to each allegation, whether the evidence presented by the

GMC could be sufficient for a Tribunal to find it proved on the balance of probabilities, bearing in mind that the Tribunal is not seeking to make findings of fact at this 'halfway' stage.

38. Mr Rigby submitted that Patient A gave convincing evidence, in accordance with his statements and complaints to the GMC and others, that Mr C was his surgeon under powerful and persistent cross-examination. He submitted that Patient A's email dated 16 January 2013 supported the identification.

39. Mr Rigby submitted that there was no evidence that Patient A's evidence against Dr Jindal was untruthful, and no sensible reason had been adduced as to why it should be.

40. Mr Rigby stated that what steps Patient A took between his two complaints to the GMC, or did not take until he saw on his records that Dr Jindal had claimed to have undertaken the surgery, do not take the Tribunal any further in relation to his credibility or reliability as a witness.

41. Mr Rigby submitted that if these matters or any other matters about which Patient A was questioned, raise any issues about reliability, which he submitted they do not, this is a *'jury question'* which did not affect the sufficiency of the GMC's case in relation to Patient A.

42. In relation to paragraphs 1 to 6 of the Allegation in relation to Patient A, Mr Rigby stated:

(1) Has been admitted by Dr Jindal.
(2) Is sufficiently proved at this stage by Patient A's evidence.
(3) Whether his actions were dishonest is a matter for the judgement of the Tribunal but there is sufficient evidence for it as a jury to come to that conclusion.
(4) The GMC is not sure that this allegation has been admitted but it has never been disputed that Dr Jindal signed these documents.
(5) As above, the evidence of Patient A is sufficient for the Tribunal to reach what it is submitted is an obvious conclusion.
(6) As above, there is ample evidence from the evidence set out above from Patient A for the Tribunal to come to that conclusion at this stage.

43. In relation to Patient B, Mr Rigby stated that Patient B was absolutely clear that he did not see Dr Jindal and that Dr Jindal did not go through the consent form with him or sign it in his presence. He stated that Patient B had always said that he recognised Mr D by his voice when he saw him for a consultation shortly after the operation. He asserted that Patient B had likewise been wholly consistent in his evidence that, save for a medical summary drafted by Dr Jindal (without claiming to be surgeon), Dr Jindal did nothing in relation to him and he did not see Dr Jindal at the clinic or at all - as he would have expected to when things went wrong - if he had been the surgeon.

44. Mr Rigby submitted that Patient B's dogged consistency on this issue under great pressure was very believable. As with the evidence of Patient A, however, he submitted that Patient B's reliability '*ex any compelling evidence to the contrary*' is a jury issue and not a basis for finding that there is insufficient evidence at the close of the GMC's case.

45. Mr Rigby submitted that there was powerful evidence in support of the allegation of Patient B against Dr Jindal in the evidence of Ms E. He stated that Ms E confirmed what Patient B told her but gives her own evidence that they had no contact with Dr Jindal, who she did not recognise as having been present at the clinic when she saw a YouTube film and a photograph of him later. He stated that once again, Dr Jindal will say he has no recollection of operating on Patient B, a patient who was hoping to be a professional XXX (as unusual as Patient A being a XXX) but the defence case is that Dr Jindal's signature is on the medical records, he had a consultation with Patient B on his own and signed the only consent form in Patient B's presence. Ms E's evidence is that this is not true. Mr Rigby submitted that her oral evidence was consistent, credible and sufficient on the crucial issues, as well indeed as she was in relation to the attack on her and Patient B's honesty.

46. Mr Rigby submitted that Dr Jindal's representatives had sought to cast doubt not only upon the reliability of Patient B and Ms E's in terms of accuracy and recall, but in relation to their honesty, principally related to the allegation that Patient B has invented or exaggerated his lack of vision. He stated that whilst Patient B is suing Accuvision and Dr Jindal for compensation, it is difficult if not impossible to understand why he would be advantaged by Dr Jindal not having been the surgeon.

47. Further, Mr Rigby stated that it was notable that although Dr Jindal clearly had access to all the papers in the Civil Claim, there is no direct or medical expert evidence to show that Patient B is malingering.

48. In relation to paragraphs 7-12 in relation to Patient B, Mr Rigby stated:

(7) Has been admitted by Dr Jindal.
(8) The evidence of Patient B and Ms E is sufficient to infer the alleged knowledge.
(9) Whether his actions were dishonest is a matter for the judgement of the Tribunal but there is sufficient evidence for it as a jury to come to that conclusion.
(10) There has never been any dispute that Dr Jindal indicated on the Treatment Report and Surgery Report that he had been the surgeon.
(11) The evidence of Patient B is sufficient to prove that Dr Jindal was not the surgeon and that Dr Jindal knew this when he signed the reports.
(12) As above, there is sufficient evidence at this stage to prove that Dr Jindal was dishonest.

49. Mr Rigby set out his reply to the paragraphs of Mr Singh's skeleton argument and also developed his written submissions orally.

Cross-admissibility

50. The Tribunal bore in mind paragraph 7.3 of the written opening dated 27 September 2024 on behalf of the GMC. Mr Rigby had submitted that the case of each patient should be considered separately and a finding in relation to one will not necessarily follow in relation to the other but that there are 'significant similarities' between the cases which supports them both being true. Since then, the GMC witnesses have given their evidence.

51. In the submissions for this application, neither counsel invited the Tribunal to introduce cross-admissibility of evidence between the two patients (for propensity or to rebut coincidence) when assessing the sufficiency of the GMC evidence at this stage. The question might be: if sufficient for X, does that support sufficiency for Y; if insufficient for X, does that detract from sufficiency for Y?

52. It seems to the Tribunal that the point of similarity would be that the procedure was not done by Dr Jindal and false entries were made in documents to name him as the surgeon. However, a matching *modus operandi* is not alleged for the events which took place five years apart at different clinics. Patient A is clear in his evidence that Dr Jindal was with him when he signed his consent form, whereas Patient B says he never met Dr Jindal and was left

alone with his partner in the waiting room to complete the consent form without any input from a medically qualified person. Patient A asserts a belief that Mr C operated, whereas Patient B asserts a belief that Mr D operated.

53. The Tribunal must assess the evidence of the GMC as a whole. As neither counsel developed the issue of cross-admissibility at this stage, the Tribunal did not take the issue of cross-admissibility any further.

The Legal Principles

54. The LQC set out a summary of the factual allegations which remain for determination as follows:

a. For Patient A, the foundation fact alleged is that on 22 September 2011 Dr Jindal did not carry out the procedure at the Solihull Clinic (paragraph 5). The allegations of knowledge and of dishonesty are dependent on that foundation fact (paragraphs 2, 3, 5, 6). It is alleged that Dr Jindal completed a Treatment Report and a Surgery Report in which he indicated that he was the surgeon who carried out the procedure in respect of Patient A (paragraphs 4 and 5).
b. For Patient B, two foundation facts are alleged, that on 28 December 2016 Dr Jindal did not meet with Patient B to discuss the consent form and did not carry out the procedure at the London clinic (paragraphs 8 and 11). The allegations of knowledge and of dishonesty are dependent on those foundation facts (paragraphs 8, 9, 11 and 12). It is alleged that Dr Jindal completed a Treatment Report and a Surgery Report in which he indicated that he was the surgeon who carried out the procedure in respect of Patient B (paragraphs 10 and 11).
c. Proof of dishonesty involves the two-stage test in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67. The first stage requires the Tribunal to make findings of fact about the doctor's actual state of knowledge or belief as to the facts at the time. State of mind cannot be proved by direct observation but by inference or deduction from the surrounding circumstances (including the nature of the alleged behaviour itself and whether the evidence shows other possibilities or explanations for the behaviour) and the doctor may give evidence about his state of mind.
d. If a foundation fact is not proved, the basis for drawing an inference about knowledge or dishonesty in relation to that matter will fall away.

55. The LQC advised that at this stage, the purpose of the Tribunal was not to make findings of fact but to determine whether **sufficient evidence** has been presented by the

GMC such that a Tribunal could properly find the foundation facts proved (and if so, could properly go on to find the dependent allegations of knowledge or dishonesty proved) to the civil standard. The civil standard is known as 'the balance of probabilities' and requires the Tribunal to determine what is more likely than not on the evidence.

56. The LQC advised that the 'sufficiency test' in Rule 17(2)(g) was considered in *R (Sharaf) v General Medical Council* [2013] EWHC 3332 (Admin) where Mrs Justice Carr stated:

a. Rule 17(2)(g) provides an important safeguard. It is oppressive and unjust for an accused person in regulatory proceedings to be required to meet a case that has not been established on sufficient evidence [49];
b. The test in the criminal case of *R v Galbraith* [1981] 1 WLR 1039 applies to these regulatory proceedings, but is adjusted to take into account that:
   - The Tribunal determines issues of fact and of law;
   - The standard of proof is the civil standard;
   - Rule 17(2)(g) states the test as 'sufficiency' of the evidence.

57. In *Galbraith*, Lord Lane CJ described categories (note, where he refers to a crime being committed, this Tribunal will consider whether the alleged misconduct occurred):

> *(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.*
>
> *(2) The difficulty arises where there is some evidence but it is of a tenuous character; for example, because of inherent weakness or vagueness, or because it is inconsistent with other evidence.*
>
> *(a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.*
>
> *(b) Where, however, the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury. [...] There will always [...] be borderline cases. They can safely be left to the discretion of the judge.'*

58. For a fact to be proved there must be evidence which is reasonably capable of supporting a finding on a rational basis: see Carr J in *Sharaf*, referring to *Johnson & Maggs v Nursery and Midwifery Council* [2013] EWHC 2140 (Admin) where Leggatt J said at [40] *'a*

tribunal is not exercising its powers lawfully if it makes a finding of fact which has no reasonable evidential basis'.

59. The Tribunal will consider:
    a. Is the GMC's evidence so tenuous and unsatisfactory (because it is inherently weak, vague, inconsistent or unreliable) that a Tribunal could not reasonably and safely find the allegation proved?
    b. Is the reliability of a GMC witness undermined to such an extent at this stage that the witness cannot reasonably be believed on the allegation?

60. With regard to assessing reliability of a witness, the LQC advised as follows:
    a. The Tribunal will assess the reliability of a witness in the context of all the evidence adduced by the GMC in the form of witness statements, oral evidence and documents. There is common ground between the parties that the Tribunal may consider documents that were put to GMC witnesses during their oral evidence, even if the document is in a bundle provided by the defence;
    b. The Tribunal cannot take into account self-serving witness statements provided on behalf of the doctor which remain untested at this stage;
    c. In *Roach v GMC* [2024] EWHC 1114 (Admin) Ritchie J [29] listed factors of relevance to assessing the reliability and credibility of a witness's evidence overall and on any core issue;
    d. The law attaches a high value to the answers given in oral cross-examination by a witness who has made an earlier written statement; oral examination is considered the best available tool for revealing where the truth lies (*Hindle v Nursing and Midwifery Council* [2025] EWHC 373 at [88-91]);
    e. A Tribunal cannot find a matter proved based on its own speculative guess as to what more probably happened. A Tribunal must not confuse grounds for suspicion with evidence sufficient to prove the allegation on the balance of probabilities. This distinction is particularly important in cases in which the evidence in support of the allegation consists of assertions by witnesses which are uncorroborated by any contemporaneous objective evidence (*Hindle* at [97-99] and *Soni v GMC* [2015] EWHC 364 (Admin) at [68]).

61. In summary, the task of the Tribunal is to ask:
    a. Has the GMC presented <u>any</u> evidence on which it could find the allegation proved? If there is no evidence on which it could find the allegation proved, that is an end of the matter.

b. If the GMC has presented relevant evidence but the Tribunal considers that it is so tenuous or unsatisfactory (because it is inherently weak, vague, inconsistent or unreliable) that a Tribunal could not reasonably and safely find the allegation proved to the civil standard, the Tribunal will accept the submission of Mr Singh on behalf of Dr Jindal, and the matter will not proceed.
c. If the GMC's evidence is reasonably capable of supporting a finding such that a Tribunal acting rationally would be entitled to find the facts proved to the civil standard, the Tribunal will reject the submission of Mr Singh on behalf of Dr Jindal, and the matter will proceed.

62. The LQC advised on the proper approach to the giving of reasons for a decision under Rule 17(2)(g) as follows:

> *'If the Tribunal allows this application, it should give detailed reasons for doing so. If it dismisses the application and the case proceeds, it is generally considered better to say as little as possible in case, in giving detailed reasons, it gives some indication as to the way in which it is considering the evidence at this stage and it would be improper for it to do so.'*
>
> In *Sharaf*, Carr J endorsed the above advice that was provided in that case about the extent of reasons to be given by a Tribunal when announcing its decision on a Rule 17(2)(g) application [38 and 73]). It was further endorsed by Nicol J in *R(Husband) v General Dental* Council [2019] EWHC 2210 (Admin).

The Tribunal's Decision about the sufficiency of evidence

63. The Tribunal considered the submissions of both parties. It took account of all the evidence presented to date, both oral and documentary.

PATIENT A

64. The Tribunal turned to the task of assessing whether the GMC evidence provides a sufficient evidential basis for a reasonable Tribunal to find paragraphs 2-6 of the Allegation proved to the civil standard. The Tribunal did not make any findings of fact at this stage.

65. The Tribunal noted that Allegation 1 is admitted by Dr Jindal, that on 22 September 2011 he signed a consent form in respect of Patient A which indicated that he would be the

surgeon to carry out the procedure. On the evidence of Patient A, it is common ground between the parties that on 22 September 2011:

- Patient A signed the consent form in the presence of Dr Jindal and Dr Jindal signed the fourth page in the presence of Patient A before the procedure was carried out [Patient A's Statement dated 17 May 2019 and Day 3/58 and Day 3/61 Transcript]; and
- Dr Jindal was present in the procedure room while the procedure was carried out [C1/2].

66. The contentious issue is who carried out the procedure, Dr Jindal or Mr C. The GMC bases it case on the evidence of Patient A that Mr C carried out the procedure, not Dr Jindal. Dr Jindal disputes this and says that he, Dr Jindal, did the procedure. The sufficiency of the GMC evidence to support a finding of fact that Dr Jindal did not carry out the procedure is key; it is the 'foundation fact' in Allegation 5.

The scope of the GMC evidence about Patient A

67. The GMC relies on one witness of fact, Patient A, and on the expert evidence of Mr L, FRCS FRCOphth Consultant Ophthalmic Surgeon.

68. The Tribunal considered the scope of Patient A's written and oral evidence. The Tribunal summarised its scope as follows:

a. Patient A's assertion that Dr Jindal did not carry out the procedure is based on his recollection of what he believes he saw and heard while in the procedure room. He asserts his belief that Mr C carried out the procedure, while Dr Jindal was present but had '*absolutely no involvement in what was going on with my eyes*'. The Tribunal assesses Patient A's evidence about what took place in the procedure room in more detail below;
b. Patient A did not offer evidence about other elements of Allegations 2-6;
c. Patient A characterised the actions of Dr Jindal and Mr C as 'fraudulent' in his witness statement but has not suggested a motive or purpose for the alleged dishonesty. The Tribunal noted that the GMC has not alleged a motive or purpose for Dr Jindal being in the procedure room but not carrying out the role of surgeon.

69. The Tribunal considered the scope of Mr L's report and oral evidence. The Tribunal summarised its scope as follows:

a. Mr L stated that he has a good understanding of the 'bilateral trans-epithelial laser vision correction' procedure undergone by Patient A, of the type which is known by the abbreviation 'LASEK', but does not personally perform such procedures;
b. He gave evidence about what the procedure typically involves, describing the steps carried out by a surgeon, the role of the assistant and what a patient experiences [Day 6 Transcript];
c. He was neutral about whether the foundation fact occurred, writing, *'I am unable to comment on whether any part of the procedure was not performed by Dr Jindal'* [paragraph 4.01(5)(b)];
d. He wrote, *'Whilst the support of non-medically qualified staff will naturally be required when undertaking any surgical procedure, it is my opinion that during a laser refractive procedure, the application of the laser treatment must only be undertaken by an appropriately trained ophthalmologist and for it to be performed by any other person would contravene UK Ophthalmic Professional standards'* [paragraph 4.01(3)];
e. He raised a concern about a paragraph in the printed consent forms for Patient A and Patient B (at page 3, second/eighth paragraphs respectively [C1/75 and 162]). The paragraph included words about 'teamwork' which could be construed as implying that someone other than the surgeon may be involved in applying the laser. Mr L recognised that it was Accuvision's standard form [paragraph 4.01(3)(a)];
f. By reference to the documents, he gave his opinion that the procedure was performed to an adequate standard and that there was no evidence within the records that indicated that the standard of care provided to Patient A during the procedure fell below the standard expected of a reasonably competent ophthalmic surgeon [paragraph 4.01 (6) and (11)];
g. The images provided by Mr L, taken from Accuvision's website, illustrating the position of the surgeon as sat behind the head of the patient;
h. In his 'Briefing note - Laser refractive surgery', Mr L described the position of the surgeon:

> *'The patient may or may not be able to see, on entry or exit who is in the room. The patient lies down for treatment, with the surgeon at the head and the scrub nurse at the side. He/she will not be able to see who is where but would normally be in conversation with the surgeon throughout the procedure, and therefore should know where the surgeon is located.'*

70. In relation to Patient A, the essence of Mr Singh's submission that the case should proceed no further is that:

a. There is no evidence on which a Tribunal could find Allegations 4, 5 and 6 proved to the civil standard (*Galbraith type 1,* as applied by *Sharaf*);
b. The allegation in paragraph 2 suffers from being an allegation of knowledge of a future matter which may or may not transpire;
c. The GMC evidence to support the foundation fact in Allegation 5, which is an identification issue, is so tenuous and unsatisfactory that a Tribunal could not reasonably and safely find the foundation fact proved by the GMC to the civil standard, or the dependent facts about knowledge and dishonesty (*Galbraith type 2,* as applied by *Sharaf*).

The allegation that Dr Jindal 'completed' the Treatment Report and the Surgery Report and 'indicated' therein that he was the surgeon who carried out the procedure (paragraphs 4, 5 and 6)

71. The GMC is correct that the Treatment Report and the Surgery Report contain entries which describe Dr Jindal as 'surgeon' [C1/77-79 and 80-81]. The question is the sufficiency of the GMC evidence that Dr Jindal 'completed' these documents or 'indicated' their contents. Mr Singh submitted there is no evidence to support proof of these alleged actions. There was no admission of these actions at the Rule 17(2)(d) stage on day 2 of these proceedings. Mr Rigby, on behalf of the GMC, submitted that such actions can reasonably be inferred.

72. The Tribunal noted that the Treatment Report is a printed form (headed Allegretto Wavelight) and states its authorship. It states, *'Entry made by:* [Mr C] */ Surgeon: Mr Prashaant Jindaal / Confirmed by:* [Mr C]*'.*

73. The Surgery Report is a printed form headed '*Surgeon Mr Prashaant Jindaal, Date 22 September 2011, Time 12:15'* and has a box at the bottom, '*Discharge Summary, NIL, Time 12:45, Surgeon Mr Prashaant Jindaal*'. An author is not stated.

74. There is no GMC witness evidence to the effect that Dr Jindal authored or completed the Treatment Report or Surgery Report for Patient A who had his procedure at the Solihull clinic. There is no manuscript writing, signature or initials by Dr Jindal to show that he saw them or adopted or endorsed their contents. By contrast, the equivalent forms (slightly different format) for Patient B five years later, at the London clinic, have a manuscript signature of Dr Jindal on every page.

75. The Tribunal considered the expert evidence of Mr L in relation to the paperwork for Patient A. Mr L referred to the Treatment Report and the Surgery Report at paragraph 3.04 of his report (he also refers to an additional document, 'Prescription Sheet signed by Mr Jindal' but there is no allegation about a prescription sheet and no copy has been provided to the Tribunal). The Tribunal took into account that:

a. In response to *'Please outline Dr Jindal's involvement in Patient A's care',* Mr L stated, on the basis of the records he had seen, that Dr Jindal was involved in the formal consenting process prior to surgery and *'was documented'* as being the surgeon who performed the treatment (paragraph 4.01(2) at C/13). This passive voice matches the submission of Mr Rigby that Dr Jindal *'is represented as being the surgeon'* in the Treatment Report and the Surgery Report;
b. Mr L mentioned the Surgery Report at 4.01(4) but did not offer an opinion about the role of Dr Jindal specifically, or of a surgeon generally, in relation to the authorship or completion of the Surgery Report or Treatment Report. At paragraph 4.01(5)(c), Mr L wrote, *'As Dr Jindal had signed the consent form with Patient A, it would generally be expected, given the circumstances, that he would then carry out the surgery'* but did not go on to say it would be expected that he would author or complete the Surgery Report or Treatment Report. At paragraph 4.01(8) Mr L wrote, *'The records kept by Accuvision appear adequate and appropriate for the procedure';*
c. In oral evidence, Mr L was not asked about and did not offer an opinion about the usual practice for the preparation and completion of the Treatment Report or the Surgery Report as at 2011, or about the extent to which the surgeon who carried out the procedure would necessarily have a role in relation to such documents.

76. Mr Rigby submitted that it is reasonable to infer that the Treatment Report and Surgery Report are part of the surgeon's records, which Dr Jindal adopted, and the GMC says that Dr Jindal *must* have had sight of them when he 'falsified' the consent form. Mr Rigby said the documents do not require a signature. He referred to Mr L's evidence that the surgeon has 'ownership' of the whole procedure and submitted that it would follow that the surgeon would have to 'sign off' the Treatment Report and Surgery Report. He said that the alleged actions of 'completing' and 'indicating' could be inferred from Dr Jindal's role.

77. The Tribunal asked for clarification of the evidential basis for inferring the actions of 'completing' and 'indicating' from the mere role of Dr Jindal, given it is the GMC's case and Patient A's evidence that Dr Jindal was *not* the surgeon. Patient A's evidence is that Mr C carried out the procedure and had introduced himself to Patient A as 'the surgeon' earlier in the day, so the inferred role would fall to Mr C. Mr Rigby replied that a conscious agreement

made between Dr Jindal and Mr C as to execution of the paperwork could be inferred. The Tribunal is mindful that paragraphs 1-6 of the Allegation do not allege any such agreement or give particulars of an alleged conspiracy between these individuals in relation to paperwork.

78. The Tribunal could not accept Mr Rigby's submission that Dr Jindal *must* have had sight of the Treatment Report and Surgery Report when he 'falsified' the consent form. This is because Patient A is clear in his evidence that he and Dr Jindal signed the consent form in each other's presence *before* the procedure took place. Whilst the pre-op optometrist's scans timed at 11:52 and 11:55 [C1/78-79] may well have been available to Dr Jindal when he signed the consent form in the presence of Patient A before the procedure, surely the Treatment Report status *'finished'* and Surgery Report *'discharge summary timed 12:45'* must have followed later.

79. The Tribunal was troubled by the following point. If the *modus operandi* of the alleged dishonesty was to put Dr Jindal *'front of house'* to go through the consent form with Patient A and sign it as 'surgeon', to give a semblance of propriety to what was about to take place and to conceal the impropriety of Mr C carrying out the procedure, why would Mr C have introduced himself to Patient A as 'the surgeon'? Why would Mr C reveal orally to the patient the very secret that he and Dr Jindal were allegedly conspiring to conceal?

80. The Tribunal noted the importance of the distinction between a basis for a suspicion and an evidential basis to prove an allegation to the civil standard or draw an inference. It reminded itself of the express words on the Treatment Report which identify its author as Mr C. The Tribunal was not persuaded by Mr Rigby that there was a sufficient evidential basis for a reasonable Tribunal to be able to infer that Dr Jindal 'completed' the Treatment Report or Surgery Report for Patient A or 'indicated' their contents. The Tribunal found merit in Mr Singh's submission about the lack of evidence to prove the actions of 'completing' or 'indicating' alleged in paragraphs 4 and 5.

81. In any event, as set out below, there was another reason why the Tribunal has concluded that there is not sufficient GMC evidence to prove paragraphs 4, 5 and 6. On the basis of the analysis set out below, the Tribunal has concluded that there was not sufficient evidence from the GMC to prove the foundation fact alleged in paragraph 5, that Dr Jindal did not carry out the procedure on Patient A. Without that fact, the allegations of knowledge and dishonesty in paragraphs 5 and 6 about the actions of 'completing' the two documents and 'indicating' their contents fall away.

The allegation that Dr Jindal was not the surgeon who carried out the procedure (paragraph 5)

82. Patient A is the only witness called by the GMC to give evidence of the foundation fact, that it was not Dr Jindal who carried out the procedure. Patient A is the only witness to give evidence that Mr C carried it out.

83. The Tribunal made a broad assessment of Patient A as a witness of fact. He gave oral evidence to this Tribunal in October 2024, thirteen years after the event. He previously gave oral evidence in 2022 to the Tribunal that was recused. This Tribunal has not seen transcripts of the 2022 proceedings.

84. The Tribunal considered that, in general, Patient A was doing his best to give an honest account of his recollection of, and his current beliefs about, what happened on 22 September 2011. He was trying to assist the Tribunal by explaining his experience as a customer of Accuvision and his grievance about the amount he was charged, and the extent to which the cost was linked to an issue about a possible diagnosis by an optometrist of keratoconus in advance of the procedure. He explained his subsequent dissatisfaction with how Mr C, as the owner of Accuvision, handled his grievance and claim for a rebate on the price, in the period 2012 to Spring 2014.

85. Patient A at times gave long answers during cross-examination to ensure that his account was being heard in context. He was candid about having no recollection when he could not recall a matter and he was open to conceding minor, background points when appropriate.

86. For the purposes of this Rule 17(2)(g) application, the Tribunal did not have any material concerns about the credibility of Patient A. Rather, the Tribunal was concerned whether there is any proper and sufficient evidential basis for Patient A's assertion of his current belief that Dr Jindal did not carry out the procedure, or whether it was based only on a suspicion on the part of Patient A.

87. The Tribunal sets out below the factors which underpin its decision that the GMC evidence about who did what inside the room is so tenuous and unsatisfactory that a Tribunal could not reasonably and safely find the foundation fact proved to the civil standard (*Galbraith type 2*, as applied in *Sharaf*).

88. A key vulnerability is that Patient A's current belief about the identity of the surgeon as Mr C is based on very little. It is based on his recollection of limited visual and audio perceptions in the procedure room in 2011. Patient A described his recollection in his evidence. The Tribunal took into account his evidence, including the quotes which are set out in Appendix Two (gathered in one place for convenience).

89. The starting point is that Patient A relies on what he recalls he saw and heard in the procedure room. Patient A says his belief about the identity of the surgeon as Mr C is based on two factors: (i) his recollection that he saw Dr Jindal in the corner of the room before the procedure began and saw Dr Jindal in the corner after he had sat up after the procedure had finished; and (ii) his recollection about hearing the voice of Mr C consistently during the procedure.

90. The GMC's expert gave evidence that by virtue of being a patient lying on his back on the table of the laser machine during the procedure, and of the steps being carried out, Patient A had *'no useful vision'* during the procedure. Mr L told the Tribunal that for each eye:

a. Anaesthetic drops are placed in the eyes of the patient; the eyes are cleaned with Betadine (iodine) which is applied copiously to the surface; the subject eye is then directly beneath the microscope and laser while the other is covered, *'so no useful vision…… the patient is not going to see anything of worth at that point because one eye is covered, and the other eye is under the laser and microscope'* [Day 6/20C-21C Transcript];
b. To ablate the stroma, the surgeon uses the foot pedal to send the data and at this stage the patient's vision *'is not functional'* [Day 6/32G Transcript];
c. Then the surgeon is under time pressure to hydrate the eye with saline, use a cannula and syringe to wash away debris (to enable the epithelium to grow back), apply antibiotic drops which would blur the vision of the patient, and put a contact lens on the eye [Day 6/33-34 Transcript];
d. In relation to whether it is the usual practice of a surgeon to talk during the procedure, Mr L (who has not personally performed such procedure) gave his opinion that it was his expectation that the surgeon would be talking and that others would be silent and just the surgeon would be making noises of encouragement and reassurance. Mr L also gave his opinion that *'with a well-oiled team and everyone's familiar with each other's working practices, there are some surgeons who don't say much at all'* and that some people speak more than others and it depends on the scenario [Day 6/35-38 Transcript].

91. Patient A agreed with the GMC's expert that he could not see who was performing the various steps of the procedure while they were taking place. Patient A recalled lying down on the table; that drops were placed in his eyes; that the lights went off in the room, and the laser was moved so it hovered above his eyes. He agreed that one eye was covered while the other was being worked on. He agreed that he could not see the face of the person putting the clamps on his eyes and he could not see Mr C while the lasers were working on his eyes [Day 7/49-51G and Day 8/9, Day 8/12 Transcript].

92. In relation to his ability to see after the procedure had finished, Patient A said in oral evidence *"I understand that obviously you have just had eye surgery but you can still see enough to function and awareness of where people are and stuff is fairly straightforward and he was still sitting in the corner of the room, absolutely; still in the corner"* [Day 8/9G Transcript].

93. Patient A's current belief that he was able to see immediately he rose from lying down is at odds with the GMC's expert evidence that the drops which are put into the eye at the end blur the patient's vision.

94. Importantly, Patient A does not claim to have seen what was happening in the room during the procedure. He does not claim that he saw Mr C perform the surgical steps described by Mr L. He does not claim that he was able to see the location of Dr Jindal during the procedure. Such evidence is missing.

95. The Tribunal found an inconsistency in the 2024 oral evidence of Patient A on the core issue of the physical position of Dr Jindal in the room, compared with his written accounts in October 2017, November 2017, May 2019 and November 2020.

96. In his November 2017 Complaint to the GMC [C1/150], Patient A specified that *'He stood in the corner of the room beyond my right foot (about as far from my eyes as possible)'* (underlining added). His statements prepared for the GOC and the GMC used neutral language ('stationed' or 'positioned') but in his oral evidence to this Tribunal, Patient A asserted that Dr Jindal sat in the corner. When asked if it was Dr Jindal who showed him into the procedure room, Patient A gave a long response in which he put forward that Dr Jindal sat down and then Patient A lay down on the table [Day 7/44C Transcript]. When asked about when the procedure had finished and Patient A was no longer lying flat but was sitting up, Patient A maintained several times that Dr Jindal was sitting in the corner at the end [Day 8/9 to 10 Transcript].

97. Further, during oral evidence, Patient A said that he was not able to recall various matters about what took place in the procedure room, for example, an estimate of the period of time he was in there, whether people were wearing blue surgery scrubs, whether the difficulty fitting the clamps was with one eye or both, or whether the hands that were moving around his face had gloves on [Day 7/48-49, Day 8/12H Transcript].

98. The Tribunal considered Patient A's evidence about how many people were in the room (quoted in Appendix Two). His written accounts had described Mr C and Dr Jindal in the procedure room, and *'On the day I had my laser eye surgery I met two people: the surgeon and someone assisting'*. Patient A's oral evidence is that in addition to Mr C, there was another person behind him during the procedure; such oral evidence is consistent with Dr Jindal, as the second person in the room, being behind Patient A during the procedure. During his oral evidence, Patient A suggested that a third person was in the room to assist the surgeon [Day 7/50-51 Transcript]; this more recent assertion of a third person in the room to assist the surgeon would maintain the feasibility of Dr Jindal being in the corner of the room throughout.

99. The Tribunal also considered Patient A's evidence about his belief that Mr C was talking to him during the procedure and that he heard the same voice consistently throughout. Patient A's evidence is that he had never met Mr C or Dr Jindal before he came to the clinic on 22 September 2011 and did not claim to have been familiar with their respective voices. Patient A said he would not recognise the voice of Mr C were he to hear it now [Day 8/11-12 and 8/26 Transcript]. He says he heard the voice of somebody with an Indian accent; his evidence is that the person who did the consent form was also of Indian ethnicity. Patient A also recalled that Mr C whispered something to another person who was behind him, and he could not remember if the other person responded or not. The evidence about his audio perceptions does not of itself identify who carried out the surgical steps involved in the procedure.

100. For these reasons, the Tribunal considers that Patient A's evidence of the foundation fact is very thin and weak.

101. In addition, the GMC evidence reveals other factors, set out below, which undermine the ability of a Tribunal to have confidence in Patient A's belief about who did what during the procedure. These factors have contributed to the Tribunal's conclusion that whereas the GMC evidence is capable of founding *a suspicion* in Patient A's mind that Dr Jindal did not

carry out the procedure, the GMC evidence is so tenuous and unsatisfactory that it is not sufficient for a reasonable Tribunal to make a finding that it is more likely than not that Dr Jindal did not carry out the procedure.

Contemporaneous sources

102. Patient A's assertion that Mr C carried out the procedure is not corroborated by any contemporaneous, objective evidence.

103. Patient A's assertion contradicts the consent form which identifies Dr Jindal as the surgeon and was signed by Patient A and Dr Jindal when they were together. It also contradicts the Treatment Report and Surgery Report. The GMC's case is that all entries in these documents about Dr Jindal having the role of surgeon are false. In relation to the consent form, Patient A's evidence is that when he signed the 'Declaration and Signature' final page, he only read down to where he signed, and he did not read on to see *'the bit that did not apply to me'* where Dr Jindal signed as surgeon.

Five years elapsed

104. Five years elapsed before Patient A clearly and expressly articulated in writing that it was Mr C who carried out the procedure as his surgeon; this was by email to the Police in November 2016 [C/125-133]. Patient A told the Police that Mr C operated without the correct registration or qualifications, but did not state the basis for his assertion or describe what happened in the procedure room. He repeated the assertion to the CQC by emails in December 2016 [C/100-103].

105. Six years elapsed before Patient A wrote an account of what took place in the procedure room in 2011; this was his statement dated 2 October 2017 to the GOC to support his complaint about four optometrists [C1/92-99]. After this, he gave written accounts in his November 2017 complaint to the GMC and his witness statements dated May 2019 and November 2020 for these proceedings.

106. The GMC evidence is that by the time Patient A wrote to the Police in November 2016, he was no longer acting in isolation or wholly independently of other people. Patient A's evidence is that he was contacted by a BBC journalist in Spring 2014 and, *'a fair while after'*, Ms F contacted him [Day 8/29 Transcript]. The Tribunal addresses this under a sub-heading *'Getting guidance from others'* below.

107. The Tribunal assessed the extent to which the documents which *pre-date* Spring 2014 show that Patient A had given any identification evidence of the person who had carried out the procedure in 2011.

108. The Tribunal noted Patient A's evidence, in his 2017 GOC statement, that the outcome of the first consultation with Mr M, optometrist and clinic manager, on 8 September 2011 was that Mr M *'would speak to* [Mr C] *as leader of the surgical team about the state of my eyes regarding my condition and whether or not* [Mr C] *could go ahead with the surgery'* [C1/93]. Patient A's evidence is that no certain booking had been made as at 8 September 2011. In the emails that follow, Patient A told Mr M that he had had a consultation with another provider, Optimax, and set out their price and Mr M did not mention Mr C or identify the surgeon who would be booked if Patient A decided to go ahead with Accuvision [C1/134-137].

109. After the procedure, Patient A had extensive email correspondence with Accuvision until Spring 2014 about the price he had been charged and the content of the reviews he wrote for online forums. Patient A mentioned Mr C numerous times in these emails, and some go directly between them. Patient A agreed in oral evidence that he never referred to Mr C as 'his surgeon' in those emails [Day 3/21] as he was not complaining about the surgery.

110. The Tribunal's assessment of this email correspondence is that it is consistent with Patient A not at that time addressing his mind to the identity of the person who had carried out the surgery but being focussed on his complaint about cost and on his dissatisfaction with how Mr C, as the founder and owner of Accuvision, was handling the cost issue. The correspondence is consistent with Patient A having registered in his mind the name of Mr C as a senior person at Accuvision and with Patient A having formed the impression that he was a surgeon.

111. The emails are about cost, the rebate of £300 paid to Patient A and his request for a further £700 rebate. On two occasions, Patient A suggested that Mr C did not know the details of his case, which is perhaps inconsistent with having been the surgeon. By email to Mr C on 12 October 2012, Patient A wrote *'When we had that meeting in London you either lied to me, or simply did not know the facts'*. In his five-page Review written in late 2012 Patient A described two people at the meeting as *'the marketing director and the founder of Accuvision'*. He set out the role of Mr C in setting the price and doing the talking and he queried *'whether he simply had not actually looked into my case in any depth'.*

112. The tone of Patient A's emails softened in March 2013, when he reduced his five-page review to three pages, and wrote an apology on 8 January 2014 to Mr M about having complained about him to the GOC.

113. Mr Rigby submitted that Patient A clearly stated that Mr C was '*the surgeon*' in his email dated 16 January 2013 to the GMC, replying to the GMC's email dated 9 January 2013 [C1/89].

114. The Tribunal's analysis of the 16 January 2013 email is that it did not set out to identify the person who carried out the procedure. On 18 December 2012 Patient A had sent a complaint to the GMC [C1/83] in which he said his *'issue has nothing to do with his recovery'*, enclosed his five-page Review about his cost complaint and complained of *'feeling a level of betrayal that I have never expected to receive from a medical professional'*. His complaint was silent about the procedure or about the identity of the person who had carried out the procedure. He wrote:

> *"I do understand that my complaint involves a few people, some of whom are registered with yourselves (the surgeon who started Accuvision, and who tried to persuade me I was wrong, and who lied to me'), and some of them are not (the optometrist……"*

115. The GMC replied to ask for the *'name and any other information (GMC/GOC registration number etc) you may have regarding the eye consultant who is the subject of the complaint'*. Patient A replied, *'The surgeon involved with my issues is called* [Mr C] …. [Mr C] *was responsible for the meeting when I was given conflicting information about why I had paid an inflated price for my surgery. I understand that this is tricky, because my issue is not with his fitness to practice per se, but more with his integrity as a businessman, and as a person'*. Patient A did not describe Mr C has having been '*his surgeon'* on the day. Patient A says in his witness statement that this complaint was closed by the GMC as Mr C did not hold registration with the GMC [C1/2].

116. The Tribunal also considered what Patient A wrote in February 2013 in his handwritten complaint to the GOC about Mr M the optometrist [D/Supp p.15-21]. Patient A had asked another optometrist, Mr O, a question about his recovery, received an answer from Mr O and said that *"*[Mr C] *(the surgeon) confirmed this fact on 26 April 2012 in*

London". He does not refer to [Mr C] as 'my surgeon' and perhaps is simply indicating his perception of the status of the person who gave the confirmation of what Mr O had said.

117. Patient A explained during oral evidence that he now realises that he had previously thought that Accuvision had only one surgeon [Day 3/53 Transcript]:

> *"My understanding of AccuVision and the way they worked, one of their selling points was that they had one surgical team, so that for me meant one surgeon which was* [Mr C]. *He is the surgeon, he isn't a surgeon, he is the one surgeon who is at AccuVision. That was my understanding. That's how I understood the whole situation".*

118. The Tribunal assessed the GMC documentary evidence for the period until March 2014 as amounting to evidence that Patient A clearly had absorbed the name of [Mr C] as senior at Accuvision, had had extensive dealings with him in relation to the cost issue and at some stage had formed an impression that he was a surgeon. However, Patient A was not addressing his mind to the identity of the person who had carried out the procedure.

Lack of reaction when acting independently in late 2012-2013

119. The Tribunal noted that when Patient A complained to the GMC on 18 December 2012 about his sense of betrayal, he referred to the concept of 'registration' with the GMC. In his witness statement, Patient A said that his complaint was closed by the GMC as Mr C did not hold registration with the GMC.

120. The evidence is clear that Patient A did not react to learning, from the GMC, that Mr C had no registration. If Patient A held a conscious belief as at 2013 that Mr C had carried out his procedure and then learnt from the GMC in early 2013 that Mr C was not registered, that would raise the question why Patient A did not react, when in other respects he has been highly articulate and proactive in expressing a concern when he felt that something was not right. The Tribunal was of the view that a lack of reaction in 2013 is consistent with Patient A not yet holding a firm belief that Mr C carried out the procedure.

Behaviour when Patient A received his medical records in April 2014 which named Dr Jindal as surgeon

121. In his 2017 GOC statement, Patient A explained that after he posted reviews about Accuvision in the years immediately following the procedure, a letter was sent to his mother's house, and he reacted to the letter by phoning Ms N of the BBC in March 2014. He

says that Ms N informed him that was acting illegally and was not a surgeon and he 'was shocked' [2017 GOC statement paragraph 19 at C1/97]. There is no witness statement from Ms N. The Tribunal noted that Patient A's own evidence about closure of his 2012 complaint to the GMC was that he had already been informed by the GMC that Mr C was unregistered, prior to contact from Ms N.

122. On 1 April 2024, Patient A wrote a short email to Accuvision to ask for his medical records. Patient A said the BBC paid for him to get his records and he forwarded them to the BBC. He says he saw the name of Dr Jindal as the surgeon and was shocked [2017 GOC statement at C1/94 and C1/97]. Patient A agrees that he did not take any steps in 2014, 2015 or most of 2016 (until his emails to the Police and the CQC in late 2016) to complain to anyone about having seen Dr Jindal's name as his surgeon in his medical records. Patient A says he held back as he believed Ms N had given his contact details to the police and he was waiting for the Police to get in touch; also the BBC did not want Accuvision to know about its investigation so that is why he did not confront individuals at Accuvision [C1/98].

123. Patient A said in oral evidence, *'Yes, I was in touch with other people waiting for things to happen, yes, and I was getting guidance from other people - well, from* [Ms N]*'* [Day 2/55H Transcript, underlining added]. In his 2017 GOC statement, Patient A said he did an interview with the BBC in November 2014 and then Ms F contacted him [C1/97].

'Getting guidance from other people'

124. Patient A was asked about contact with Ms F. He gave evidence about this in his 2017 GOC statement [paragraph 19 at C1/97]. He gave more details in oral evidence [Day 2/56-58, Day 3/12 and Day 8/29-30 Transcript]. He understood that Ms F *'got into campaigning for greater accountability in laser eye surgery'* but made it clear that she has never been his advocate.

125. Patient A said *'I had a short message from* [Ms F] *at one point'* [Day 2/56] and in response to more questions, gave evidence about other instances of contact between them, which began '*a fair while'* after his contact with Ms N in Spring 2014.

126. He estimated the first contact with Ms F was *'around nine or ten years ago'* i.e. late 2014/2015, which was before he wrote to the Police in November 2016. He gave the GMC permission to speak to Ms F. Later, he knew that Ms F was assisting Patient B who had had surgery in December 2016 and knew that Patient B was claiming compensation in a claim

against Accuvision and Dr Jindal. Patient A said he had a phone call with Ms F and a series of emails from her when the previous Tribunal recused itself in 2022. He said that he had a WhatsApp message from Ms F asking which hotel the GMC had put him in when attending this Tribunal in October 2024.

127. Patient A said he was happy to disclose *'all my emails to* [Ms F] *and everything'*.

Summary of the Tribunal's assessment of the GMC evidence of the foundation fact in paragraph 5 of the Allegation

128. The Tribunal considers that there is ample evidence that Patient A *now* has a firm belief in his mind that Mr C carried out the procedure. However, there is no satisfactory evidence that he held such a belief in the years immediately following the procedure.

129. Patient A now feels able to draw an inference about the identity of the person who carried out the procedure as surgeon, based on what he now believes he saw *before* the procedure had started and *after* it had finished, and on what he now believes he heard during the procedure. The Tribunal is of the view that the evidence is very tenuous; at best, it amounts to a basis for a suspicion about who did what but no more. A fact-finding Tribunal would be being asked to speculate about what had happened, based on Patient A's suspicion.

130. The Tribunal reminded itself of the point made by Mr L about the wording in the consent form about 'teamwork' and how that might contribute to a suspicion that Dr Jindal did not carry out the procedure but that does not affect the overall conclusion of the Tribunal about the insufficiency of Patient A's evidence.

131. The Tribunal concluded that it would not be reasonable or safe for a Tribunal to place reliance on the inference which has been drawn by Patient A as the basis for a finding of fact that it is more likely than not that Dr Jindal did not do the procedure. The Tribunal considers that the GMC has not put forward a sufficient evidential basis for a reasonable Tribunal to be able to make a finding of fact and find it proved to the civil standard (more likely than not) that Dr Jindal did not carry out the procedure.

132. The Tribunal accepted the submission of Mr Singh that there is insufficient evidence to prove the foundation fact alleged in paragraph 5, that Dr Jindal did not carry out the procedure on Patient A. The Tribunal concluded that it follows that the dependent allegations

of knowledge and dishonesty alleged in paragraphs 2, 3, 5 and 6 cannot be proved and fall away.

133. The Tribunal also accepted the submission of Mr Singh that there was insufficient evidence to prove the actions of 'indicating' and 'completing' alleged in paragraphs 4 and 5.

134. This leaves only paragraph 1, which is admitted.

PATIENT B

135. The Tribunal turned to the task of assessing whether the GMC evidence provides a sufficient evidential basis for a reasonable Tribunal to find paragraphs 8-12 of the Allegation proved to the civil standard. The Tribunal did not make any findings of fact at this stage.

136. The Tribunal noted that Allegation 7 is admitted by Dr Jindal, that on 28 December 2016 he signed a consent form in respect of Patient B which indicated that he would be the surgeon to carry out the procedure.

137. The GMC's case against Dr Jindal in relation to Patient B is built on two foundation facts: that on 28 December 2016 Dr Jindal did not meet with Patient B to discuss the consent form (paragraph 8(a)) and that Dr Jindal did not carry out the procedure (paragraph 11). The allegations of knowledge and of dishonesty are dependent on those foundation facts (paragraphs 8, 9, 11 and 12). Actions of 'completing' a Treatment Report and a Surgery Report and 'indicating' therein that he was the surgeon who carried out the procedure are alleged (paragraphs 10 and 11 of the Allegation).

138. Dr Jindal's case is that he, Dr Jindal, met Patient B to discuss the consent form and carried out the procedure.

139. In relation to Patient B, the essence of Mr Singh's submission is that the case should proceed no further because the GMC evidence to support the foundation facts (that Dr Jindal did not meet Patient B to discuss the consent form and did not carry out the procedure) is so tenuous and unsatisfactory that a Tribunal could not reasonably and safely find these foundation facts proved by the GMC to the civil standard, or the dependent facts about knowledge and dishonesty (*Galbraith type 2,* as applied by *Sharaf*).

The scope of the GMC evidence about Patient B

140. The GMC relies on two witnesses of fact, Patient B and his former partner, Ms E, and on the expert evidence of Mr L, FRCS FRCOphth Consultant Ophthalmic Surgeon.

141. The Tribunal considered Patient B's written and oral evidence and summarised its scope as follows:

a. Patient B's asserts he never met Dr Jindal;
b. Patient B asserts that he and Ms E (his partner at the time) were given the consent form by Mr K on 28 December 2016 when they were in the waiting room of the clinic and were left to complete it without input from a medically qualified person;
c. Patient B's assertion that Dr Jindal did not carry out the procedure is based on his recollection of what he believes he heard in the procedure room and his belief that '[Mr D] *sat immediately behind my head.* [Mr D] *was holding my head and all I could hear was him repeatedly telling me to "look into the light*"' and *'As I was looking up into the lights all I could hear close by was* [Mr D]*'s voice. Someone was holding my head and because he was so close to me I assumed it was* [Mr D]*'*;
d. Patient B did not offer evidence about other elements of Allegations 8-12;
e. Patient B has not suggested a motive or purpose for the alleged dishonesty. The Tribunal noted that the GMC has not alleged a motive or purpose for Dr Jindal signing the consent form if he had not met Patient B to discuss it, or for countersigning the other documents which describe him as the surgeon if he had not carried out the procedure.

142. The Tribunal considered Ms E's written and oral evidence and summarised its scope as follows:

a. Ms E says she was with Patient B in the waiting room when they were given the consent form by Mr K and they were left to complete it without input from a medically qualified person;
b. She says she stayed in the waiting room when Patient B went into the procedure room. Her account of what occurred in the procedure room derives from what Patient B told her afterwards;
c. Ms E asserts that she did not see Dr Jindal at the clinic on 28 December 2016. However, there is no evidence that she knew what he looked like beforehand, to act as the basis for her saying she did not see him. She says at a later time, she saw what he looks like in a Google image and a YouTube video;

d. In relation to posts on Patient B's Instagram account during 2017, Ms E stated that she had thrown her handset at the wall which had smashed its screen, and that she has an iPhone but does not use the cloud and was not able to provide evidence of their phone data to prove the dates of the photos.

143. The Tribunal reminded itself of Mr L's expert evidence, as set out above to the effect that a patient has no 'useful vision' during the procedure. The Tribunal also noted what Mr L wrote in his report specifically about Patient B:

a. As to who carried out the procedure, he wrote *'The treatment report/surgery report states the surgeon to be [Dr Jindal], implying that the procedure was performed by [Dr Jindal]. I am unable to confirm, however, whether this is an accurate reflection of the course of events, or whether as is alleged, someone other than Dr Jindal was present and performed the procedure'* [paragraph 4.01(5)(b)];
b. By reference to the documents, he gave his opinion that there was no evidence to suggest that the procedure was not performed to an adequate standard and there was no evidence within the records that indicated that the standard of care provided to Patient B during the procedure fell below the standard expected of a reasonably competent ophthalmic surgeon [paragraph 4.01 (7) and (11)].

144. The Tribunal made a broad assessment of Patient B as a witness of fact. Patient B gave oral evidence to this Tribunal in October 2024 and June 2025. He had previously given oral evidence in 2022 to the Tribunal that was recused. This Tribunal has not seen transcripts of the 2022 proceedings. The Tribunal had real concerns about the reliability of the evidence of Patient B to prove the foundation facts that Dr Jindal did not do the consent form or carry out the procedure: this is because his evidence suffers from inconsistencies; he was often evasive during oral evidence; on some topics, he would reply to questions clearly but then switch to *'I don't recall'* if put under pressure; and he frequently stated that he had no recollection of a matter and *'You'd have to ask* [Ms E]*'*.

145. The Tribunal made a broad assessment of Ms E as a witness of fact. The Tribunal had real concerns about the reliability of her evidence about the consent form.

146. The Tribunal noted that the GMC's case about the location of Dr Jindal on 28 December 2016 has changed over time. This point is linked to Ms F. Patient B put forward evidence that Ms F told him that Dr Jindal was abroad (January 2019 witness statement [C1/40]):

'[Ms F] *told me she had spoken to Dr Jindal, I am not sure how she had spoken to him but he had told her he was away in Tenerife at Christmas 2016. It was not just one thing that made me wonder whether Dr Jindal had been my surgeon, there were many things'* (underlining added).

147. During oral evidence, Patient B said he knew that Ms F was a witness for the GMC during the 2022 Tribunal, but the GMC does not rely on her evidence in these proceedings. Patient B also confirmed that Ms F had told him that Dr Jindal was out of the country on the day of his procedure, that Dr Jindal was away [Day 17/20-21 Transcript].

148. The Tribunal understands that the GMC no longer contends that Dr Jindal was away on 28 December 2016. Indeed, the GMC alleges that he signed the consent form on 28 December 2016 and 'on the same date' indicated that he was the surgeon who carried out the procedure in the Treatment Report and Surgery Report.

The allegation that Dr Jindal did not meet Patient B to discuss the consent form (paragraph 8(a))

149. It is common ground between the parties that:

a. On 14 November 2016 Patient B attended the Accuvision clinic in London with Ms E. Patient B had a consultation with an optometrist, Mr G, and then saw Mr K, marketing director, who booked the procedure for 14 December 2016 and Patient B paid a cash deposit of £1,000. After the visit, Patient B rescheduled the procedure to 28 December 2016;

b. On 28 December 2016 Patient B and Ms E came to the clinic and Patient B was seen by an optometrist who took pre-op scans;

c. At some point before Patient B was called to go into the procedure room, Ms E had written out the declaration on the final page of the consent form and Patient B had signed each page of the consent form.

150. The contentious issue is whether Dr Jindal met Patient B to discuss the consent form with him. The GMC alleges that he did not. Patient B's evidence is that he never met Dr Jindal: he said this in his June 2018 complaint to the GMC and in his witness statement dated 5 December 2022 for his Civil Claim:

'My medical notes show that Dr Prashant Jindal was my operating surgeon. However, I have never met Dr Jindal, not before, during or after my surgery. I have had no pre-op consultation with a Dr Jindal or anyone that made out to be my surgeon.'

151. The Tribunal considered the significance of a document which has been adduced by the GMC (as an exhibit to the January 2019 witness statement of Patient B) but is not the subject of the allegations [C1/174-5]. It is a two-page 'Ophthalmic Medical Consultation' note, with manuscript entries to show 28 December 2016 and a signature of Dr Jindal at the start and at the end. There are manuscript notes about having discussed treatment options with Patient B (including factors relevant to Patient B's interest in XXX) and ends with *'To proceed with Trans-epi/surface'*.

152. The GMC has not made an allegation against Dr Jindal to the effect that this Ophthalmic Medical Consultation note was a fiction or falsified by him. Its authenticity was not challenged in the original Notice of Allegation and the GMC has not applied to amend the allegation to contend that this document is false.

153. In oral submissions in response to this application, the Tribunal asked Mr Rigby about this document. He suggested that it was put together in the absence of Patient B, that it pretends to be a note of a consultation by Dr Jindal and there must be elements of falsity about it. The Tribunal has given this careful thought. The Tribunal is of the view that absent an allegation by the GMC to challenge the authenticity of this document (which would be a serious and significant allegation), the proper course, at this stage, was to accept it as evidence from the GMC which is not the subject of an allegation of falsity or dishonesty.

154. The Tribunal considers that the Ophthalmic Medical Consultation note presents a significant hurdle for the GMC to overcome in seeking to advance a case that Dr Jindal did not meet Patient B on 28 December 2016 to discuss the consent form. The Tribunal went on to consider what evidence the GMC has adduced to seek to displace the contemporaneous Ophthalmic Medical Consultation note and to support the allegation that Dr Jindal did not meet Patient B in relation to the consent form.

155. Patient B's evidence is that while he and Ms E were in the waiting room, Mr K handed them the consent form, left it with them to complete and sign, and returned to collect it approximately ten minutes later. Patient B asserted this action by Mr K when he gave a video interview to the Police in late 2017 or early 2018. The Police prepared a draft statement. Ms E endorsed the accuracy of the unsigned Police statement in her oral evidence, stating that the Police wrote the draft and she then made amendments on Patient B's behalf. In that statement, Patient B said that, in late October 2017, Ms F had suggested he go to the Police.

Patient B said in oral evidence that the Police informed him in 2018 that they had closed their investigation.

156. Patient B repeated his assertion that Mr K handed them the consent form in his Complaint to the GMC dated 27 June 2018 and in his witness statement dated 11 January 2019.

157. Patient B has since qualified his evidence about Mr K:

a. In his witness statement dated 9 November 2020 he wrote:
'I have been advised by the GMC that they have received information to suggest that [Mr K] *and* [Ms J] *were not in the clinic on the day of my surgery and I have been asked to provide my comments on this.*
…. I believe that the person who gave me the consent form to sign on the day of my surgery was [Mr K]. *The person who gave me the form looked like the person whom I had met in the previous consultation who I understood to be* [Mr K]. *I have never thought it was anyone else'.*

b. In his witness statement dated 5 December 2022 for his Civil Claim, Patient B maintained that Mr K handed them the consent form on 28 December 2016, whilst stating, '*If this was not* [Mr K], *then I do not know who it was.* [Ms E] *wrote a paragraph out for me and I signed the consent form and then handed it to* [Mr K], *if it was* [Mr K]'.

158. In oral evidence, on 2 June 2025 (day 20) Patient B pulled back further from his original assertion that Mr K handed them the consent form. He said that he now knows that '*apparently*' Mr K was not in work and accepts that he may have been *'genuinely mistaken'*.

159. The Tribunal noted additional aspects of the GMC evidence about the circumstances in which Patient B was given the consent form or signed it:

a. Whereas Patient B recently stated in his oral evidence that he may have been '*genuinely mistaken'* that Mr K handed them the consent form, Ms E in her oral evidence on 4 June 2025 (day 22) stood firmly by her earlier assertion, without qualification, that it was Mr K who handed them the consent form in the waiting room. Their position have diverged;
b. Ms E was insistent in her oral evidence that she and Patient B had received no paperwork at all from Accuvision before the procedure was carried out. This was at odds with what Patient B had told the Police; in his interview he said that Mr K had given them '*some papers'* on 14 November 2016;

c. Ms E described Patient B signing the consent form in her 5 December 2022 statement for the Civil Claim (C1/247). In her oral evidence, when asked about the extent to which she had read or explained the consent form to Patient B she became increasingly evasive. She said *'whatever I read I read it out to him'*. When asked about specific parts she adopted a pattern of response to the effect of *'I don't think I really read that bit'* or '*I skipped that bit'* or '*I probably would have skipped that bit'*. By contrast she asserted a clear recollection that she definitely did not read the last part of the last page about the surgeon's signature;
d. Accuvision provided Patient B with a list of all his appointments since 14 November 2016. This shows activity by Mr K on 18 November 2016 to book the procedure but does not show any activity by Mr K on 28 December 2016.

160. The Tribunal noted another shift in Patient B's evidence about who he met on 28 December 2016. Patient B had asserted in his written evidence that, after the procedure, he was led out and taken to another room where he was seen by a female optometrist who gave Ms E eye drops for him to use. In his interview with the Police in early 2018, he described '*an* [XXX] *lady'*. In his complaint to the GMC dated 27 June 2018, he asserted it was Ms J and repeated this in his witness statement dated 11 January 2019, *'I then went to see a woman named* [Ms J] *... I can recall she was an* [XXX] *lady'.*

161. When the GMC advised Patient B that they had received information to suggest that Ms J was not in the clinic on 28 December 2016, Patient B addressed this in his witness statement dated 9 November 2020. He explained that voice recognition had been the basis for his identification of the person as Ms J. He said that after the surgery his eyes were closed but he recalled that he heard the XXX accent of the female optometrist. He said that when he attended a post-op assessment on 9 February 2017 with Ms J, he believed that she sounded like the same lady who had given him the eye drops on 28 December 2016.

162. In his witness statement for his Civil Claim dated 5 November 2022, he shifted his evidence to state that he *presumes* it was Ms J on 28 December 2016 but if it was not her then it must have been another XXX lady. In cross-examination, Patient B stated, *'if she wasn't there then I am mistaken', 'a genuine mistake'* and *'I was mistaken about that voice';* he then evaded further questions, stating he was '*muddled'* and *'in pain'* and '*I'm not here to discuss the civil suit'*.

The allegation that Dr Jindal was not the surgeon who carried out the procedure on Patient B (paragraph 11)

163. Patient B is the only witness to give evidence that it was not Dr Jindal who carried out the procedure. Patient B is the only witness to give evidence that Mr D, an optometrist, carried it out.

164. At this stage, the concern is whether there is any proper and sufficient evidential basis for Patient B's assertion that Dr Jindal did not carry out the procedure, or whether his evidence amounts to no more than a suspicion on his part about who did what in the procedure room.

165. The Tribunal sets out below the factors which underpin its decision that the GMC evidence on the issue of the identification of the surgeon, that it was not Dr Jindal but was Mr D, is so tenuous and unsatisfactory that a Tribunal could not reasonably and safely find the fact proved to the civil standard (*Galbraith type 2*, as applied in *Sharaf*).

166. A key vulnerability is that Patient B's assertion is based on very little. It is based on what he says about his recollection of his audio perception of a voice in the procedure room on 28 December 2016 and a belief that he recognised the same voice some days later at a post-op appointment on 3 January 2017. It is common ground that Patient B had an appointment with Mr D on 18 January 2017 [list of appointments at C1/202]. For the purposes of this application, the Tribunal takes Patient B's evidence *'at its highest'* that Patient B came across Mr D at a post-op appointment on 3 January 2017.

167. Patient B's evidence in his witness statement dated 11 January 2019 is that when he went into the procedure room on 28 December 2016, two men were already present and then two more men came in. He wrote:

> *'No one had introduced themselves to me or said who their names were; it was the first time I had seen any of the four men but it was not the last time I would see one of them,* [Mr D]' [C1/32]

168. In his statement for his Civil Claim he said that he was never introduced to *'anyone that specifically indicated that they were my surgeon'*.

169. Patient B goes on to say that when he went to the clinic on 3 January 2017 for a post-op assessment with Mr G, Mr G called in Mr D to examine him, and he was introduced to Mr D by name and that was when he recognised Mr D's voice [C1/221 - 222]. Patient B wrote:

> *'That is the second time I had seen* [Mr D] *and I believe he was the one holding my head through surgery as I recognised his voice. As* [Mr D] *was doing some of the checks I thought he had definitely had something to do with the surgery'* [C1/32].

170. In oral evidence Patient B said that he had never spoken to any of the four men before he went into the procedure room [Day 10/21 Transcript]. He described all four men as Asian in his interview with the Police.

171. Patient B does not claim that he actually saw Mr D perform any of the surgical steps. He said he could not see who was doing what during the procedure, consistent with the expert evidence of Mr L. He said that when the procedure was done, he was told to keep his eyes closed and someone helped him off the table.

172. In his statement dated 5 December 2022 for his Civil Claim he stated the limitations of his identification evidence as follows [C1/218]:

> *'My medical notes show that Dr Prashant Jindal was my operating surgeon. However, I have never met Dr Jindal, not before, during or after my surgery. I have had no pre-op consultation with a Dr Jindal or anyone that made out to be my surgeon. I was unable to see anything when the surgery actually started and cannot say who was pressing the buttons or otherwise. I accept that I am unable to say who was in the operating room. However, I distinctly remember the voices of those around me and what was being said. I have never been introduced to anyone who said they were Dr Jindal, nor anyone that specifically indicated that they were my surgeon. I believe that Dr Jindal was not my surgeon as I have not met or been introduced to anyone called Dr Jindal or as my surgeon.'* [underlining added]

173. The Tribunal considered Patient B's oral evidence [Day 10/23]:

> *'*Q: *Okay? You said, "So I'm in the operating room. I get on the table. I don't see anything then." They clamp your eye, pop the drops in and laser. Then afterwards, you don't see anything?*
>
> A: *Yes.*
>
> Q: *Okay. That's what you said under oath last time. Do you agree?*

A: *That's what happened, yes.*

[…]

Q: *All right. You're in no position to say, are you, who operated on your eyes?*

A: *No, I didn't see anyone. When I was on that table, I was concentrating on the laser.'*

174. In summary, the Tribunal considered that Patient B's evidence to identify Mr D as the person who carried out the procedure amounts to the following. Patient B had not met any of the four men before; they were all Asian; he does not list the four names to preclude one being Dr Jindal; he did not have prior knowledge of what Dr Jindal looks like in order to form a visual perception while in the room that Dr Jindal was not present; he heard a voice during the procedure; some days later he believes he heard the same voice; and on this second occasion he knew that the person speaking was called Mr D. There is barely any description of the amount of words spoken by Mr D during the procedure or during the post-op assessment, to provide a basis for an opportunity to recognise the voice some days later.

175. The Tribunal sets out below more factors which undermine the ability of a Tribunal to be able to place confidence in Patient B's assertion of his belief that Mr D carried out the procedure. These factors have contributed to the Tribunal's conclusion that whereas the GMC evidence may be capable of founding *a suspicion* in Patient B's mind that Dr Jindal did not carry out the procedure, it is so tenuous and unsatisfactory that it is not sufficient for a reasonable Tribunal to be able to make a finding of fact and find it proved to the civil standard (more likely than not) that Dr Jindal did not carry out the procedure.

176. Patient B's assertion about the identity of the person who carried out the procedure as Mr D is not corroborated by any contemporaneous, objective evidence.

177. Patient B's assertion contradicts the consent form which identified Dr Jindal as the surgeon and the Treatment Report and Surgery Report. The GMC's case is that all entries in these documents about Dr Jindal having the role of surgeon are false.

178. Patient B's assertion contradicts the Ophthalmic Medical Consultation note, which is not the subject of any allegation of dishonesty (see above).

179. The Tribunal noted that Patient B had adopted his witness statement dated 5 December 2022 for his Civil Claim as part of his evidence-in-chief in these proceedings (11 October 2024, day 10) and that during cross-examination in October 2024 he did not object

to being asked questions about it. There was a marked shift in his approach during his oral evidence on 2 and 3 June 2025 (days 20 and 21). If asked about the contents of the statement, Patient B replied, *'I am not here to discuss the civil suit'*. He did this numerous times, often to avoid giving an answer.

180. The Tribunal was concerned about the inconsistencies in the evidence of Patient B about the first time he heard the name of Dr Jindal as his surgeon:

a. At paragraph 51 of his statement dated 5 December 2022 for his Civil Claim, Patient B wrote:
'On 13th September 2017, I received an email from [Mr G]. *He advised me to see my surgeon as he stated that I required further management. He said Dr Prashant Jindal was available on the 22nd September 217, 4th October 2017, 5th October 18th October and 20th October 2017. I booked 20th October 2017 because Dr Prashant Jindal was meant to be there'* (the email is not in the bundle);

b. Ms E, in her oral evidence, endorsed Patient B's evidence that they received an email from Accuvision on 13 September 2017 to the above effect; she thought this email had attached the medical summary (a three-page letter dated 11 September 2017 which included Dr Jindal's name and enclosed six pages of scans [C1/183]);

c. However, Patient B asserted at paragraphs 55-56 of his statement for the Civil Claim that it was not until a few days after 4 October 2017 that he heard Dr Jindal's name as his operating surgeon, stating: *'On the 4th October 2017, Accuvision claimed that they had not received my letter and asked* [Ms E] *to send a copy via email, which she did. A few days later I received my complete medical records from Accuvision, and that was the first time I heard Dr Prashant Jindal's name, shown as my operating surgeon.'*

d. This is at odds with Patient B's evidence that on 13 September 2017 they had received an email which identified his surgeon as Dr Jindal;

e. A further point is that there is no evidence that Patient B or Ms E replied to the email of 13 September 2017 to say words to the effect of *'No, that's wrong, my surgeon was* [Mr D]*'*. If Patient B held a firm belief as at 13 September 2017 (which pre-dates his first contact with Ms F on 26 September 2017, according to his evidence) that Dr Jindal had not been his surgeon, why did he not react?

181. The Tribunal was also concerned about the inconsistencies in the evidence of Patient B about his fitness to work as a XXX after the procedure. In his statement dated 5 December 2022 for his Civil Claim he asserted [C1/236]:

'Since the surgery I have increasing pain and avoid exposing myself to daylight. I have to use a 'wraparound' dark sunglass at all times, and I avoid leaving my home wherever possible. I spend the majority of my time in darkened rooms. I have ceased socialising or participating in day to day tasks, such as shopping, going walking since the surgery. Prior to the surgery I was a proficient [XXX] *training on a daily basis'.*

182. This is directly contradicted by his work invoices and oral evidence about his XXX work in the period March to September 2017, including his invoice dated 10 September 2017 and his invoice dated 19 September 2017 [C1/274].

183. The XXX invoices and customer reviews during 2017 also conflict with the letter dated 13 October 2017 written on '*Centre For Sight'* headed paper which identifies Mr H as medical director. The Tribunal has one page and no author is stated; the document may be incomplete. It is Patient B's evidence that he went to see Mr H and Ms F came too. Patient B's evidence is that on 26 September 2017 he and Ms E had contacted 'My Beautiful Eyes Foundation' and spoke with patient advocate, Ms F [C1/227]. He said that Ms F told them that she had been working with a BBC journalist since 2013 to try to expose Accuvision for illegal activities.

184. The letter from the *'Centre for Sight'* states, '*Reason for consultation… He reports not being able to function at all and unable to work since his operation'*. During cross-examination, Patient B sought to distance himself from the content of that letter, saying *'I can't help what that man wrote down'* [Day 16/25E Transcript].

185. The 'Centre for Sight' letter reports visual acuity scores that are significantly worse than other results during 2017. The scores are not ascertained by objective, scientific equipment but by the answer given by a patient when reading a chart of ever decreasing script. It is beyond the scope of these proceedings for the Tribunal to give further consideration to the nature of the visit to Mr H on 13 October 2017, save to note that Patient B says that Mr H advised him to go back to Accuvision to see his surgeon and *'He told me to not let anybody examine him'* (witness statement for his Civil Claim at paragraph 58 C1/228). This is part of the background to the meeting at Accuvision on 20 October 2017.

186. Patient B says that he and Ms E met Ms F and someone from the BBC in a café near to the Accuvision clinic, on 20 October 2017. They then went to the clinic with concealed

recording equipment and had a meeting with Mr G and then a meeting with Mr I and Mr C, at which Mr D was also present.

187. The Tribunal notes the following points which arise from the audio recordings (and written transcripts):

a. Patient B had asserted in his witness statement dated 11 January 2019 that during the meeting Ms E *'asked* [Mr C] *who had been in the room during my surgery but he refused to say, he just said they were a nurse'* [C1/39]. That evidence is directly contradicted by the recording, which provides objective contemporaneous evidence that Mr C replied that Dr Jindal was the surgeon (pages 8 and 16 of the transcript);
b. Patient B and Ms E did not react to Mr C identifying Dr Jindal as the surgeon by stating a contrary position, that Mr D had carried out the procedure. The Transcript shows no reaction on their part to disagree with Mr C or to counter that Mr D had been the surgeon even though Mr D was in the room.

Summary of the Tribunal's assessment of the GMC evidence of the foundation facts that Dr Jindal did not meet Patient B to discuss the consent form and did not carry out the procedure

188. The Tribunal considers that the GMC evidence of Patient B and Ms E to the effect that Mr K handed them the consent form while they were in the waiting room and left them to sign it and then returned to collect it is wholly unsatisfactory, for the reasons set out above. The Tribunal considered that the reliability of Patient B and Ms E is undermined to such an extent that they cannot reasonably be believed on this issue. The Tribunal considers that the GMC has not put forward a sufficient evidential basis to displace the contemporaneous Ophthalmic Medical Consultation note which evidences a pre-op meeting between Dr Jindal and Patient B. The Tribunal considers that the GMC has not put forward a sufficient evidential basis for a reasonable Tribunal to be able to make a finding of fact and find it proved to the civil standard (more likely than not) that Mr K handed them the consent form in the waiting room and left them to complete it without input from anyone medically qualified. The Tribunal considers that the evidence is so unsatisfactory that a Tribunal could not reasonably and safely find the foundation fact, that Dr Jindal did not meet Patient B to discuss the consent form, proved to the civil standard.

189. Patient B may feel able to draw an inference about the identity of the person who carried out the procedure as surgeon, based on what he says he recalls about the voice he heard during the procedure and at a post-op appointment some days later. However, the Tribunal determined that the GMC has not put forward a sufficient evidential basis for a

reasonable Tribunal to be able to draw an inference and find it proved to the civil standard (more likely than not) that Dr Jindal did not carry out the procedure. The Tribunal is of the view that the evidence of Patient B is very tenuous; at best, it amounts to a basis for a suspicion on his part but no more. A fact-finding Tribunal would be being asked to speculate about what had happened, based on Patient B's suspicion.

190. The Tribunal reminded itself of the point made by Mr L about the wording in the consent form about teamwork and how that might contribute to a suspicion that Dr Jindal did not carry out the procedure on Patient B but that does not affect the overall conclusion of the Tribunal about the insufficiency of Patient B's evidence.

191. The Tribunal concluded that it would not be reasonable or safe for a Tribunal to place reliance on Patient B's suspicion as the basis for a finding of fact that it is more likely than not that Dr Jindal did not carry out the procedure. The Tribunal considers that the identification evidence is so tenuous and unsatisfactory that a Tribunal could not reasonably and safely find the foundation fact, that Dr Jindal did not carry out the procedure, proved.

192. The Tribunal accepted the submission of Mr Singh that there is insufficient evidence to prove the foundation facts alleged in paragraphs 8(a) and 11. It follows that the dependent allegations of knowledge and dishonesty in 8(b), 9, 11 and 12 fall away.

<u>The allegation that Dr Jindal 'completed' the Treatment Report and the Surgery Report and 'indicated' therein that he was the surgeon who carried out the procedure (paragraphs 10 and 11)</u>

193. The Treatment Report and the Surgery Report contain entries which describe Dr Jindal as 'surgeon' [C1/165-173]. The Surgery Report is a printed form headed 'Surgeon Mr P Jindal, Date 28 December 2016, Time 12:00' and has a box at the bottom, 'Discharge Summary, Time 12:45, which has a manuscript signature which appears to be a signature of Dr Jindal. Each page of the Treatment Report has a manuscript signature which appears to be a signature of Dr Jindal. Mr Singh, on behalf of Dr Jindal, said that these are signatures authored by Dr Jindal. The Tribunal considers that there is sufficient evidence for the alleged actions of 'completing' these documents and 'indicating' therein that he was the surgeon to go forward for determination at the end of stage 1.

The Tribunal's Overall Determination on the Rule 17(2)(g) application

194. The Tribunal has decided the application as follows:

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

Patient A

1 On 22 September 2011, you signed a consent form ('Form 1') for Trans-Epithelial laser vision correction surgery ('Procedure 1') in respect of Patient A which indicated that you would be the surgeon to carry out Procedure 1.
Admitted and found proved

2 When signing Form 1, you knew that you would not be carrying out Procedure 1.
17(2)(g) application granted

3 Your actions as described at paragraph 1 were dishonest by reason of paragraph 2.
17(2)(g) application granted

4 Following completion of Form 1, on the same date, you indicated that you were the surgeon who carried out Procedure 1 on a:

a. Treatment Report; **17(2)(g) application granted**

b. Surgery Report. **17(2)(g) application granted**

5 When completing the Treatment and Surgery Reports, you knew that you were not the surgeon who carried out Procedure 1 **17(2)(g) application granted**

6 Your actions as described at paragraph 4 were dishonest by reason of paragraph 5.
17(2)(g) application granted

Patient B

7 On 28 December 2016, you signed a consent form ('Form 2') for Advanced Surface Laser Surgery / trans-epithelial surgery ('Procedure 2') in respect of Patient B which indicated that you:

a. had:

i. discussed the contents of Form 2 with Patient B;
Admitted and found proved

ii. given Patient B the opportunity to discuss any aspects of the proposed procedure with you;
Admitted and found proved

b. were to be the surgeon who would carry out Procedure 2.
Admitted and found proved

8 When signing Form 2, you knew that:

a. you had not met with Patient B to discuss the matters set out at paragraph 7a; 17(2)(g) application granted

b. you would not be carrying out Procedure 2. 17(2)(g) application granted

9 Your actions as described at paragraph 7 were dishonest by reason of paragraph 8. 17(2)(g) application granted

10 Following completion of Form 2, on the same date, you indicated that you were the surgeon who carried out Procedure 2 on a:

a. Treatment Report; Withdrawn

b. Surgery Report. Withdrawn

11 When completing the Treatment and Surgery Reports, you knew that you were not the surgeon who carried out Procedure 2. 17(2)(g) application granted

12 Your actions as described at paragraph 10 were dishonest by reason by paragraph 11. 17(2)(g) application granted

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct.' 17(2)(g) application granted

Tribunal Decision

195. In relation to Patient A, as stated above, the Tribunal accepted the submission of Mr Singh that there is insufficient evidence to prove the facts alleged in paragraphs 2, 3, 4, 5 and 6. This leaves only paragraph 1, which is admitted. The Tribunal concluded that paragraph 1 by itself cannot found an allegation of misconduct or of impairment of fitness to practise and should proceed no further – therefore and determined that Allegations 1-6 should proceed no further.

196. In relation to Patient B, as stated above, the Tribunal accepted the submission of Mr Singh that there is insufficient evidence to prove the facts alleged in paragraphs 8, 9, 11, and 12 of the Allegation. The Tribunal concluded that paragraph 7 (admitted) and paragraph 10 (if found proved at the end of stage 1) by themselves cannot found an allegation of misconduct or of impairment of fitness to practise. The Tribunal determined that Allegations 7-12 should proceed no further.

197. Given that the Tribunal upheld the Rule 17(2)(g) application in its entirety, the GMC's case falls.

198. Accordingly, the Tribunal decided under Rule 17(2)(g) that the hearing should proceed no further.

199. That concludes this case.

APPENDIX ONE: Overview of the other applications made to date during the facts-stage

1. On day one of the hearing, 30 September 2024, the Tribunal announced in public session its refusal of Dr Jindal's application, made through his representative Mr Talbir Singh, KC, that the hearing be adjourned in order to launch an emergency judicial review of the decision made on Saturday 28 September 2024 by a preliminary hearing tribunal ("PHT"). The PHT's decision was set out in its Determination on Preliminary Matters dated 28 September 2024. The PHT had refused to exclude Ms F from observing the public substantive hearing commencing on 30 September 2024 and had refused to direct that the substantive hearing take place in private. The Tribunal's written reasons for its decision to refuse the application to adjourn are set out in Annex A (handed down in private on 17 October 2024).

2. On day three, 2 October 2024, the Tribunal granted an application made by Mr Singh, on behalf of Dr Jindal, that the hearing be adjourned until 14:00 the next day to allow time for skeleton arguments to be prepared for a recusal application. There was no objection from Mr Terence Rigby, Counsel, on behalf of the GMC.

3. On day four, 3 October 2024, the Tribunal granted Mr Singh's application that the hearing be adjourned until the morning of 4 October 2024 due to a personal matter. There was no objection from Mr Rigby on behalf of the GMC.

4. On day five, 4 October 2024, the Tribunal refused an application made by Mr Singh, on behalf of Dr Jindal, for the Tribunal to recuse itself. The Tribunal's written reasons for its decision are set out in Annex B (handed down in private on 7 October 2024).

5. On day seven, 8 October 2024, the Tribunal granted an application made by Mr Rigby, on behalf of the GMC, that Patient A be allowed to give evidence remotely (and from abroad) in order to conclude his evidence. The Tribunal's written reasons are set out in Annex C (handed down in public on 17 October 2024).

6. On 14 October 2024, a non-sitting day, the Tribunal received emails from a third party that were of a threatening nature. These emails made reference to events taking place in the hearing and urged the Tribunal to hear from a member of the public who was observing the hearing. The Tribunal shared these emails with the parties and invited submissions. The Tribunal considered excluding the observer named in the emails under Rule 42. The Tribunal was not satisfied that there was sufficient evidence to link the emails to the observer and determined not to exclude them from the hearing.

8. On day 15, 21 October 2024, the Tribunal refused Mr Singh's application that the Tribunal should recuse itself. The Tribunal's written reasons are set out in Annex D (handed down in private on 25 October 2024).

9. On day 18, 24 October 2024, the LQC of the Tribunal decided to recuse himself for the reasons he gave in Annex E (which was handed down in public on 24 October 2024). By this stage, Patient A and Mr L had given oral evidence and Patient B was part of the way through giving oral evidence. The Tribunal became inquorate, save that it was agreed by the parties that it was proper for it to work in camera during 25 October 2024 (day 19) to finish writing its Annex D. The proceedings were adjourned part-heard to appoint a new LQC and continue on a date to be scheduled. A new LQC was empanelled.

10. On day 20, 2 June 2025, the proceedings resumed before the newly constituted Tribunal.

11. On day 21, 3 June 2025, the Tribunal refused Mr Singh's application, on behalf of Dr Jindal, under Rule 34(1) to admit further documents into evidence. The Tribunal's written reasons for its decision are set out at Annex F (handed down in private on 5 June 2025).

12. On 3 June 2025 after consultation with both parties in private and with the support of both parties, the Tribunal put in place as a matter of case management an internal protocol for handling 'non-party communications'.

13. On day 26 of the hearing, 10 June 2025, The Tribunal granted Mr Singh's application, on behalf of Dr Jindal, for part of the proceedings (submissions on his Rule 17(2)(g) application) to be heard in private under Rule 41(2). The Tribunal's full written reasons for its decision are set out at Annex G (handed down in private on 11 June 2025).

APPENDIX TWO – Quotes of Patient A's evidence about the identity of the surgeon

October 2017 statement for the GOC. Patient A wrote [C1/93-94]:

> *'[9] On the day of my surgery,* [Mr C] *introduced himself as the surgeon…. Throughout the surgery he was right next to me, using the instruments and talking to me… he also had difficulty getting the clamps in my eyes due to the involuntary reflexes……'*

[11]….Throughout the surgery [the person who went through the disclaimer with me] was stationed beyond my feet in the corner of the room…he had absolutely no involvement in what was going on with my eyes….'.

November 2017 Complaint to the GMC. Patient A wrote [C1/150]:

'On the day I had my laser eye surgery I met two people: the surgeon and someone assisting. The assistant went through the disclaimer with me before, but aside from that he did nothing. He stood in the corner of the room beyond my right foot…' and stated that the assistant was Dr Jindal.

May 2019 and November 2020 witness statements. Patient A adopted his 2017 statement for the GOC and his November 2017 Complaint to the GMC and maintained that:

'Dr Jindal was present in the room while my surgery was performed but he was not involved and he was positioned in the corner of the room beyond my feet while the surgery was performed on my eyes by [Mr C]*'* [C1/2].

Patient A's oral evidence about his belief that it was Mr C who carried out the procedure:

About the number of people in the room:

A: "There was a third person who was behind my right shoulder, so next to [Mr C] *at the time that he was performing surgery, but that person wasn't relevant. That's why…*

Q I'm not…

A …. I omitted them from any report.

Q Well, why is that third person not relevant?

A Because they weren't signing any documents to claim to be my surgeon and they weren't performing surgery on me without being a qualified surgeon. I don't know that person's name, I don't know who it is, I don't know who it was. He wasn't somebody who was relevant to the situation that I was in which was giving – which was reporting the fact that [Mr C]*, as an unqualified person, performed surgery on my eyes while Dr Jindal signed documents and sat in the corner watching while the surgery was performed on me. …. I mentioned a third person in my previous tribunal because it was putting the three people in the room…."* [Day 7/45 Transcript]

……

Q: "Your recollection is that there's two people behind you?

A: No, no, sorry, there was one person behind me, they're slightly off to my right.

Q: Was there nobody sat down behind you as your eye is under the laser?

A: That person I can't remember – I don't know if they were sitting down or not. [Mr C] *was kind of next to my right shoulder, leaning over from, like, I guess next to my right shoulder is the closest I could say, leaning over me from somewhere just there. The other person was further behind,* [Mr C] *was right behind me here. So I – yes, I guess, again we're getting into semantics, but he was just there, somewhere around there."* [D7/50-51 Transcript]

About seeing and hearing during the procedure:

Patient A said, *"I couldn't see* [Mr C] *while the lasers were working on his eyes"* and that once he was lying down, *"Though I wasn't – as you say you can't look at somebody,* [Mr C] *was talking to me fairly constantly. He was the one who put everything into my eyes because he's talking to me as he's doing stuff….."* [Day 7/49-51 Transcript];

……

"A: As I lay down on the bed [Mr C] *was positioned next to my head. From the first moment of the drops he never moved away from my head, so he was always there right next to my right shoulder leaning over me, the whole way through; it was the same consistent voice the whole way through. I think I mentioned, you can't see but you are aware of movements and things and he was there the whole time – absolutely the whole time. The same voice, the same person. It is absolutely ... There's no question about that at all. It was one person there the whole time who was* [Mr C]*."* [Transcript Day 8/12, underlining added]

……

A: "Sorry, I am not identifying him by his voice. What I mean is there is somebody there who I know is [Mr C]. *He starts doing things with my eyes and he is talking to me consistently through the whole operation. He is the one who is leaning over me. So the point at which I lost visual sight of* [Mr C], *but I am still aware there is one person there – I am still aware that it is the same voice throughout the whole surgery from the point that the lights are on, he is talking to me, I can see who it is, to the point that I sit up – it is the same voice, it is the same person, it is the same presence the whole time in the same place in the room.*

Q: You say you recognised the voice.

A: Sorry, the voice was consistent." [Transcript Day 8/13, underling added]

……

A: "It's the fact that I could see him speaking to me, I know that's [Mr C]; *the lights go down, that voice is still speaking to me continuously through the whole surgery, leaning over me."* [Day 8/14B]

……

Q: "Did you hear any other voice in the surgery room apart from that one voice?

A: No. I am pausing because at one point [Mr C] *whispered something to the other person who was behind me. I can't remember if that person responded or not. So that would be the only ... I couldn't say for certain that that person didn't say something at one point."*
[Day 8/14 underlining added]

ANNEX A – 17/10/2024

Application to Adjourn the Hearing

1. On day one of the hearing, 30 September 2024, Mr Talbir Singh KC, on behalf of Mr Jindal, made an application to adjourn the hearing in order to issue an application for an emergency judicial review of a Medical Practitioner's Tribunal ('MPT') Preliminary Hearing's decision made on 28 September 2024.

2. Mr Singh submitted that this hearing was, in effect, a retrial. The case first came before an MPT in September 2022 and had reached a point where the first stage evidence had concluded and the Tribunal started deliberating on the facts. The Tribunal recused itself as it principally felt that the actions of an individual, Ms F, may have created an appearance of bias.

3. Mr Singh told this Tribunal that a subsequent ruling from a MPT was that Ms F was not to be admitted entry into this hearing. That decision was taken to the High Court by Ms F. The High Court did not rule upon the Tribunal decision-making process and rejected the judicial review. Comments were made about the conduct and behaviour of Ms F and, as a result, the GMC no longer pursued the exclusion of Ms F and left any such application to Dr Jindal's legal team.

4. Mr Singh drew the Tribunal's attention to a lengthy preliminary hearing that had taken place from 26-28 September 2024, the weekend before the commencement of this substantive hearing. Ms F represented herself. The Tribunal's decision at the preliminary hearing was that Ms F be allowed to observe this substantive hearing. Mr Singh submitted that under Rule 30 of the Rules, this Tribunal was now bound by that decision. On behalf of Dr Jindal, his defence team disagreed with this decision and intended to launch an emergency judicial review, which can take 24-48 hours under emergency provisions. Mr Singh submitted that because this Tribunal could no longer adjudicate on that topic, Dr Jindal's legal team ought to be given the time to launch the application.

5. Mr Singh furnished the Tribunal with documents that included:

- 2022 Tribunal's Determination in respect of excluding Ms F from attending the hearing, dated 16 September 2022;
- 2022 Tribunal's Determination regarding the question of whether the Tribunal should recuse itself, dated 17 September 2022;
- Determination from a MPT preliminary hearing, dated 25 June 2024;

- High Court ruling in respect of Ms F's request for a judicial review, dated 6 September 2024;
- Determination from a MPT preliminary hearing, dated 28 September 2024.

6. Mr Singh took the Tribunal through the background of the case in relation to Ms F. He submitted that the necessary documents had been drafted and Dr Jindal did not seek to delay this hearing. If the High Court Judge ruled that the application was not urgent, and this hearing could continue, Dr Jindal would make no further application to adjourn. Dr Jindal and his team wanted the case concluded and shared the desire to conclude the hearing with expedition. They wanted to ensure the smooth running of this case with no disruptions to the Tribunal, legal representatives, witnesses and other members of the public.

7. Mr Singh reminded the Tribunal he was making the application to the High Court under the emergency provisions. If the GMC position that an application should be submitted in the usual way was considered, it may take a number of weeks before a High Court could convene. Therefore, this substantive hearing would be unable to go ahead and this is why the emergency provisions of a judicial review were being invoked. Mr Singh submitted that because of the protracted history of these proceedings nothing should be done until the High Court had responded.

8. On behalf of the GMC, Mr Terence Rigby, Counsel, opposed the application. He submitted that had there been an application prepared for a judicial review by now for an urgent hearing, this application would have more force. Nothing had been served on the GMC or Administrative Court. Mr Rigby questioned the timescale put forward by Mr Singh and acknowledged that the Administrative Court could make a ruling very quickly if urgent.

9. However, in this particular situation there had been a very serious contest between Dr Jindal and Ms F and Ms F had not sought an urgent final order after challenging the decision to exclude her from these proceedings. Mr Rigby submitted that this application being made by Dr Jindal was not more urgent than Ms F's application. If, and when, an application were to be made to the Administrative Court, the GMC would be given the opportunity to respond, as would Ms F. If pursued, there would be a full scale hearing that could not be heard this week.

10. Mr Rigby submitted that from a practical point of view, the GMC very much objected to making an order now to not just delay but to stay this hearing. This hearing kept being put off and needed to proceed and be dealt with and nothing would be achieved by granting the application to adjourn.

The Tribunal's Decision

11. The Tribunal was mindful that it needed to balance any prejudice to parties on an application of this type. It also bore in mind that it was bound under Rule 30, by the decision made at the preliminary hearing on 28 September 2024, that Ms F be permitted to attend this substantive hearing.

12. The Tribunal took into account that it did not know when the High Court would make the decision on whether the judicial review application was urgent. It also did not know when, if the application was successful, the High Court would hand down its decision regarding Ms F's attendance at these proceedings.

13. The Tribunal considered it not to be in the interests of justice to adjourn the hearing for a short period to find out if the High Court would deal with this matter as an urgent application, owing to the many unknowns and intangibles of this case.

14. The Tribunal acknowledged that there was the potential for Dr Jindal to feel uncomfortable in Ms F's presence and that her attendance may affect him giving his best evidence. However, it formed the view that it would be in the interests of justice to proceed as scheduled and not delay matters any further. Any application for a judicial review into the decision of the preliminary MPT on 28 September 2024 could be submitted in the meantime. If and when any High Court response warranted a revisit of the Tribunal's decision, the Tribunal would be happy to hear submissions from both parties at that juncture.

15. The Tribunal offered to make reasonable adjustments if that would assist Dr Jindal to give his best evidence.

16. Accordingly, the Tribunal refused Mr Singh's application for the hearing to be adjourned in order to launch an emergency judicial review.

ANNEX B – 07/10/2024

Application that the Tribunal recuse itself

1. On day five of the hearing, Friday 4 October 2024, Mr Talbir Singh KC, on behalf of Mr Jindal, made an application for the Tribunal to recuse itself.

Background

2. This application arose from a comment that was made by Mr Rigby, Counsel for the GMC, as to raising Dr Jindal's character should the cross examination of Patient A continue in a way that was calling into question the character of Patient A.

3. After Mr Singh had accused Patient A of being a *"liar"* several times, and being unable *"to give a straight answer",* Mr Rigby stated: *"Forgive me, I think there is an issue we may need to discuss in private without the witness*". The LQC agreed to this and Patient A, along with the two observers in the public gallery, were asked to leave the hearing room.

4. Once the witness had left, and the public gallery cleared, Mr Rigby advised the following:

> *"I just want to make a – what shall we say – public comment in effect to my learned friend that if he continues to call this witness a liar we will certainly seek to put the character of his client before you."*

5. Mr Singh objected to this and pointed out that this matter should have been raised by Mr Rigby with him first under the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), and the protocol and traditions of the Bar. Mr Rigby responded that he wanted to make sure that Mr Singh's line of questioning of Patient A stopped.

6. The hearing was adjourned to discuss these comments.

Submissions

<u>On behalf of Mr Jindal</u>

7. Mr Singh submitted that there were matters externally that were interfering with these proceedings. He said that there was no suggestion this Tribunal was, in fact, biased but there was an appearance of bias, and the Tribunal must view this application much wider than usual as to why the two patients were making the assertions that they were. Ms F was part of a long-standing dispute with the owners of Accuvision and there was also a sustained online campaign against Dr Jindal.

8. Mr Singh confirmed that the GMC was not aware of his intention to attack the character of Patient A, but was aware that the character of Patient B would be attacked. Mr Singh, after clarification from the Tribunal Clerk, accepted that this matter was marked in the record as being in private and would not be available to the public should they request a transcript. He did however submit that it could still be argued that the matter was raised in public and that an application could be made to have that part of the transcript released to the public by way of an application to the High Court.

9. Mr Singh said it was the cumulation of the matters referred to in his written submissions that led to the application for recusal. He said he would underscore the words *"a fair minded observer armed with those facts".* He said that Dr Jindal's legal team had a large bundle of posts online of a hostile campaign against Dr Jindal and that they had considered putting this information before the Tribunal.

10. Mr Singh said these were all facts that a reasonable bystander would be aware of and were relevant to the application for recusal.

On behalf of the GMC

11. Mr Rigby said that much of the application to recuse was completely irrelevant and that a professional Tribunal led by a legal chair can ensure that Dr Jindal has a fair hearing.

12. Mr Rigby submitted that the Tribunal should not be concerned with matters outside of the hearing and it should not recuse itself just because some party may publish some information about this matter. That was completely irrelevant.

Relevant Legal Principles

13. The Legally Qualified Chair ('LQC') gave the following advice to the Tribunal, which was accepted by the Tribunal and parties.

14. Some of the case law referred to below is framed around courts and Judges rather than Tribunals, however it still applies to these proceedings.

15. The basic principle is that a Tribunal hearing a case must be impartial and that justice *"should not only be done, but should manifestly and undoubtedly be seen to be done"* (*R v Sussex Justices, ex p McCarthy [1924] 1 KB 256*). A Tribunal will not be impartial if, for example, they have a direct financial interest in the outcome of the case. In such cases, a Tribunal will automatically be disqualified from hearing a case: the fact of the interest alone is sufficient. So too if it can be positively demonstrated that the Tribunal is biased in favour of a particular party, known as *"actual bias".*

16. The principle extends beyond direct interests in the outcome or positive evidence that the Tribunal is biased in favour of one side, however. If in some other way the Tribunal's conduct or behaviour gives rise to a suspicion that they are not impartial, then the Tribunal will also be disqualified from hearing the case. Not all such suspicions justify the *recusal* of a Tribunal; the suspicion must be objectively justified by reference to the concept of the *"fair-minded and informed observer".* If such an observer would consider that there was a real possibility that the Tribunal was biased, then the Tribunal must recuse themself. This is known as *"apparent bias".* Most cases in this area are in respect of allegations of apparent bias rather than of there being actual bias or a personal interest in the outcome of the case. The prejudice to the administration of justice and delays that arise from a successful recusal application are not relevant factors when determining whether the application should be

allowed. If the test for the relevant category of bias is established, then the Tribunal must not hear the case, irrespective of any resulting inconvenience. The decision whether or not to recuse is not a discretionary case management decision. The Court of Appeal said in *Morrison v AWG Group Ltd* [2006] EWCA Civ 6, when dealing with an allegation of apparent bias, that such issues:

> *"are totally irrelevant to the crucial question of the real possibility of bias and automatic disqualification of the judge. In terms of time, cost and listing it might well be more efficient and convenient to proceed with the trial, but efficiency and convenience are not the determinative legal values: the paramount concern of the legal system is to administer justice, which must be, and must be seen by the litigants and fair-minded members of the public to be, fair and impartial. Anything less is not worth having." (Paragraph 29.)*

Where there is *"real ground for doubt"* about the ability of the judge to try the matter objectively, then that doubt should result in *recusal* (*Locabail v Bayfield* [2000] QB 451, at paragraph 25). However, there must be a sufficient basis for such doubt: *"To insist upon sitting when there is real ground for doubt does a disservice to the critic: to recuse oneself because one is too ready to admit real ground for doubt does a disservice to the critic's opponents."* (*Ghadami v Bloomfield and others* [2016] EWHC 1448 (Ch), at paragraph 17.)

Apparent bias

17. The test for whether there is apparent bias is that set out by Lord Hope of Craighead in *Porter v Magill* [2002] 2 AC 357:

> *"The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Tribunal was biased."*

The relevant facts that are to be taken as known to the fair-minded and informed observer are not limited to those which are in the public domain (*Virdi v Law Society* [2010] EWCA Civ 100, at paragraphs 42-49).

18. In *Broughal v Walsh Brothers Builders Ltd and another* [2018] EWCA Civ 1610, the Court of Appeal, after an extensive review of the authorities, confirmed that a judge who refuses permission to appeal on the papers is not automatically disqualified from hearing the substantive appeal, or any oral renewal of the *application* for permission. The judge would, however, be disqualified on the ground of apparent bias if, when refusing permission on the papers, they had expressed their views in such a way as to indicate to any fair-minded lay observer that they had reached a concluded view and are unlikely to be open to further argument (*paragraph 35*).

19. In *Bates v Post Office* [2019] EWHC 871 (QB*)*, the managing judge trying lengthy group litigation rejected an *application* to recuse himself on the basis of findings he had made in a

judgment at the end of one of the phases of the litigation which were alleged by one of the parties to show that he had pre-judged issues due to be determined at a subsequent stage.

Criticism of the Tribunal

20. A judge asked to recuse himself or herself should do so only where the case is properly made out. It must be borne in mind that, in our system, litigants are not permitted to choose their judges. In *Dobbs v Tridios Bank NV* [2005] EWCA 468, Mr Dobbs criticised Chadwick LJ in relation to a hearing in which the judge had taken part, and asked that he recuse himself. Chadwick LJ (with whom Longmore and Neuberger LJJ agreed) declined to do so. He said:

> *"7. … But it is important for a judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is this. If judges were to recuse themselves whenever a litigant criticised them, we would soon reach the position in which litigants were able to select judges to hear their cases simply by criticising all the judges that they did not want to hear their cases. It would be easy for a litigant to produce a situation in which a judge felt obliged to recuse himself simply because he had been criticised -- whether that criticism was justified or not. That would apply, not only to the individual judge, but to all judges in this court; if the criticism is indeed that there is no judge of this court who can give Mr Dobbs a fair hearing because he is criticising the system generally. Mr Dobbs' appeal could never be heard.".*

Inclusion of irrelevant material

21. If the Tribunal has received what is usually called irrelevant material the Tribunal must put this information out of its mind, otherwise the Tribunal should not continue to hear the case and should recuse itself.

22. *R. (on the application of Short) v Police Misconduct Tribunal*; the test for apparent bias had not been met where a *police* disciplinary Tribunal had refused to recuse themselves after the legally qualified Tribunal chairman had been sent documents which were allegedly prejudicial and irrelevant. It was likely to be common in Tribunals that a legally qualified chair would see or hear evidence that was irrelevant; in approaching his task professionally, he should be able to put such evidence out of his mind.

23. *AB (a barrister) v Bar Standards Board*: The barrister did not attend the hearing and within the bundle of papers was an email from the Metropolitan Police which tended to suggest that the author thought there was a credible case of a perversion of the course of justice by the barrister.

24. In this case the document went before an expert Tribunal chaired by a retired judge and such a Tribunal can be trusted to make a proper assessment of information of that kind

and not to attach weight to irrelevant information or inappropriate weight to incomplete information.

25. The information given to the Tribunal in this case was without any detail compared to the full account of a Doctor's misconduct and striking off in, *R (Mahfouz) and The Professional Conduct Committee of the General Medical Council* [2004] EWCA 2004.

The Tribunal's Decision

26. The Tribunal had regard to its decision to allow Mr Rigby's request to raise the matter in the absence of the witness as an application to go into private session as per Rule 41, despite this Rule not being explicitly referred to. The Tribunal reminded itself that there was no objection from Mr Singh in relation to clearing the hearing room.

27. The Tribunal had been made aware of various matters mainly by Mr Singh and accepted there was a background of which it was not aware other than it was very distressing and involved negative posts about Dr Jindal online. The Tribunal was given information about the *"bundle"* of online posts about Dr Jindal and of the fact that Ms F's evidence was discredited and that some matter relating to Dr Jindal from 2011 existed.

28. The Tribunal took into account Mr Singh's submission that these matters and the others raised within the application contributed to an inability to afford Dr Jindal a fair hearing. The Tribunal was conscious of the fact that all these matters, other than the comment by Mr Rigby, existed prior to the commencement of this hearing. The Tribunal formed the view that the addition of Mr Rigby's comment did not affect what already existed.

29. The Tribunal also noted that Mr Rigby confirmed that both parties had discussed that there was likely to be an attack on the character of Patient B and that this may lead the GMC to apply to bring in the character of Dr Jindal.

30. The Tribunal placed themselves in the shoes of the fair-minded observer and applied the test as set out in *Porter V Magill* and, in addition, reminded itself that the relevant facts that were to be taken as known to the fair-minded and informed observer were not limited to those which were in the public domain. This could not, in the Tribunal's view, include facts of which the Tribunal was not aware, as to include such matters, would require the Tribunal to speculate.

<u>What the Tribunal knows from the GMC relating to Dr Jindal</u>

31. This was limited to the fact that the GMC may bring in evidence relating to the character of Dr Jindal due to the nature of the cross examination of Patient A.
As observed in its previous decision about whether to pause the evidence of Patient A, the questioning that raised in the GMC's mind the potential of calling the character of Dr Jindal into question, was a conscious choice by Mr Singh following instructions and/or legal advice. The Tribunal noted it had been given more background by Mr Singh than by Mr Rigby. Mr

Singh had referenced the date of 2011 and had informed the Tribunal that the witness, Ms F, a GMC witness in the previous Tribunal hearing, was dispensed with as a witness when independent evidence contradicted her account.

32. In the Tribunal's view the case of *Dobbs v Tridios Bank NV* [2005] EWCA 468, had some relevance to the situation where information is given by those who make an application for recusal. The following paragraph was of assistance:

> *"…If judges were to recuse themselves whenever a litigant criticised them, we would soon reach the position in which litigants were able to select judges to hear their cases simply by criticising all the judges that they did not want to hear their cases. It would be easy for a litigant to produce a situation in which a judge felt obliged to recuse himself simply because he had been criticised…"*

33. The Tribunal had regard to Mr Singh's submission that Mr Rigby's comment, when coupled with the matters individually or cumulatively, meant that the Tribunal should recuse itself. The Tribunal concluded that although the situation it found itself in was not initially produced by Dr Jindal, the subsequent and more detailed information was produced by his counsel, Mr Singh.

34. The Tribunal did not accept that adding Mr Rigby's comment to what the Tribunal had already seen and heard meant that it was likely to speculate in the way suggested by Mr Singh. Also, the Tribunal did not accept Mr Singh's submission about the potential for the posting of additional material on an online forum as a result of Mr Rigby's comment, given that this comment was made in private session.

35. The Tribunal noted that prior to commencement of this hearing, no application, to its knowledge, was made regarding the inability for Dr Jindal to have a fair hearing based upon the information that existed in the public domain at that time. The following paragraph of *Dobbs v Tridios Bank NV* [2005] EWCA 468 was of relevance:

> *"if the criticism is indeed that there is no judge of this court who can give Mr Dobbs a fair hearing because he is criticising the system generally. Mr Dobbs' appeal could never be heard."*

The Tribunal determined that if the application had been put in this way, then it would have been entirely rejected. In essence, the application came down to whether Mr Rigby's comment meant that, when considered together with all the other information that was now before the Tribunal, that there was a real possibility of bias.

36. In *Resolution Chemicals Ltd v H Lundbeck A/S* [2013] EWCA Civ 1515, the Court of Appeal emphasised that there must be a real possibility of bias; although the standard of probability does not have to be reached, the test is not whether there is *"any possibility"* of bias. Taking all of the matters into consideration and placing itself in the shoes of a fair-minded observer, as per the relevant test, the Tribunal does not consider that such a fair-

minded observer would consider that the Tribunal was biased even when knowing facts that were not in the public domain. That included matters raised in private sessions but not information of which the Tribunal was not aware.

37. In all the circumstances the Tribunal concluded there was not a real possibility of bias as there must be for the Tribunal to recuse itself. Accordingly, it refused the application to recuse itself and determined that Dr Jindal was able to have a fair trial.

ANNEX C – 17/10/2024

Application for Patient A to give evidence remotely

1. On day seven of the hearing, 8 October 2024, Mr Rigby made an application on behalf of the GMC that Patient A be permitted to give evidence remotely via video link.

2. Patient A had originally been scheduled to give evidence in person on day two of the hearing only, 1 October 2024. However, cross examination carried over to day three, 2 October 2024 and, due to other issues that arose on this day, Patient A was unable to conclude his evidence. Patient A lives in XXX and his flight home was that afternoon. He advised the GMC that, due to commitments he already had, such as XXX home and family matters, it would be difficult to return to the UK to give evidence in person again. However, he was happy to give evidence remotely outside of the times that he was unavailable.

3. Mr Rigby submitted that if Patient A could not give his evidence from abroad, he would be greatly inconvenienced by having to fly back to Manchester and stay at least one more night. It was in the interests of justice that Patient A be permitted to give evidence remotely as provided by the Rules:

> ***34*** *(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.*

4. Mr Rigby submitted that *"the boat had sailed"* in relation to whether there was any advantage in Patient A giving evidence in person versus remotely. Mr Rigby told the Tribunal

that Mr Singh could cross examine Patient A and take as long as he wished to, remotely. In respect of Patient A being in a foreign jurisdiction, the GMC and MPTS had both offered guidance and confirmed this would not be an issue. Mr Rigby referred the Tribunal to relevant case law including *Agbabiaka [2021] UKUT 00286 (IAC)* and *GMC v BBC [1998] EWCA Civ 949,* as well as the MPTS guidance on giving evidence from abroad. This guidance had been updated in October 2024, superseding the previous guidance of 18 October 2023.

5. Mr Rigby advised that the MPTS had been in contact with the Foreign, Commonwealth and Development Office ('FCDO') in relation to the status of the MPTS, i.e. whether it was exercising the judicial power of the state. Mr Rigby stated the FCDO had confirmed it was not and submitted that any idea that an official or senior official at the FCDO would be flippant on this matter was outrageous.

6. On behalf of Dr Jindal, Mr Singh made submissions and produced an additional bundle of documents. He submitted that Patient A could not give evidence from abroad and the undisputed position of the law was that permission must be obtained by the Tribunal. He told the Tribunal that the basis for any change in the guidance was unknown and had changed at 10:00 only that morning. Mr Singh submitted that the guidance had changed at the same time as the GMC was making its application and that it would look unfair to a reasonable bystander.

7. Mr Singh asked why, if the Tribunal was not deemed to be a tribunal within the legal framework, had the MPTS embarked on the procedure and new guidance been placed before the Tribunal in highly extenuating circumstances under pressure of time, without knowing the proper basis for this advice. Mr Singh submitted that effectively, the GMC placed this Tribunal in a difficult position of giving detailed judgment about whether the overseas legal procedure outlined in case of *Agbabiaka* be adopted or not.

8. Mr Singh asked if all relevant information had been provided to the FCDO by the MPTS. He submitted that the *BBC* case would not assist the Tribunal as that centred around the definition of a *'court',* which was not the topic of discussion here. Mr Singh told the Tribunal that Patient A's evidence could be concluded in person and it was beyond the shadow of a doubt that live, in-person testimony was best, with body language etc all making a difference.

The Tribunal's Decision

9. The Tribunal first considered whether the updated guidance of the MPTS was applicable. The updated guidance was issued shortly before the application by Mr Singh in relation to taking evidence from abroad. The Tribunal acknowledged Mr Singh's submission that it did not know the reasons for the change. However, it concluded that as a Tribunal it did not need to know and that the guidance was that which is currently in force and superseded the previous guidance. The Tribunal acknowledged that this was the guidance and it was within the Tribunal's power to disregard it if it considered that it was wrong in law.

10. The Tribunal then considered whether the position stated in the guidance and by the FCDO was correct. To answer this question, it first determined whether it was a Court or Tribunal to which the relevant law and procedure applied in relation to receiving evidence from abroad, i.e. whether the MPTS was exercising the judicial power of the state. The Tribunal referred to the list of tribunals and courts found on the Government website. The MPTS does not appear on the list of Courts and Tribunals that prefaces the list of countries therein. XXX is listed and the entry says the following:

> *"Citizens or residents of* [XXX] *who want to give evidence from* [XXX] *by video link in UK civil and commercial and administrative tribunals must request permission on an individual basis. Contact the relevant tribunal for information."*

11. Moving onto the case law referred to, the case of *GMC v BBC*, the Tribunal was of the view that this was relevant. This concerned a determination as to whether the Professional Conduct Committee ('PCC') which exercised similar functions to the MPTS, was exercising the judicial power of the state. It was found in that case that the PCC, *"….is exercising a sort of judicial power but in our judgment it is not a judicial power of the state which is being exercised."* The Tribunal concluded that the MPTS is similarly not exercising a judicial power of the state.

12. The Tribunal, accordingly, found that the guidance on the Government website in relation to taking evidence abroad did not apply to this Tribunal and it was, therefore, not bound by the procedure therein.

13. The Tribunal considered that, even if the guidance had applied to this Tribunal, it noted that paragraph 20 of the guidance issued by the President of the First – Tier Tribunal, Immigration and Asylum Chamber dated 13 September 2024, which states the following, in relation to countries where individual permission is required:

> "*20. When considering the application for permission to rely on oral evidence from a person abroad, the Tribunal shall only rely on current information provided by the ToEU" (taking of evidence abroad unit)"*

14. The Tribunal had current information from the taking of evidence abroad unit by way of emails which state:

> *"The legal principle underlying the Taking of Evidence process is that States are sovereign equals and one State will not do anything that breaches the other State's sovereignty. This means that if any part of the UK State is involved in conducting and/or managing the proceedings then the Taking of Evidence Process would apply.*
>
> *However, as far as the FCDO is aware, cases heard at the Medical Practitioners Tribunal Service are wholly private proceedings and do not have any State authority behind them. If this is indeed the case, then the proceeding would fall outside the*

purview of the ToE Team and therefore the Taking of Evidence Process would not apply.

Local legal advice is available, should you want to discern whether you are adhering to the host countries local laws. Information on how to find a local lawyer abroad can be found below:
Find a professional service abroad - Find a lawyer abroad (fcdo.gov.uk)"

15. The Tribunal relied upon this current information from the taking of evidence abroad unit, together with the MPTS guidance and its interpretation of the *GMC v BBC* case referred to above.

16. The Tribunal was content that it was in the interests of justice to allow Patient A to conclude his evidence by way of video link. It made this decision on the basis that to not allow Patient A to do so, may result in undue delay in this hearing and may result in the evidence of Patient A not being concluded.

17. Therefore, the Tribunal determined to grant Mr Rigby's application to allow Patient A to continue his evidence via video link.

ANNEX D – 25/10/2024

Application for the Tribunal to recuse itself

270. On Day 14 of the hearing, 17 October 2024, Mr Singh made an application, on behalf of Dr Jindal, that the Tribunal should recuse itself from these proceedings.

Background to the application

271. On day 11 of the hearing, 14 October 2024, a non-sitting day, the Tribunal received emails from a third party by the name of '[Mr P]'. These emails were regarding the hearing and included racist language, veiled threats to the Tribunal and an insistence that the Tribunal should allow a particular observer at the hearing to address them. The emails were disclosed to parties in the afternoon of Day 11 and then raised in session the following morning. At that time, the GMC's witness, Patient B, remained on oath in the middle of his evidence. The Tribunal raised the emails with the parties, acknowledged the seriousness of them and addressed the potential next steps, which could include excluding the observer. Patient B was only available during the morning session so, in the interest of progressing the case, the Tribunal, with agreement from the parties, decided to continue with Patient B's evidence, with the intention of addressing the emails in the afternoon.

272. At the end of the morning session, Patient B indicated his desire to continue giving evidence after lunch. The Tribunal and parties then had further discussion on the issue of the emails. The LQC mentioned the possibility of issuing some kind of warning to the observer. Mr Singh raised a concern at this stage that he felt like the Tribunal had diluted its position on the issue and appeared to have already made its decision without the further discussion that was expected.

273. Mr Singh subsequently advised the Tribunal that the handling of this issue was of serious concern to him and that he was left with no choice but to make a recusal application, which should be dealt with before the Tribunal considered whether or not to exclude the observer.

274. Later, after hearing parties' comments on the issue and having been informed that Patient B would not be able to continue giving evidence that afternoon, the Tribunal determined to consider the matter of exclusion before hearing Mr Singh's application for recusal. The Tribunal accepted Mr Singh's suggestion that if they were to question the observer, then a warning should be given in relation to them potentially incriminating themselves. In dealing with this consideration, the Tribunal invited the observer to give comments limited only to their knowledge or involvement in the emails. The observer elected to do this and did so under affirmation. The Tribunal advised the parties that it would ask these questions and the parties would not be permitted to ask any questions as the observer was not a witness in the case.

275. On Day 13 of the hearing, the Tribunal received a further email from Mr P, which was disclosed to the parties in session at the first opportunity.

276. On Day 14 of the Hearing, Mr Singh made his application for recusal. Mr Singh said that the way that this had been handled by the Tribunal, combined with the content of the emails it had received and the way other applications had been dealt with previously meant that there was a real possibility that the Tribunal may be biased or be perceived by the public to be biased and that it should therefore recuse itself.

Submissions

<u>On behalf of Dr Jindal</u>

277. Mr Singh told the Tribunal that this application differed from his previous application for recusal in that the first application was limited to a discrete piece of information that had

come to the Tribunal's attention. He submitted that there was now an accumulation of events and information that meant the Tribunal must consider whether there was any possibility this had led to it becoming biased or that there could be a perception of bias. He said that this issue raised uncomfortable questions and that justice must be seen to be done.

278. Mr Singh submitted that there were six grounds underpinning his application. Namely that there was a possibility of procedural impropriety, judicial bias, improper influence or the perception of any of these issues. He submitted that Judges are required to perform their duties without fear, favour, affection or ill will and it was the Tribunal's obligation to conduct its business free from external influence. Mr Singh submitted that events had transpired that meant a reasonable bystander could have the impression that the Tribunal was biased.

279. Mr Singh told the Tribunal that, when the issue of the Mr P emails was raised, he had submitted that the proper course of action was to either exclude the observer or for the Tribunal to recuse itself. He acknowledged that, when he had told the Tribunal that there was evidence linking the emails to the observer, he had not then provided that evidence. However, Mr Singh submitted that it was unfair that the Tribunal described this as a choice on the part of the Defence as the reason for the delay was that the evidence was not yet in a format that could be shared, and Mr Singh had not had the opportunity to address this. He submitted that, at the time, it was unclear whether the Tribunal would consider exclusion or recusal first and so was waiting to present the material – it was merely a practical issue of producing presentable material.

280. Mr Singh submitted that, on the afternoon of day 12 of the hearing, when the Tribunal invited comment from the observer, he was not aware that the Tribunal was going to take such action immediately. He submitted that he had attempted to object but this was overruled and that parties were then denied their right to cross examine the observer, who appeared to have taken on the role of a witness giving evidence. Mr Singh submitted that this series of events, coupled with comments from the LQC that the observer could write what she liked, gave the impression of unfair bias towards the observer. Mr Singh said that this did not instil confidence in Dr Jindal, or a reasonable bystander, that the Tribunal was unbiased.

281. Mr Singh submitted that, in dealing with the emails and the link to the observer, the Tribunal had introduced a burden and standard of proof. He said that there did not need to be evidence linking the two for the Tribunal to be able to exclude the observer. Mr Singh said it was not necessary to introduce a burden of proof as the observer was not a

party in the hearing and the decision to exclude could just be based on whether there was an arguable connection. Additionally, Mr Singh submitted that it was unclear who that burden was upon and said that a reasonable bystander would question why the burden of proof had been introduced and the Tribunal's position apparently changed from the morning.

282. Mr Singh submitted that the first email from Mr P had caused intimidation, as evidenced by the LQC's comments to that effect and the fact that he had reported the email to the Police. Mr Singh said that this action was quite reasonable and would be taken by anyone else in the same situation but was evidence of intimidation and was further material that the Tribunal would need to put out of its mind when considering the case. Mr Singh submitted that a reasonable bystander would find it incongruous that the Tribunal would feel intimidated and yet be able to put that intimidation out of its mind. Mr Singh further submitted that the list of things that the Tribunal must put out of its mind now included the intimidation of the emails, Dr Jindal's character and history and the character of a potential defence witness. Mr Singh submitted that the Tribunal was being asked to perform Olympian levels of mental gymnastics to put all of these factors out of its mind.

283. Mr Singh also submitted that there had been improper communications between the MPTS and the GMC, which had not been disclosed to parties. He submitted that the question ought to be addressed whether the issue of costs of High Court proceedings had ever been discussed between this Tribunal or any previous Tribunal and members of the MPTS.

284. Mr Singh submitted that he had still not received full disclosure regarding communications about how the guidance on hearing witness evidence from abroad came to be updated. He said that the nature and timing of communications that had been disclosed would give a bystander the impression that the MPTS was assisting the GMC in an application that it was about to make. Further, he submitted that it was improper for the LQC to have contacted the FCDO of his own volition. Mr Singh submitted that this constituted the LQC 'stepping into the arena' and a bystander would question whether this was consistent with the actions of an impartial Tribunal. Mr Singh submitted that the onus was on the party making an application to demonstrate its legality, the LQC and the MPTS should not have been involved. He reminded the Tribunal that the guidance on this topic was changed on the very morning that the GMC was about to make its application and that this timing would be questioned by a reasonable bystander.

285. Mr Singh also submitted that the Tribunal had demonstrated partiality towards Patient B in the way it had accommodated his alleged health issues. Mr Singh submitted that Patient B's health was a topic of dispute, and it was for the GMC to address the Tribunal, not for the Tribunal to take affirmative action of its own accord.

286. Mr Singh submitted that the cumulative effect of all of the above factors gave an appearance that the Tribunal could be biased or that there was a potential for it to be biased, and that it should therefore recuse itself from proceedings.

On behalf of the GMC

287. Mr Rigby submitted that, in responding to this application, he adopted the same legal framework as in the previous recusal application. He reminded the Tribunal that the reasonable bystander is not Dr Jindal, nor is it someone prone to believe in conspiracy theories which, he said, was what Mr Singh's submissions amounted to. He also said that a reasonable bystander doesn't, without evidence, believe that professional judges cannot be trusted to dismiss from their minds irrelevant information or to resist pressure to favour one party over another. He submitted that there was no such evidence here. Further, Mr Rigby submitted that Dr Jindal disagreeing with a decision of the Tribunal was not the test for whether the Tribunal was biased.

288. Mr Rigby submitted that the only material difference between this recusal application and the first was the emails from Mr P, which the Tribunal would have no difficulty in putting from its mind.

289. Regarding the issue of hearing witness evidence from abroad, Mr Rigby submitted that all parties were making their own enquiries as to the position and this was being done co-operatively until the defence opposed hearing the remainder of Patient A's evidence from abroad. Mr Rigby submitted that this opposition would have, at the least, delayed proceedings and may have resulted in not hearing the balance of Patient A's evidence if he could not do so remotely. Mr Rigby said that, in this context, it was not wrong or unfair that the LQC should make enquires of his own, nor was it that the MPTS should do the same.

290. Mr Rigby submitted that the Tribunal was made up of experienced and professional members who would be expected to be able to deal with the relatively common-place occurrence of needing to put from their mind information that should not have been heard. Mr Rigby submitted that this included the topic of the threatening nature of the Mr P emails. He said that his recollection was that the LQC had said the emails were

potentially threatening but not that he or the other Tribunal members felt intimidated in the sense that it was sufficient to cause them to be influenced towards one party or another.

291. Mr Rigby submitted that a bystander would make of these emails that they were from an unknown source, made no specific threats and gave no indication that the sender could do anything materially significant. He said that a bystander would believe the Tribunal would have no difficulty putting the emails completely from its mind. Mr Rigby submitted that Mr Singh's submissions went beyond suggesting there may be a perception of bias to saying that there may indeed be bias without any evidence to support this assertion. He said that Mr Singh's submissions questioned the professionalism, goodwill and expertise of the Tribunal.

292. Mr Rigby submitted that it would be extraordinary for the Tribunal to have excluded the observer without first seeking evidence to substantiate the claim that they were linked to the Mr P emails. Mr Rigby submitted that both parties had been given ample opportunity to make submissions on the subject and that the Tribunal had made its approach clear, including when it was going to consider the topic of exclusion. He submitted that Mr Singh had not been denied the opportunity to make submissions, the LQC had simply said that he had already had ample opportunity.

293. Regarding the assertion that the Tribunal favoured the observer by suggesting they were free to write what they liked, Mr Rigby submitted that this did not demonstrate any bias as they were in fact free to write whatever they wanted. Mr Rigby said that the legality of what a person writes does not affect their ability to write it and if they suffer any consequences of that writing.

294. Mr Rigby submitted that it had always been his understanding that the Tribunal had not made any decision regarding whether to exclude the observer until after hearing submissions from the parties. He considered that it was logical that the Tribunal deal with the issue of exclusion before that of recusal. He submitted that the Tribunal did not ignore Mr Singh's request to handle the recusal first, it merely decided the other way.

295. Mr Rigby submitted that it was not the case, as Mr Singh claimed, that the Tribunal's *'desire to proceed has trumped the objective of securing a fair hearing.'* He submitted that the majority of the pauses in the hearing have been for the Tribunal to listen and consider in detail applications made by the Defence. In all of these decisions, Mr Rigby said the Tribunal had been fair and transparent, as evidenced by the transparent way in which the Mr P emails were handled.

296. Mr Rigby submitted that, despite claiming the LQC had made comments that demonstrated partiality towards the observer and Patient B, Mr Singh had provided no evidence in support of this claim. He said that, in the fullness of time, the Tribunal may agree with the Defence's position that Patient B is malingering, but that is a decision for the facts stage, and it was right and proper for the Tribunal to make reasonable adjustments for someone presenting with a health concern. He said it would be extraordinary for a Tribunal to demand evidence of a disability from a witness in the middle of their evidence and there was no basis for a bystander to consider this biased.

297. Mr Rigby submitted that, in all the circumstances, the Tribunal was more than capable, and should be trusted to be capable because of its position, expertise and experience, to put out of its mind any information that should not have been heard and to not be influenced by the emails. Mr Rigby submitted that the factors other than the emails were wholly unfounded and without merit.

Relevant Legal Principles

298. The Legally Qualified Chair ('LQC') gave the following advice to the Tribunal, which was accepted by the Tribunal and parties.

299. Some of the case law referred to below is framed around courts and Judges rather than Tribunals, however it still applies to these proceedings.

300. The basic principle is that a Tribunal hearing a case must be impartial and that justice *"should not only be done, but should manifestly and undoubtedly be seen to be done"* (*R v Sussex Justices, ex p McCarthy [1924] 1 KB 256*). A Tribunal will not be impartial if, for example, they have a direct financial interest in the outcome of the case. In such cases, a Tribunal will automatically be disqualified from hearing a case: the fact of the interest alone is sufficient. So too if it can be positively demonstrated that the Tribunal is biased in favour of a particular party, known as *"actual bias"*.

301. The principle extends beyond direct interests in the outcome or positive evidence that the Tribunal is biased in favour of one side, however. If in some other way the Tribunal's conduct or behaviour gives rise to a suspicion that they are not impartial, then the Tribunal will also be disqualified from hearing the case. Not all such suspicions justify the *recusal* of a Tribunal; the suspicion must be objectively justified by reference to the concept of the *"fair-minded and informed observer".* If such an observer would consider that there was a real possibility that the Tribunal was biased, then the Tribunal must

recuse themself. This is known as *"apparent bias".* Most cases in this area are in respect of allegations of apparent bias rather than of there being actual bias or a personal interest in the outcome of the case. The prejudice to the administration of justice and delays that arise from a successful recusal application are not relevant factors when determining whether the application should be allowed. If the test for the relevant category of bias is established, then the Tribunal must not hear the case, irrespective of any resulting inconvenience. The decision whether or not to recuse is not a discretionary case management decision. The Court of Appeal said in *Morrison v AWG Group Ltd* [2006] EWCA Civ 6, when dealing with an allegation of apparent bias, that such issues:

> *"are totally irrelevant to the crucial question of the real possibility of bias and automatic disqualification of the judge. In terms of time, cost and listing it might well be more efficient and convenient to proceed with the trial, but efficiency and convenience are not the determinative legal values: the paramount concern of the legal system is to administer justice, which must be, and must be seen by the litigants and fair-minded members of the public to be, fair and impartial. Anything less is not worth having." (Paragraph 29.)*

302. Where there is *"real ground for doubt"* about the ability of the judge to try the matter objectively, then that doubt should result in *recusal* (*Locabail v Bayfield* [2000] QB 451, at paragraph 25). However, there must be a sufficient basis for such doubt: *"To insist upon sitting when there is real ground for doubt does a disservice to the critic: to recuse oneself because one is too ready to admit real ground for doubt does a disservice to the critic's opponents."* (*Ghadami v Bloomfield and others* [2016] EWHC 1448 (Ch), at paragraph 17.)

Actual bias

303. Bias is an attitude of mind that prevents the judge from making an objective determination of the issues that they have to resolve (*Re Medicaments and Related Classes of Goods (No 2) [2001] 1 WLR 700, at paragraph 37*).

304. Actual bias arises where a judge's decision is affected by prejudice towards or against one of the parties to litigation. Instances of actual bias being demonstrated are rare. As the Court of Appeal noted in *Locabail v Bayfield [2000] QB 451*, proof of actual bias is rare, as the law does not allow for the questioning of judges about extraneous influences affecting their mind. Litigants are protected from this practical difficulty by being able to apply for recusal using the lower standard applicable to the test of apparent bias. This

requires them to show a real danger of bias, without requiring them to show that such bias actually exists.

Apparent bias

305. The test for whether there is apparent bias is that set out by Lord Hope of Craighead in *Porter v Magill* [2002] 2 AC 357:

> *"The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Tribunal was biased."*

306. The relevant facts that are to be taken as known to the fair-minded and informed observer are not limited to those which are in the public domain (*Virdi v Law Society* [2010] EWCA Civ 100, at paragraphs 42-49).

307. In *Broughal v Walsh Brothers Builders Ltd and another* [2018] EWCA Civ 1610, the Court of Appeal, after an extensive review of the authorities, confirmed that a judge who refuses permission to appeal on the papers is not automatically disqualified from hearing the substantive appeal, or any oral renewal of the *application* for permission. The judge would, however, be disqualified on the ground of apparent bias if, when refusing permission on the papers, they had expressed their views in such a way as to indicate to any fair-minded lay observer that they had reached a concluded view and are unlikely to be open to further argument (*paragraph 35*).

308. In *Bates v Post Office* [2019] EWHC 871 (QB*)*, the managing judge trying lengthy group litigation rejected an *application* to recuse himself on the basis of findings he had made in a judgment at the end of one of the phases of the litigation which were alleged by one of the parties to show that he had pre-judged issues due to be determined at a subsequent stage.

Criticism of the Tribunal

309. A judge asked to recuse himself or herself should do so only where the case is properly made out. It must be borne in mind that, in our system, litigants are not permitted to choose their judges. In *Dobbs v Tridios Bank NV* [2005] EWCA 468, Mr Dobbs criticised Chadwick LJ in relation to a hearing in which the judge had taken part and asked that he recuse himself. Chadwick LJ (with whom Longmore and Neuberger LJJ agreed) declined to do so. He said:

"7. … But it is important for a judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is this. If judges were to recuse themselves whenever a litigant criticised them, we would soon reach the position in which litigants were able to select judges to hear their cases simply by criticising all the judges that they did not want to hear their cases. It would be easy for a litigant to produce a situation in which a judge felt obliged to recuse himself simply because he had been criticised -- whether that criticism was justified or not. That would apply, not only to the individual judge, but to all judges in this court; if the criticism is indeed that there is no judge of this court who can give Mr Dobbs a fair hearing because he is criticising the system generally. Mr Dobbs' appeal could never be heard.".

Inclusion of irrelevant material

310. If the Tribunal has received what is usually called irrelevant material the Tribunal must put this information out of its mind, otherwise the Tribunal should not continue to hear the case and should recuse itself.

311. *R. (on the application of Short) v Police Misconduct Tribunal*; the test for apparent bias had not been met where a *police* disciplinary Tribunal had refused to recuse themselves after the legally qualified Tribunal chairman had been sent documents which were allegedly prejudicial and irrelevant. It was likely to be common in Tribunals that a legally qualified chair would see or hear evidence that was irrelevant; in approaching his task professionally, he should be able to put such evidence out of his mind.

312. *AB (a barrister) v Bar Standards Board*: The barrister did not attend the hearing and within the bundle of papers was an email from the Metropolitan Police which tended to suggest that the author thought there was a credible case of a perversion of the course of justice by the barrister.

313. In this case the document went before an expert Tribunal chaired by a retired judge and such a Tribunal can be trusted to make a proper assessment of information of that kind and not to attach weight to irrelevant information or inappropriate weight to incomplete information.

314. The information given to the Tribunal in this case was without any detail compared to the full account of a Doctor's misconduct and striking off in, *R (Mahfouz) and The Professional Conduct Committee of the General Medical Council* [2004] EWCA 2004.

Stepping in to the arena

315. The case of *Ilirjan Hima Appellant - and - The Secretary of State for the Home Department - CA-2022-001810,* 26th June 2024, gave an example of what qualifies as stepping into the arena. In this case the court said that the Judge had stepped into the arena as*,"… the judge's cross-examination occupied more time than any other part of the appellant's evidence."* In addition, the Supreme Court in the case of *Serafin v Malkiewicz and others [2020] UKSC 23,* highlighted examples of where the Judge had acted unfairly.

316. In summary, this included the Trial Judge demanding the Respondent's tax returns within 24 hours and backing the same with a threat of an HMRC investigation, giving indications that he thought the Respondent was lying, telling the Respondent that he would report him for perjury, telling the self-represented Respondent that he was not asking a "brilliant question" in cross-examination.

The Tribunal's decision

317. The Tribunal considered that a significant part of the reason for this application arose out of the events of day 12 of the Hearing, which are set out above. The Tribunal acknowledged that, during the course of that day, Mr Singh had formed the impression that the observer would be excluded from the Hearing, having discussed this with the Tribunal at the start of the day. After Patient B had departed for lunch, indicating his willingness to continue in the afternoon, the topic of exclusion was raised again in terms of how to proceed with that issue now that Patient B was going to continue his evidence.

318. The Tribunal considered the submission, that, in the course of this discussion, it gave Mr Singh the impression that its position had softened and was now minded to merely warn the observer. The Tribunal did not consider this to be the case as it had not formed, or even considered, such an opinion. All options were available at all times through these discussions and the Tribunal did not make any decision until after hearing representations from the parties. After Mr Singh indicated his intention to apply for recusal, and hearing submissions on the order of events, the Tribunal determined to consider the topic of exclusion first and considered this to have been clear to the parties. It was made clear that the observer would be invited to answer questions from the Tribunal but that the parties would not be permitted to ask questions.

319. The Tribunal noted that, throughout day 12 of the hearing, discussions about the emails and the possibility of exclusion were had between the Tribunal and parties in an informal

way and that these discussions had included submissions. It considered that the lines between discussion and submissions had become blurred, and the topics shifted several times between exclusion, recusal and order of events. The Tribunal considered that it had flagged in the morning that it wanted to consider excluding the observer and then, having heard submissions on the topic, proceeded in the order that it did – to consider exclusion before recusal.

320. The discussions between the Tribunal and the parties were undertaken in a transparent manner in order to facilitate collaboration between the parties in the case and to enable the Tribunal to consider an appropriate procedure for the highly unusual position it found itself in.

321. Turning to consider the application proper, the Tribunal considered that Mr Singh's submissions covered several key areas, which it dealt with in turn. He said that the Tribunal, when considering whether to recuse itself, the Tribunal must ask itself challenging questions. The Tribunal accepted that it needed to not merely construct a defensive rebuttal of his submissions but to put itself in the mind of the reasonable bystander. The Tribunal spent more than a full day reflecting on Mr Singh's submissions and considering its decision.

322. The Tribunal distinguished between any questioning of parties during the hearing and how it approaches information when it is giving due consideration during Tribunal discussions in camera. Clarifications or challenges from the LQC to Mr Singh's submissions, and the evidence upon which they are based, should not be seen as the same as reflective considerations made by all the Tribunal Members whilst in camera. The challenges were made to allow all Tribunal Members to fully understand the submissions by Mr Singh, in order for the Tribunal to be able to make a fully informed and fair decision regarding the potential exclusion and this recusal application.

<u>The exclusion decision</u>

323. Regarding the order of proceedings, and as set out above, the Tribunal considered that it had discussed with parties what the order should be but had not considered the exclusion decision until after it had decided on the order. The Tribunal did not consider it unfair to deal with the exclusion first. In reaching its decision, the Tribunal bore in mind that Mr Singh's recusal application was not ready, and the Tribunal had time available that afternoon to deal with this matter. Once the order had been decided, the Tribunal considered that the parties had been given time to make submissions on the topic of exclusion and had been advised about the process to be adopted when hearing the

observer's comments, before the observer was asked to comment on the emails and the Tribunal went in camera to make its determination.

324. The Tribunal considered that, when dealing with the question of exclusion, one option was to make that decision just on the evidence available at the time, i.e. the emails received by the Tribunal. The Tribunal determined to give the observer an opportunity to respond to its questions and also invited the parties to adduce any evidence they thought relevant. It chose this approach so that it could make a fair and reasoned decision based upon the best possible evidence. The Tribunal also considered that it was fair to an observer who was being considered for exclusion to have the opportunity to comment upon that proposal. The Tribunal noted that it was not until it had made its decision regarding exclusion, that Mr Singh explained that the information he wished to disclose to the Tribunal, had not been in a format that allowed him to do so.

325. The Tribunal had determined that there must be evidence to show a link between the observer and the emails as it would have been unfair to exclude the observer without this. If a link had been established, the Tribunal would have moved to the next stage, which was to determine if there was a risk to a fair trial for the Doctor, should the observer remain and disrupt the proceedings by way of their conduct both in and out of the Hearing. The Tribunal rejected the assertion that to exclude the observer only required an arguable link. The balance of probabilities was used simply as a test to determine if a link could be established. Ultimately, evidence to demonstrate a link was not forthcoming and so the Tribunal pursued the issue no further.

326. The Tribunal had no communication with the MPTS or anyone else regarding the exclusion decision.

<u>Factors that lead to bias, perceived or actual</u>

327. The Tribunal noted that, in addition to the discrete matter that formed the first recusal application, it had now been informed by Mr P of other matters relating to Dr Jindal's character and that of a potential defence witness. The Tribunal considered that it had seen no evidence at all to substantiate the new information that it had received or of anything untoward in Dr Jindal's history. The Tribunal considered that it would have no difficulty putting this unsubstantiated claim out of its mind and would proceed on the basis that Dr Jindal is of good character and, subject to any application from the GMC, will give such a direction at the appropriate time.

328. The Tribunal considered that the emails from Mr P were of a racist nature and completely unsubstantiated. They had no relevance to the considerations at hand and the Tribunal gave the content of these emails no credence at all.

329. The Tribunal acknowledged that the emails constituted an attempt to intimidate it and interfere with proceedings but, notwithstanding the reasonable concern that led the LQC to report the incident to the Police, none of the Tribunal Members themselves felt intimidated. The Tribunal was satisfied that this attempt to intimidate was ineffective and could easily be put out of its mind. The Tribunal considered that this was made easier by the nature of the emails, which fundamentally undermined the credibility of any of their content.

330. The Tribunal then turned to Mr Singh's submissions on hearing evidence from overseas and the timing of the guidance being updated. The MPTS guidance was updated on the day of the GMC's application. The Tribunal had no knowledge of any discussions leading up to that change other than those that were disclosed to the parties. The Tribunal did not and do not have any influence as to if, and when, guidance is updated. Equally, the Tribunal had no information or involvement in conversations between the MPTS and the FCDO. The Tribunal recognised Dr Jindal's concerns about the timing of the update to the guidance but reiterated that there was no communication between the Tribunal and the MPTS or GMC in relation to the issuing of any guidance relevant to the decision to hear the evidence of Patient A.

331. The Tribunal considered that efforts to work co-operatively should not be criticised and doing so does not equate to the Tribunal showing bias or favour to one party. To conclude that seeking clarification on a position equates to partial assistance is not well founded. The Tribunal considered that it was relevant for the Tribunal to know whether, if granted, the application could fall foul of international law.

332. Regarding stepping into the arena, in relation to the LQC's email to the FCDO, the Tribunal considered that one of the duties of an LQC is to ensure that the Tribunal acts lawfully and within the rules. The Tribunal was satisfied that this is why the LQC contacted the FCDO – to clarify the position, so that he was then able to advise the Tribunal. The LQC did not consult with the other Tribunal Members before making this request for clarification, nor should he have.

333. Mr Singh submitted that the Tribunal had demonstrated partiality towards the observer when the LQC said that they could write what they wanted. The Tribunal considered that this comment was meant at face value, that the Tribunal had no power over what the

observer wrote but that did not mean that there would be no consequences for doing so. Nor was it meant as any form of encouragement or support. Mr Singh submitted that the observer writes regularly and inaccurately about proceedings, but what the Tribunal had seen did not evidence this. The Tribunal considered that what it had seen was a partisan account of proceedings but did not appear to be materially inaccurate. The Tribunal noted that there had been two incidents with the observer's phone going off and one incident when a Tribunal member had heard them react audibly to a question, but considered that these incidents had been dealt with, appropriately, at the time. It was not appropriate to re-open these incidents.

334. Mr Singh had also submitted that the Tribunal was partial towards Patient B. The Tribunal considered that it made reasonable adjustments to assist a witness with health concerns to give his best evidence. The Tribunal considered that it must, at this stage in proceedings, take at face value Patient B's description of his health. The Tribunal understood that the Defence would challenge Patient B's statements about his health but considered that to be a matter for the facts determination. At this stage in proceedings, it would be inappropriate to deny reasonable adjustments to someone that appeared to require them. In addition, no objection was raised by the defence at the time that reasonable adjustments were discussed and granted. The Tribunal rejected the assertion that it was partial towards Patient B by virtue of making reasonable adjustments for him.

335. Effective communication underlies the entire legal process, ensuring that everyone involved understands and is understood, otherwise, the legal process will be impeded or derailed. Fair treatment does not mean treating everyone in the same way: it means treating people equally in comparable situations. It is for the Tribunal to ensure that all persons can participate fully in the proceedings and that wherever possible all persons are given sufficient time for their particular needs.

336. The Tribunal then considered Mr Singh's submissions regarding its refusal to grant an adjournment on day 1 of the hearing to allow Mr Singh to seek Judicial Review. The Tribunal did not deny Mr Singh the opportunity to seek Judicial Review, merely that an adjournment to do so would not be granted. Mr Singh confirmed that, as of the date this application for recusal was made, no such Judicial Review application has been made. The Tribunal determined it could not accept that if a determination goes against Dr Jindal, that determination is taken as evidence of bias against him.

337. Mr Singh had submitted that Dr Jindal's case had been heard in 2022 and that that Tribunal had recused itself for less than is being raised in this application. The Tribunal

was not party to all the factors that led the 2022 Tribunal to recuse itself, although it had seen the determination. The Tribunal noted the comments of the High Court in relation to that recusal decision. The Tribunal considered that, in any event, the events that led to the previous recusal, are not relevant to the application for recusal in these proceedings and did not establish a precedent for this Tribunal against which to judge this recusal application.

338. Mr Singh addressed the various emails in this case. The Tribunal disclosed the Mr P emails on the same day that they were received, acting transparently and openly. The LQC's account of this was provided to the parties in response to Mr Singh's request for disclosure:

'The Chair received a phone call from Mr Ritchie at 9.30am on 14th October about the existence of emails received about the case.

Mr Ritchie had not read the full emails, and I asked him not to read them and to forward them to me and I would deal with them. I contacted Dr Moriarty by email asking him to forward any emails he received and not to read them. This email was sent at 10.29am.

This was the only advice given to the Tribunal in private, i.e. not to read and to forward any emails to me.

The Mpts were contacted on the same day to inform them of the matter and of the intention by me to contact the police regarding the emails received.

The Tribunal were also informed that I had contacted the police.

When the emails were disclosed to the parties, the Tribunal members then read the full emails so that matters could be properly dealt with in the hearing.'

339. The Tribunal has had no contact with the GMC regarding any actual or potential High Court proceedings. In addition, any response from the MPTS to Mr Singh's disclosure requests is not within the purview of the Tribunal.

340. Mr Singh also submitted that the crime report regarding the Mr P emails should be disclosed. No such report was in the possession of the LQC, nor was the LQC willing to disclose any such report in what he considered to be a personal matter. The nature of the report was disclosed to the parties.

Bias

341. In relation to actual bias, the Court of Appeal noted in *Locabail v Bayfield* [2000] QB 451, proof of actual bias is rare, as the law does not allow for the questioning of judges about extraneous influences affecting their mind. Litigants are protected from this practical difficulty by being able to apply for recusal using the lower standard applicable to the test of apparent bias. This requires them to show a real danger of bias, without requiring them to show that such bias actually exists.

342. The Tribunal therefore placed itself in the shoes of the fair-minded observer and applied the test as set out in *Porter V Magill* and, in addition, reminded itself that the relevant facts that were to be taken as known to the fair-minded and informed observer were not limited to those which were in the public domain. This could not, in the Tribunal's view, include facts of which the Tribunal was not aware, as to include such matters, would require the Tribunal to speculate.

343. In the Tribunal's view the case of *Dobbs v Tridios Bank NV* [2005] EWCA 468, had some relevance to the situation where information is given by those who make an application for recusal. The following paragraph was of assistance:

> *"…If judges were to recuse themselves whenever a litigant criticised them, we would soon reach the position in which litigants were able to select judges to hear their cases simply by criticising all the judges that they did not want to hear their cases. It would be easy for a litigant to produce a situation in which a judge felt obliged to recuse himself simply because he had been criticised…"*

344. The Tribunal had regard to Mr Singh's submission that the new matters together with matters raised in the previous recusal application, when considered individually or cumulatively, meant that the Tribunal should recuse itself.

345. The Tribunal noted that prior to commencement of this hearing, no application, to its knowledge, was made regarding the inability for Dr Jindal to have a fair hearing based upon the information that existed in the public domain at that time. The following paragraph of *Dobbs v Tridios Bank NV* [2005] EWCA 468 was of relevance:

> *"if the criticism is indeed that there is no judge of this court who can give Mr Dobbs a fair hearing because he is criticising the system generally. Mr Dobbs' appeal could never be heard."*

346. The Tribunal determined that if the application had been put in this way, then it would have been entirely rejected. In essence, the application came down to whether the matters raised, either individually or when considered together with all the other information that was now before the Tribunal, created a real possibility of bias.

347. In *Resolution Chemicals Ltd v H Lundbeck A/S* [2013] EWCA Civ 1515, the Court of Appeal emphasised that there must be a real possibility of bias; although the standard of probability does not have to be reached, the test is not whether there is *"any possibility"* of bias.

348. In all the circumstances the Tribunal concluded there was not a real possibility of bias as there must be for the Tribunal to recuse itself in relation to the individual matters raised. Accordingly, it refused the application to recuse itself, on this basis and determined that Dr Jindal was able to have a fair trial.

Cumulative effect of all the factors

349. Notwithstanding the findings above, the Tribunal considered that it must further put its mind to whether the balance of all the points set out could have the cumulative effect of giving the appearance of bias to a reasonable bystander.

350. The Tribunal considered that Mr Singh's submission that the Tribunal wanted to push on regardless of the need for a fair trial did not accord with the fact that Patient B, whose evidence was scheduled to conclude by day 4, is still ongoing during week four of the hearing.

351. The Tribunal has considered fully and carefully a number of applications made by the Doctor's representatives, and this again demonstrates its commitment to ensuring that there is a fair trial in this matter. The Tribunal makes no criticism of the Doctor's representatives in making these applications and accepts that these were clearly made following legal advice/instructions, and it was therefore correct for Mr Singh to make these applications.

352. The Tribunal further concluded there was not a real possibility of bias as there must be for the Tribunal to recuse itself even when taking the factors together cumulatively.

ANNEX E – 24/10/2024

Decision to recuse

1. Mr Singh brought to the Tribunal's attention a social media post, made by an observer at the hearing, which he said had made him feel intimidated. In light of this, Mr Singh made an application that the Tribunal should exclude the observer.

2. Both parties made submissions on the application. Mr Singh's submissions included that, if the Tribunal did not exclude the observer, he did not feel comfortable continuing to work in a threatening environment and would step away from proceedings.

3. Later, during the course of the Tribunal's discussions, Mr Singh indicated that he wanted to further address the Tribunal. He said that he regretted and withdrew his submission that he would step away from the case if the Tribunal did not exclude the observer and also proposed a possible alternative if that came to pass.

4. In light of Mr Singh's submissions, and despite his subsequent withdrawal of those submissions, the LQC considered that he was unable to continue participating in the hearing. The LQC made the following statement:

   'Mr Singh, this morning, brought to the attention of the Tribunal, social media posts which he has said made him feel threatened.

   The part of the post that had this effect upon Mr Singh referenced Newton's third law of motion. In common language this is most often expressed as 'every action has an equal and opposite reaction'.

   As a result of this, Mr Singh applied to exclude [Ms F] *from the proceedings. This is not the first attempt to do so by the Doctor's representatives.*

   This application was phrased in a way that, included a confirmation by Mr Singh, that he would walk away from these proceedings should [Ms F] *not be excluded. Mr Singh also confirmed when making this application, that High Court action would be taken. This approach was also adopted previously by Mr Singh when the Tribunal of its own volition, considered exclusion due to emails received by the Tribunal. On that occasion it*

was said that the Defence would apply for Recusal, should [Ms F] *not be excluded. They did apply, and the application was refused.*

I have considered the manner in which proceedings have been conducted very carefully. It is not proper or correct for a Tribunal to be informed of consequences for not granting an application, should that application, not go the way of the party applying.

This approach placed extra pressure on the Tribunal and could place into their minds, the consequence of not making a decision in a certain way, similar to the emails received by the Tribunal. This was unfair to the members of the Tribunal.

In my opinion as Chair, I consider that the conduct of these proceedings as set out above has subconsciously influenced the ability of myself as chair to deal with this matter fairly, it is therefore with regret that I am left with no alternative, for professional reasons, to recuse myself from this hearing.

I must further comment that Mr Singh did withdraw the submission regarding walking away should the Tribunal not exclude [Ms F]. *The Tribunal thank him again for this withdrawal and apology, which is to his credit.'*

5. In light of this, the Tribunal was no longer quorate and so adjourned to allow MPTS Case Management to consider whether it would be appropriate to appoint a new LQC as a substitute.

ANNEX F – 03/06/2025

Application on the admissibility of evidence

1. Mr Singh, on behalf of Dr Jindal, made an application pursuant to Rule 34(1) of the GMC (Fitness to Practise) Rules 2004 ('the Rules') to admit further documentary evidence for use in questioning Patient B. The application was heard in private on 3 June 2025 (day 21), by way of a pause to the cross-examination of Patient B in public.

2. Mr Singh invited the Tribunal to admit into evidence XXX

3. Mr Rigby, on behalf of the GMC, opposed this application but accepted that it was appropriate for the documents to be provided to the Tribunal for the purposes of considering this application.

4. The Tribunal heard submissions from the parties before making its decision.

Submissions on behalf of Dr Jindal

5. Mr Singh submitted that the documents were relevant to the question of Patient B's credibility. They had been disclosed by Patient B in the civil litigation commenced by Patient B in the XXX County Court.

6. Mr Singh submitted that Patient B had asserted that he was now suffering pain as a direct result of a botched operation on 28 December 2016. He stated that it was his position that Patient B was malingering, and that Patient B had made false claims about his symptoms for compensation purposes.

7. Mr Singh stated that XXX. He stated that Patient B was someone who had XXX and knew '*the system and how it operates'*. He stated that it was for the Tribunal to make an assessment of somebody who had experience in making '*audacious claims about pain'*.

8. Mr Singh submitted that XXX were relevant because he was entitled to ask Patient B whether Patient B had disclosed a history of pain and pain medication to Accuvision Limited before the procedure on 28 December 2016, and whether Patient B had failed to mention these symptoms before the procedure. He stated that it would be highly relevant to the issue of malingering if Patient B had failed to do so. If the evidence is from XXX it has a bearing on the veracity of his evidence.

9. Mr Singh stated that this issue was not something he intended to question Patient B at length about but was a short issue. He concluded by stating that credibility is critical to the assessment of who carried out the procedure on 28 December 2016.

Submissions on behalf of the GMC

10. Mr Rigby submitted that the documents related to confidential information about Patient B's health. He stated that they had been extracted to demonstrate something

adverse to the witness. Further, he stated that the documents are not remotely relevant to the allegations in these proceedings.

11. Mr Rigby submitted that Mr Singh ought not to be allowed to ask questions in relation to incidents that took place in XXX.

12. Mr Rigby stated that the documents could not conceivably be relevant to whether or not Dr Jindal had carried out the procedure on Patient B on 28 December 2016.

Relevant Legal Principles

13. The LQC referred the Tribunal to Rule 34(1) of the Rules:

> *'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.'*

14. The LQC stated that Rule 34(1) gives the Tribunal a broad discretion to admit evidence if it is fair and relevant to do so. The Tribunal will consider all the circumstances of the case and the balance of prejudice to each party. The Tribunal will consider the overarching objective of the Medical Act 1983 to protect the public and the overriding objective of the Rules to deal with cases fairly and justly.

15. The LQC also drew on *McLennan v GMC* [2020] CSIH 12 at [80]. Lord Carloway, in the context of considering evidence of character, observed, as a generality, that a Tribunal conducting disciplinary proceedings is *'not to be encouraged to ingather evidence of bad character… as an attempt to undermine either credibility or reliability. If it were to be otherwise, tribunal hearings would be greatly prolonged, and the tribunal could be deflected from its purpose, by parties addressing matters of peripheral, if any, significance'.*

Tribunal's Decision

16. The Tribunal had regard to whether it could make the decision without seeing the documents. It determined to look at them, on the invitation of both parties, and was of the view that it could not undertake a proper consideration of this application without doing so.

17. The Tribunal started with the question of relevance. The Tribunal reminded itself of the scope of the allegations for determination at stage 1 of these proceedings. The allegations put in issue the role of Dr Jindal in relation to the consent form signed by Patient B and whether Dr Jindal was the surgeon who carried out the procedure on Patient B on 28 December 2016.

18. The allegations do not raise any issues about whether Patient B has experienced pain of any nature at any time. The allegations do not raise any issues about the outcome of the procedure on 28 December 2016, or any consequences of the procedure. The XXX are not direct evidence of any of the allegations for determination.

19. The Tribunal moved on to consider whether XXX, and questioning in relation to such documents, would be relevant to the issue of the credibility of Patient B in these proceedings. The Tribunal accepted the submission of Mr Singh that credibility is critical to the assessment of who performed the procedure on 28 December 2016. At the time of making this application, Mr Singh had already had the opportunity to cross-examine Patient B on days 10, 11, 16, 17, 20 and 21 about his credibility in relation to the allegations and by reference to the documents which had already been admitted into evidence before the Tribunal.

20. The Tribunal noted that XXX

21. The Tribunal concluded that XXX would not take the Tribunal any further on the issue of Patient B's credibility in relation to the allegations about the events of 28 December 2016 and would not assist the Tribunal in its assessment of that issue. The Tribunal considered that the test of 'relevance' in Rule 34(1) was not met.

22. Further, even if, contrary to the above, it could be said that XXX documents were relevant to the issue of the credibility of Patient B in these proceedings, the Tribunal was not satisfied that it would be fair to admit either of them, in all the circumstances, at this advanced stage of the cross-examination of Patient B. The Tribunal was mindful that fairness to Dr Jindal was a prime consideration. However, it was of the view that any disadvantage in not being able to question Patient B about these peripheral matters was outweighed by the prejudice to the GMC in seeking to introduce these matters at this late stage, during the oral evidence of Patient B. It considered that the test of fairness was not met. The Tribunal was not satisfied that it would be fair and reasonable to use its discretion to admit these documents.

23. Accordingly, the Tribunal determined to refuse the application.

ANNEX G – 10/06/2025

Application for part of the proceedings to be heard in private under Rule 41(2) of the Rules

1. Mr Singh, Counsel for Dr Jindal, made an application on 10 June 2025, under Rule 41(2) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to exclude the public from the hearing of his Rule 17(2)(g) application.

Submission on behalf of Dr Jindal

2. Mr Singh submitted that wholly exceptional circumstances are present in this case and are sufficient to justify the Tribunal using its discretion to hear his Rule 17(2)(g) application in private. His application is about the sufficiency of the evidence adduced by the GMC at this stage.

3. Mr Singh said that his submissions may be perceived by one or more of the non-party observers as being critical of the GMC and its witnesses. He stated his concern that the hearing should proceed expeditiously and fairly. He pointed to a risk of inaccurate reporting of the hearing of the application by non-party observers, to a risk of further attempts by non-parties to make direct contact with members of the Tribunal to seek to introduce additional evidence, and to a risk of disruption to the smooth running of the hearing if his application is heard in public. He referred to the history of the proceedings since May 2022.

4. Mr Singh submits that the fairness, integrity and smooth running of the hearing should trump any need for the public to hear the legal submissions about his application. He submits that this Tribunal ought to be 'isolated' while hearing and deliberating on his application, to protect the Tribunal members from disruption. Hearing the submissions in private will promote that objective. In balancing the relevant factors for consideration, it is relevant to bear in mind that the decision on the Rule 17(2)(g) application will be announced in public.

Submission on behalf of the GMC

5. Mr Rigby stated that the GMC rely on the presumption in Rule 41(1) that the matter will proceed in public and submitted that the Tribunal was already sufficiently protected. He invited the Tribunal to have regard to that presumption and stated that there were not sufficient circumtances to displace it.

The Relevant Legal Principles

6. There is a presumption in Rule 41(1) that all hearings, save when considering the physical or mental health of the practitioner or interim orders within Rule 41(3), will proceed in public. This presumption about public hearings is not absolute but is subject to the discretion of the Tribunal in Rule 41(2):

> *'41.*
> *(2) The Committee or Medical Practitioners Tribunal may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the particular circumstances of the case outweigh the public interest in holding the hearing in public.'*

7. The general principle of open justice is reflected in the common law and in Article 6(1) of the ECHR. The Tribunal should interpret Rule 41(2) in a way that gives effect to article 6(1) of the ECHR right to a fair trial.

8. The Tribunal must consider the balance between the fundamental principle of open justice and the public interest in awareness of this application on the one side, and the factors relied on in favour of hearing the application in private on the other side.

9. The Tribunal will carry out a balancing exercise of all relevant factors and give effect to the overriding objective of dealing with the case fairly and justly. The purpose of this Tribunal is set by the Medical Act 1983, to hear and determine allegations made by the GMC against a registered practitioner. The overriding objective of the Rules is to secure that the Tribunal deals with the case 'fairly and justly'; this takes precedence over the over-arching objective of the Act to protect the public (schedule 4, at para 1(1A) and (1B)). The primacy of the overriding objective of fairness was noted in *Ramaswamy v GMC [2021] EWHC 1619* by Mr Justice Morris at [22], where he also stated:

'Fairness to the medical practitioner is of prime importance and a prime consideration; fairness to the GMC and the interests of the public must also be taken into account.'

10. The duty to deal with the case fairly and justly includes recognising that it is in the interests of justice to achieve finality and to seek to avoid unnecessary delay in the resolution of the allegations made by the GMC. The duty also includes ensuring that a party can participate fully and that parties and witnesses can give their best evidence.

11. The Tribunal will bear in mind the nature of a Rule 17(2)(g) application, as explained by Mrs Justice Carr in *R (on the application of Sharaf) v General Medical Council [2013] EWHC 3332 (Admin).* Further, the proper approach to the giving of reasons when the Tribunal announces its decision, after hearing the application, is set out in *Sharaf* [at 38 and 73]. Mrs Justice Carr endorsed the legal advice given to the Tribunal (and it was further endorsed by Nicol J in *R(Husband) v General Dental Council [2019] EWHC 2210 (Admin)),* as follows:

"If the Tribunal allows this application, it should give detailed reasons for doing so. If it dismisses the application and the case proceeds, it is generally considered better to say as little as possible in case, in giving detailed reasons, it gives some indication as to the way in which it is considering the evidence at this stage and it would be improper for it to do so."

12. The Tribunal will consider whether there is evidence of real and significant risks which tip the scales against this application being heard in public.

The Tribunal's Decision

13. The Tribunal had regard to the submissions of both parties. The Tribunal moved on to consider its discretion under Rule 41(2) and whether the circumstances of this case demonstrate sufficient justification to outweigh the principle of open justice in relation to hearing the Rule 17(2)(g) application.

14. The application will involve issues of law. The application is made at the end of the GMC's case, before the doctor or his witnesses have given evidence. If the application disposes of the allegations in full, the proceedings will end. If the application does not dispose of all the allegations, the proceedings will continue in relation to the live allegations. In this sense, the giving of evidence by the doctor and his witnesses is a possible next step.

15. The Tribunal noted that in the different context of a criminal trial, a submission of 'no case to answer' is usually made without the jury, in public. In that different context, it is generally understood that the press knows not to report on the application. Further, the criminal court has powers to deal with a contempt of court. Such safeguards do not carry across to these Tribunal proceedings. In this case, it is not the press but the conduct of one or more non-party observers that is the cause for concern. The issue is not conduct inside the hearing room during a public session, but activity which takes place beyond the hearing room.

16. The Determination of Preliminary Matters dated 28 September 2024 sets out the history from May 2022 to the end of September 2024. In summary, the first Panel sat in May 2022, heard all the evidence for stage 1 and retired to deliberate on the facts. While deliberating, a non-party, Ms F, began interactions with individual panel members on 31 May, 8 June and 9 June 2022 and those interactions led to the Panel making a decision to recuse itself in mid-September 2022. A description of the conduct of Ms F in 2022 is set out in the order of Mr Justice Ritchie dated 6 September 2024, refusing her application for urgent consideration of her claim for judicial review started on 2 September 2024.

17. A fresh substantive hearing of the allegations was listed to start on 30 September 2024 before a new panel ("the second Panel"). The course of the proceedings before the second Panel from 30 September to 25 October 2024 is set out in the transcripts and in Annexes A, B, C, D and E. The timetable for hearing witnesses was seriously eroded by various matters, including issues arising out of conduct outside the hearing room by one or more non-party, in the form of sending emails to members of the second Panel or publishing postings on social media about the proceedings. The apparent author(s) included more names than just Ms F. At least one matter was reported to the police by an affected individual who has a proper role in the proceedings.

18. On 24 October 2024 (day 18 for the second Panel), the Legally Qualified Chair gave reasons for his decision to recuse himself. By this stage, Patient A and Mr L had given oral evidence and Patient B was part of the way through giving oral evidence. The second Panel became inquorate, save that it was agreed by the parties that it was proper for it to finish writing Annex D during 25 October 2024 (day 19).

19. Thereafter, the part-heard proceedings were listed to resume on 2 June 2025, with a time estimate of 14.5 days. A new Legally Qualified Chair was empanelled and on 2 June 2025 (day 20), the proceedings resumed before the newly constituted Tribunal ("the third

Tribunal"). The third Tribunal heard the rest of the evidence of Patient B and the evidence of the GMC's next witness, Ms E, and the GMC closed its case on 5 June 2025 (day 23). Day 24 could not be effective for an entirely separate reason of a personal nature which is wholly unrelated to these proceedings. Case management directions were given for skeleton arguments about the Rule 17(2)(g) application to be provided on 9 June (day 25) with a view to hearing oral submissions on 10 June (day 26).

20. Observers, including Ms F, have been present as observers since 2 June 2025, either in the hearing room where the third Tribunal sits or remotely. This has already resulted in the third Tribunal being deflected from its primary purpose and spending some time on case management in relation to observers. The third Tribunal, after consultation with the parties in private, adopted a private protocol on 3 June 2025 for the handling of non-party communications. The objective of the protocol is to reduce the impact of conduct by non-parties which takes place beyond the hearing room. The protocol has been engaged. This third Tribunal is mindful of the importance of these regulatory proceedings going ahead without further disruption or delay. It would run counter to the over-arching objective of protecting the public if one or more members of the public could effectively frustrate the process by disrupting the timetable.

21. A significant factor in the history to date has been the conduct of at least one person who has observed when the hearing has been in public session. Ms F originally had a role as a witness for the GMC in 2022 but was no longer a witness when the proceedings started again in late 2024 and is not currently a witness. Her past conduct contributed to delay in the ability of the Tribunal to make progress through the prescribed steps in Rule 17(2). The Tribunal is aware that she remains interested in the case as she attends as an observer when the hearing is sitting in public. It is in the interests of the parties and of the public to reach a proper resolution of these allegations.

22. The Tribunal considers that the history to date supports a strong inference that, if the Rule 17(2)(g) application is heard in public, one or more non-party observer(s) will take an intense interest and this would lead to:

- A real and significant risk of one or more observers taking steps to contact members of the third Tribunal while they are in the process of hearing the application or making deliberations, to seek to provide information to the Tribunal and/or influence the outcome of the application; and/or

- A material risk of one or more of the observers publishing information on social media or otherwise communicating outside the hearing room in a way which might adversely impact the doctor or his representatives or witnesses and their ability to participate in the proceedings.

23. In the event that the application does not dispose of all the allegations, the next step will be for the doctor to have an opportunity to give his evidence and call witnesses. The Tribunal considered that it will better promote the administration of justice if the doctor and his witnesses can participate without fear of an escalation in communications by non-parties arising out of a public hearing of the Rule 17(2)(g) application.

24. The Tribunal took into account that an important objective of the principle of open justice is to safeguard the integrity of the process. The Tribunal noted that any disadvantage of sitting in private is mitigated by the following factors:

- The GMC is not hampered in its presentation of its response to the application by reason of sitting in private;
- The recording of the proceedings, including when sitting in private, contributes to safeguarding their integrity;
- After hearing the submissions, the Tribunal will deliberate in camera and then will announce its decision in public session in accordance with the Rules.

25. The circumstances are wholly exceptional. In light of the evidence before it, the Tribunal concluded that if this application is held in public, there is a real and significant risk of disruption to the proper course of the regulatory proceedings. In this way, hearing this application in public risks prejudicing the interests of justice.

26. The Tribunal considered that there is sufficient justification to displace the presumption in favour of a public hearing, and that to hear the Rule 17(2)(g) application in private is a necessary and proportionate response to the risks. The Tribunal concluded that a private hearing of the application, with the decision to be announced in public, will better facilitate effective proceedings, while also respecting the wider public interest.

27. The Tribunal wished to emphasise that whilst it is usual and proper for an application under Rule 17(2)(g) to be heard in public, this was a case with wholly exceptional circumstances. The Tribunal was satisfied that it was necessary and proportionate for the fair administration of justice and in the interests of justice to hear the application in private.

28. The Tribunal therefore determined to grant the application under Rule 41(2) for the hearing of the Rule 17(2)(g) application to proceed in private. The Tribunal's decision on the Rule 17(2)(g) application will be announced publicly in accordance with the Rules.