

PUBLIC RECORD**Dates:** 18/08/2025 - 03/09/2025 and 24/09/2025**Doctor:** Dr Mohamed KHALIL**GMC reference number:** 5180080**Primary medical qualification:** MB BCh 1987 Cairo University**Type of case**

New - Misconduct

Outcome on factsFacts relevant to impairment
found proved**Outcome on impairment**Consideration of impairment
not reached**Summary of outcome**

Case concluded

Tribunal:

Legally Qualified Chair	Ms Bushra Tabassum
Lay Tribunal Member:	Mrs Barbara Larkin
Registrant Tribunal Member:	Dr Susan Ellerby

Tribunal Clerk:	Mr Francis Ekengwu 18/08/2025 to 19/08/2025 Ms Angela Carney 20/08/2025 to 03/09/2025 and 24/09/2025
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Attendance and Representation:

Doctor:	Present, not represented Not present or represented 01/09/2025 to 03/09/2025
GMC Representative:	Ms Rosalind Emsley-Smith, 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 Facts - 03/09/2025

1. This determination will be handed down in private. However, as this case concerns Dr Khalil's misconduct a redacted version will be published at the close of the hearing.

Background

2. Dr Khalil qualified as a doctor in 1987 and prior to the events which are the subject of the hearing was working as a Locum Associate Specialist at Maindiff Court Hospital, Abergavenny.

3. The allegation that has led to Dr Khalil's hearing can be summarised that, in March 2019 Dr Khalil submitted an application form to Betsi Cadwaladr University Health Board (the Health Board) for approval to work as a medical practitioner under section 12(2) of the Mental Health Act and failed to declare a conviction and previous regulatory proceedings. It is further alleged that Dr Khalil breached a condition on his registration imposed by an MPTS Interim Orders Tribunal in November 2022 by failing to notify the Approval Lead of his Section 12 Approval Tribunal of his conditions. The GMC alleged that Dr Khalil's actions were therefore dishonest.

The Outcome of Applications Made during the Facts Stage

4. The Tribunal refused Dr Khalil's application, made pursuant to Rule 4(5) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that, the five-year rule was triggered in relation to paragraphs 1-4 of the Allegation which fell outside of the five-year rule. The Tribunal's full decision on the application is included at Annex A.

5. The Tribunal refused Dr Khalil's first application on abuse of process argument made on two grounds: late disclosure and Tribunal bias. The Tribunal's full decision on the application is included at Annex B.

6. The Tribunal granted Dr Khalil's first application to adjourn the hearing. The Tribunal's full decision on the application is included at Annex C.

7. The Tribunal granted Dr Khalil's second application to adjourn the hearing. The Tribunal's full decision on the application is included at Annex D.

8. The Tribunal refused Dr Khalil's second application on abuse of process argument made on three grounds: The Health Board's wholly inadequate and unfair investigation and the GMC's failure as prosecutor and reliance on tainted evidence, Institutional bias and disproportionality. The Tribunal's full decision on the application is included at Annex E.

9. The Tribunal refused Dr Khalil's third application to adjourn the hearing. The Tribunal's full decision on the application is included at Annex F.

10. The Tribunal granted the GMC's application, made pursuant to Rules 29(2) and 31 of the Rules, to proceed in Dr Khalil's absence. The Tribunal's full decision on the application is included at Annex G.

The Allegation and the Doctor's Response

11. The Allegation made against Dr Khalil is as follows:

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

1. In March 2019 you submitted an application form ('the Form') to Betsi Cadwaladr University Health Board ('the Health Board') for approval to work as a medical practitioner under section 12(2) of the Mental Health Act.

To be determined

2. When submitting the Form, you:

a. answered 'no' when asked:

i. 'have you ever been convicted of a criminal offence?';

To be determined

ii. 'have you been convicted of a criminal offence, been bound over or cautioned or are you currently the subject of any police investigations, which might lead to a conviction, an order binding you over or a caution in the UK or any other country?';

To be determined

iii. 'have you been or are you currently subject to any fitness to practice proceedings by an appropriate licensing or regulatory body in the UK or any other country?';

To be determined

b. declared that the information:

i. you provided 'is true and accurate';

To be determined

ii. 'given here is true'.

To be determined

3. When submitting the Form, you knew that:

a. the answers described at:

i. paragraphs 2a i - 2a iii were untrue;

To be determined

ii. paragraphs 2b i - 2b ii were untrue;

To be determined

b. you were more likely to be approved by the Health Board if you provided the answers described at:

i. paragraphs 2a i - 2a iii;

To be determined

ii. paragraphs 2b i - 2b ii.

To be determined

4. Your actions at:

a. paragraphs 2a i - 2a iii were dishonest by reason of paragraphs 3a i and 3b i;

To be determined

b. paragraphs 2b i - 2b ii were dishonest by reason of paragraphs 3a ii and 3b ii.

To be determined

5. On 15 November 2022 the Interim Orders Tribunal ('IOT') of the Medical Practitioners Tribunal Service imposed condition 4c as set out in Schedule 1 ('Condition 4c') on your registration.

6. On or around 16 November 2022 you knew that:

a. the IOT had imposed Condition 4c on your registration;

To be determined

b. your approval to work was more likely to be suspended by the Health Board if you complied with Condition 4c.

To be determined

7. You failed to comply with Condition 4c.

To be determined

8. Your actions at paragraph 7 were:

- a. dishonest by reason of paragraphs 6a and 6b;

To be determined

- b. in breach of Condition 4c.

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**

Witness Evidence

12. The Tribunal received evidence on behalf of the GMC by video link from Ms A, All Wales Approval Manager for approved clinicians and Section 12(2) Doctors, Betsi Cadwaladr University Health Board. Ms A worked at the Health Board from April 2021 but was not working at the Health Board at the time of the alleged events in 2019. Whilst Ms A endeavoured to be helpful in providing additional documents throughout the course of her oral evidence, the Tribunal concluded that much of her oral evidence was speculative. For instance, she was unable to produce the Mental Health Act 1983 Section 12(2) Approval/Reapproval process criteria for Wales, applicable at the time of the events due to unreliable version control. Although she relayed what she had been told regarding the process of receiving Section 12(2) applications for approval in 2019, she was unable to confirm its accuracy, as she was not employed by the Health Board during that period. As such, the Tribunal placed limited weight on Ms A's oral evidence, placing greater reliance on the contemporaneous documentary evidence relating to the relevant time and events.

13. Dr Khalil provided his own witness statement, which was undated.

Documentary Evidence

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

- Mental Health Act 1983 Section 12(2) Approval/Reapproval process criteria for Wales, 2025,
- A PDF version of a form entitled '*Mental Health Act 1983 Section 12(2) Application form for Approval/Reapproval in Wales*', in the name of Dr Khalil, dated 25 March 2019 ('the Database Form')

- A Word version of a form entitled '*Mental Health Act 1983 Section 12(2) Application form for Approval/Reapproval in Wales*', in the name of Dr Khalil containing edits in 'red' – ('the Email Form'), dated 25 March 2019, attached in an email from Dr Khalil dated 29 March 2019 to Ms B at the Health Board
- Supporting information from Dr Khalil for his Section 12(2) approval application
- Dr Khalil's statement, undated
- A screenshot from the List of Registered Medical Practitioners website showing Dr Khalil's registration status in 2022
- Letter to Dr Khalil confirming his Section 12(2) approval, dated 8 May 2019
- Supervised Mental Health Act Assessment Forms

The Tribunal's Approach

Burden of Proof

15. The LQC advised GMC bears the responsibility to prove each element of any allegation brought forward. The practitioner under investigation does not have to establish their own innocence; the onus is entirely on the GMC to substantiate the case.

16. The appropriate standard of proof is on the balance of probabilities. The Tribunal must determine whether, on all the evidence available, it is more likely than not that the alleged events or conduct occurred. This is a civil, not criminal, standard.

Assessment of Evidence

17. The LQC reminded the Tribunal of the principles set out in *Dutta v GMC [2020] EWHC 1974 (Admin)* and *Khan v GMC [2021] EWHC 374 (Admin)*, confirming that all evidence, whether oral or documentary, must be considered in the round when making determinations. The Tribunal must evaluate the reliability and credibility of each witness and the weight to be attached to their testimony. Less emphasis is to be placed on the demeanour of witnesses instead, the focus should be on the consistency of their evidence with established facts, objective records, and independent documentation.

18. The LQC stated that, factual findings must be rooted in evidence, avoiding speculation and unsupported assumptions. The Tribunal should only rely on proven and tested material as confirmed in the case of *Roy v GMC, [2023] EWHC 2659 (Admin)* and *Byrne v GMC [2021] EWHC 2237*

Adverse Inference

19. The LQC reminded the Tribunal should a doctor or party choose not to give evidence or to call a witness who could reasonably explain or refute an allegation, the Tribunal may draw an adverse inference but only if it is fair, reasonable, and based on all the circumstances in accordance with the principles identified from the case of *Kuzmin v GMC [2019] EWHC*

2129 (*Admin*). Such inferences must never be automatic; they must be explained by the Tribunal and cannot substitute for concrete evidence.

Hearsay Evidence

20. The LQC reminded the Tribunal that Hearsay is admissible in these proceedings but must be treated with caution. The Tribunal should consider the reliability of the original source, the presence of corroborative evidence, and whether the practitioner had a fair opportunity to respond or challenge the statement in accordance with the principles set out in *Thornycroft v NMC [2014] EWHC 1565 (Admin)*.

Dishonesty Test

21. The Tribunal was reminded of the test set out in *Ivey v Genting Casinos [2017] UKSC 67*:

- Firstly, establish the facts as the doctor believed them to be. Secondly, determine whether the conduct was dishonest by the objective standards of ordinary, reasonable people.
- It is not necessary for the practitioner to have realised their actions were dishonest; dishonesty is an objective assessment, regardless of the individual's own view.

Fairness and Impartiality

22. The Tribunal was reminded that it must act fairly and impartially, giving each party the opportunity to present their case and respond to evidence. Any doubts should be approached with caution and resolved through careful consideration of all available material.

The Tribunal's Analysis of the Evidence and Findings

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

24. In reaching its decision on the allegation, the Tribunal adopted a holistic approach, considering all the evidence presented.

Paragraph 1

25. In his written statement Dr Khalil confirmed that he had hand delivered an application in December 2018 after receiving advice from somebody in the office where he collected his application form. He then received revised advice to add '*See enhanced DBS*' and submitted a new declaration by hand or post. He stated that he wanted to finish the process in December 2018 as he had been advised of an Approval Panel meeting scheduled for January 2019. He recalled that the form had to be completed in black ink, and at the time he had to specifically purchase a pen with black ink to complete the form.

26. The Tribunal noted the email provided by Ms A, dated 29 March 2019 timed 15:56 containing ‘the Email Form’ and other documents which was sent to a Ms B at the Health Board. The email address this came from was ‘*KHALIL, Mohammed (NORTHAMPTONSHIRE HEALTHCARE NHS FOUNDATION TRUST)*’ and stated:

*‘Dear Ms B
I am including all the documents for section 12 approval for your kind care.
Thank you
Dr Mohamed Khalil.’*

The circumstances which prompted the submission of these additional documents at this time were not clear.

27. On day two of the hearing Ms A told the Tribunal that ‘the Database Form’ and the supporting documents she provided to the GMC on behalf of the Health Board were ‘all’ the documents that were submitted by Dr Khalil for his application, which she retrieved from the database.

28. On day three of the hearing, Ms A provided the Tribunal with the ‘Email Form’ and other attachments that were sent to Ms B on 29 March 2019. This contained an additional document and so this information was inconsistent with the information Ms A provided to the Tribunal on day two of the hearing. The Tribunal noted that the ‘Email Form’ contained writing and amendments in ‘red’ as if the document was still in ‘Draft’ form. This differed from the ‘Database Form’.

29. The Tribunal noted that both ‘the Database Form’ and the ‘Email form’ state ‘*Please print and use black ink*’.

30. The Tribunal noted on ‘the Database Form’, next to the section ‘*Have you ever been convicted of a criminal offence*’ it states: ‘Yes/No X’.

31. The Tribunal noted on the ‘Email Form’ it states ‘YES/No X ~~(please circle)~~’ with the ‘X’ underlined and the ‘please circle’ struck through with red ink.

32. The Tribunal noted at the end of both ‘the Database Form’ and the ‘Email Form’ it states ‘To be submitted’ with both a postal address and an email address underneath.

33. Ms A told the Tribunal that it was her understanding that in 2019 the Health Board was in the process of moving from paper records to digital records. She stated that, if a handwritten form had been submitted to the Health Board during this period of time, it was likely to have been scanned into the electronic database and the original hard copy subsequently destroyed. However, she could not confirm this with any certainty.

34. The Tribunal found that Ms Awas unable to provide direct evidence on this issue, as she was not employed in her current role by the Health Board in 2019. The Tribunal found that, although she appeared to be making a genuine effort to assist, much of her oral evidence was speculative. On day three when Ms A was asked about the differences between ‘the Database Form’ and the ‘Email Form’ she said that it was the first time she had seen the ‘Email Form’ with the red text and amends.

35. The two ‘Supervised Mental Health Act Assessment Forms’ submitted with Dr Khalil’s email in March 2019, although similar to the documents found on the database, differed from those he said he had submitted in December 2018 and which he provided copies of.

36. The Tribunal noted that the two ‘Supervised Mental Health Act Assessment Forms’, found on the database and dated 30 November 2018 and 14 December 2018 (typed versions), appeared to bear an electronic signature from Dr C but contained no handwritten comments under the section titled ‘Supervising section doctor’s comments on section 12(2) candidate’s understanding of the process’. In contrast, the documents submitted by Dr Khalil included assessments dated 6 December 2018 and 14 December 2018 which were otherwise identical to the database version save for the fact that they each contained handwritten notes and a handwritten signature by Dr C. The Tribunal was unable to resolve the discrepancy in dates and the omission of additional comments in the documents placed before the approval panel, particularly given that the handwritten versions contained positive remarks supportive of Dr Khalil’s application for approval.

37. The Tribunal noted on ‘the Database Form’ which is dated 25 March 2019 it states Dr Khalil’s employment as Maindiff Court Hospital. Dr Khalil in his witness statement confirmed that he had left Maindiff Court Hospital in February 2019 after being given one weeks’ notice. He provided what he said was his last payslip dated 22/02/2019 from Pertemps Medical Agency, which provided partial corroboration. However, the payslip did not specify the location of work. The Tribunal also noted the document which confirmed Dr Khalil was working, via Pertemps Medical Agency, in the CAMHS team at Belfast Health and Social Care Trust, with a recorded start date of 23/12/2019 and end date of 26/06/2020.

38. The Tribunal heard no evidence from witnesses who were working for the Health Board in 2018/2019.

39. The Tribunal noted that Dr Khalil in his written statement confirmed that his application was submitted by hard copy and hand delivered in December 2018. The Tribunal considered that this seemed to accord with the dates on his supporting documents for training, his assessment dates and the dates of his references.

40. In her oral evidence Ms A told the Tribunal that any paper forms or documentation provided in 2019 would have been scanned into the database and then destroyed. The Tribunal considered this to be speculation. The Tribunal was of the opinion that just because

the Health Board was unable to provide a handwritten application form, this was not evidence that it never existed.

41. Ms A was unable to explain why the layout of the ‘Email Form’ differed from the ‘Database Form’, she believed it was the database form that was submitted to the Approval Panel. She was unable to explain why the form she believed was submitted to the Approval had a missing signature in one section.

42. The GMC was unable to clarify for the Tribunal the circumstances under which the ‘Email Form’ was submitted alongside other supporting documents to Ms B.

43. The Tribunal was not satisfied that the purpose of the ‘Email Form’ was for approval to work as a medical practitioner under Section 12(2) of the Mental Health Act. The Tribunal had no information about why this form had been submitted and how it related to the hard copy application Dr Khalil stated he had previously delivered. Accordingly, having considered the evidence in its entirety, including the absence of contextual clarity around the ‘Email Form’ which emerged during Ms A’s cross-examination. The Tribunal was not satisfied on the balance of probabilities, that the GMC had discharged the burden of proving its case, that Dr Khalil in March 2019 submitted either form to the Health Board for approval to work as a medical practitioner under section 12(2) of the Mental Health Act.

44. Accordingly, on the balance of probabilities, the Tribunal found paragraph 1 not proved.

Paragraphs 2, 3 and 4

45. Paragraphs 2, 3 and 4 fall as paragraph 1 was found not proved.

Paragraph 5

46. The Tribunal was provided with a screen shot of the GMC’s List of Registered Practitioners website by Ms A, which states that Dr Khalil had conditions on his registration from 15 November 2022.

47. Dr Khalil did not dispute that he was subject to an interim order.

48. Accordingly, the Tribunal found paragraph 5 proved.

Paragraph 6a

49. It was Dr Khalil’s evidence in his witness statement that since September 2022 he has not undertaken any work that required GMC registration. XXX

50. The Tribunal considered that Dr Khalil would have been served notice in writing, at his registered address, of the date of the interim order hearing, so he would have been aware

that an interim hearing was taking place. As per the Fitness to Practise Rules, if Dr Khalil had not been present or represented at that hearing the Interim Orders Tribunal (IOT) would have had to have decided that service had been effected, to proceed in Dr Khalil's absence to make its decision.

51. The Tribunal noted that the IOT hearing on or around 16 November 2022 was a new IOT hearing. The Tribunal considered that Dr Khalil was familiar with the GMC's Fitness to Practise proceedings, having previously been suspended in 2012. At the conclusion of all MPTS hearings, both interim and substantive hearings, the practitioner is informed of outcome in writing to their registered address.

52. The Tribunal considered, Dr Khalil having been aware of the IOT hearing, that it is more likely than not, he received the IOT decision either during or following the IOT hearing or checked the outcome on or around 16 November 2022.

53. Accordingly, on the balance of probabilities the Tribunal found paragraph 6a proved.

Paragraph 6b

54. The Tribunal noted that interim condition 4c states:

'4. He must personally ensure that the following persons are notified of the conditions listed at 1 to 3:'

c. the approval lead of his regional Section 12 approval tribunal (if applicable) - or Scottish equivalent'

55. The Tribunal noted the letter dated 8 May 2019 from the Health Board confirming Dr Khalil's Section 12(2) approval, states:

'4. You must inform All Wales Approving Board (BCUHB)... if fitness to practice proceedings are being undertaken by an appropriate licensing or regulatory body in the UK or another country.'

56. Ms A told the Tribunal that Dr Khalil's Section 12(2) approval would not necessarily be suspended if he had GMC conditions on his registration. She also stated that there are doctors with GMC conditions on their registration who still had Section 12(2) approval and were not suspended because of the conditions.

57. The Tribunal noted that Dr Khalil prior to 2019 had Section 12(2) approval in other areas and is likely to have been familiar with the requirements.

58. The Tribunal considered that, it was more likely than not, Dr Khalil would have been aware of what his responsibilities were around reporting any conditions on his registration and the potential consequences of complying with condition 4c.

59. Therefore, on the balance of probabilities the Tribunal found that, it was more likely than not, Dr Khalil knew that his Section 12(2) approval was more likely to be suspended by the Health Board if he had complied with condition 4c.

60. Accordingly, on the balance of probabilities, the Tribunal found paragraph 6b proved.

Paragraph 7

61. Dr Khalil in his written evidence stated:

‘...Since September 2022, I have not undertaken any work requiring GMC registration since... I have not been working in England or Wales, so there has been no need to contact the trust or report my conditional registration. XXX.’

62. The Tribunal heard evidence from Ms A, who was working at the Health Board in 2022, that standard checks are undertaken to verify a Doctor’s Section 12(2) reapproval applications, which included verifying a Doctor’s registration status on the GMC’s List of Registered Medical Practitioner’s (LRMP) website, 6 months in advance of any Reapproval Application. She said that it was during this check in August 2023 that she discovered that Dr Khalil was subject to conditions which came into effect in November 2022. Her evidence was that if Dr Khalil had informed the Health Board of the conditions on his registration, she would have known.

63. It was Dr Khalil’s own evidence through his written submissions that as he was not working *‘there has been no need to contact the trust or report my conditional registration’*. In addition, Ms A’s confirmed that the Health Board had not received notification of Dr Khalil’s conditional registration.

64. Accordingly, on the balance of probabilities the Tribunal found paragraph 7 proved.

Paragraph 8a

65. The Tribunal accepted the Legally Qualified Chair’s advice and applied the two-stage test set out in *Ivey v Genting Casinos [2017] UKSC 67, as above*:

66. The Tribunal found paragraphs 6a, 6b and 7 proved.

67. In terms of the first stage of the test, the Tribunal considered Dr Khalil’s actual state of knowledge or belief as to the facts. It was Dr Khalil’s evidence that he had not worked in England or Wales since September 2022 XXX. He had therefore not undertaken any work requiring GMC registration and as such, Dr Khalil believed at that time there had been no need to contact the Health Board to report his conditional registration.

68. The Tribunal accepted that Dr Khalil was not working in a position that required GMC registration since September 2022 XXX. Based on these circumstances, the Tribunal accepted that it was Dr Khalil's belief that because he was not undertaking work requiring GMC registration and was not working in England or Wales, it was not necessary at that time to notify the Health Board in Wales of condition 4c of his interim conditions.

69. In terms of the second stage of the test, the Tribunal considered whether Dr Khalil's actions were dishonest applying the objective standard of ordinary decent people. The Tribunal considered the broader context, including Dr Khalil having not undertaken work since September 2022 in England and Wales XXX. The Tribunal accepted Dr Khalil's failure to report did not constitute a deliberate act of dishonesty but was instead an oversight arising from the circumstances he faced at the time. Applying the objective standard of ordinary decent people, the Tribunal concluded that Dr Khalil's conduct would not be regarded as dishonest.

70. Accordingly, on the balance of probabilities the Tribunal found paragraph 8a, not proved.

Paragraph 8b

71. The Tribunal found paragraph 7 proved that Dr Khalil failed to comply with interim Condition 4c.

72. The Tribunal having determined that Dr Khalil had failed to report the conditions on his registration to the Health Board, was satisfied that this was subsequently in breach of Condition 4c.

73. Accordingly, on the balance of probabilities the Tribunal found paragraph 8b proved.

The Tribunal's Overall Determination on the Facts

18. The Tribunal has determined the facts as follows:

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

1. In March 2019 you submitted an application form ('the Form') to Betsi Cadwaladr University Health Board ('the Health Board') for approval to work as a medical practitioner under section 12(2) of the Mental Health Act.

Found not proved

2. When submitting the Form, you:
 - a. answered 'no' when asked:
 - i. 'have you ever been convicted of a criminal offence?';

Falls as paragraph 1 was not proved

ii. 'have you been convicted of a criminal offence, been bound over or cautioned or are you currently the subject of any police investigations, which might lead to a conviction, an order binding you over or a caution in the UK or any other country?';

Falls as paragraph 1 was not proved

iii. 'have you been or are you currently subject to any fitness to practice proceedings by an appropriate licensing or regulatory body in the UK or any other country?';

Falls as paragraph 1 was not proved

b. declared that the information:

i. you provided 'is true and accurate';

Falls as paragraph 1 was not proved

ii. 'given here is true'.

Falls as paragraph 1 was not proved

3. When submitting the Form, you knew that:

a. the answers described at:

i. paragraphs 2a i - 2a iii were untrue;

Falls as paragraph 1 was not proved

ii. paragraphs 2b i - 2b ii were untrue;

Falls as paragraph 1 was not proved

b. you were more likely to be approved by the Health Board if you provided the answers described at:

i. paragraphs 2a i - 2a iii;

Falls as paragraph 1 was not proved

ii. paragraphs 2b i - 2b ii.

Falls as paragraph 1 was not proved

4. Your actions at:

a. paragraphs 2a i - 2a iii were dishonest by reason of paragraphs 3a i and 3b i;

Falls as paragraph 1 was not proved

- b. paragraphs 2b i - 2b ii were dishonest by reason of paragraphs 3a ii and 3b ii.

Falls as paragraph 1 was not proved

- 5. On 15 November 2022 the Interim Orders Tribunal ('IOT') of the Medical Practitioners Tribunal Service imposed condition 4c as set out in Schedule 1 ('Condition 4c') on your registration.

Found proved

- 6. On or around 16 November 2022 you knew that:

- a. the IOT had imposed Condition 4c on your registration;

Found proved

- b. your approval to work was more likely to be suspended by the Health Board if you complied with Condition 4c.

Found proved

- 7. You failed to comply with Condition 4c.

Found proved

- 8. Your actions at paragraph 7 were:

- a. dishonest by reason of paragraphs 6a and 6b;

Found not proved

- b. in breach of Condition 4c.

Found proved

Determination on Impairment - 24/09/2025

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

The Evidence

- 75. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary evidence.

Submissions

76. On behalf of the GMC, Ms Rosalind Emsley-Smith, Counsel, clarified the two-stage process to be adopted in relation to the impairment stage. Ms Emsley-Smith submitted that the GMC's position is neutral on misconduct and impairment.

77. Dr Khalil made submissions to the Tribunal, providing the background to the allegations which led to the matter coming to an Interim Order Tribunal (IOT) hearing. He explained that he was not present at the IOT hearing XXX. Dr Khalil explained to the Tribunal that, following the IOT's decision, he did not personally review the written outcome of the IOT. Instead, the content and implications of the decision were outlined to him over the telephone by his legal representative after the hearing had concluded.

78. Dr Khalil explained to the Tribunal that he had not worked in a role requiring GMC registration in the last three years. Dr Khalil confirmed he was therefore not working in medical practice at the time the IOT conditions were imposed. Dr Khalil stated that the Scottish Section 12 approval tribunal equivalent had contacted him following the conditions being imposed, following which he had confirmed to them that he was not working in medical practice at the time, and he would inform them if he returned to medical practice. Dr Khalil told the Tribunal that, at the time he was not thinking about his future as a doctor. XXX. He stated that he now accepted that he breached his conditions and retrospectively he would have read the conditions more carefully and try to comply with them to the best of his ability.

79. Dr Khalil emphasised that he had not engaged in any medical work in the last three years which could have raised concerns regarding patient safety or his clinical practice.

The Relevant Legal Principles

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

81. The Tribunal was also reminded that it must decide in accordance with Rule 17(2)(l) of the Rules whether, based on the facts which it has found proved as set out before, Dr Khalil's fitness to practise is impaired by reason of misconduct that is serious.

82. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to the statutory ground of misconduct which was serious, and thereafter if there was serious misconduct, if that led to a finding of impairment.

83. Whilst there is no statutory definition of impairment, the Tribunal was reminded of the public protection test which should also be applied drawn from the GMC guidance and case law CHRE v NMC and Grant [2011] EWHC 927 (Admin).

84. The LQC also reminded the Tribunal of the guidance of Mrs Justice Cox set out in the Grant case, specifically paragraph 74 which states:

"In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant tribunal should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances."

85. When applying the public protection test, the Tribunal was reminded that the assessment is forward-looking, focusing on whether the doctor currently poses an ongoing risk. This involved considering the doctor's conduct at the time of the events, as well as any relevant factors since then, such as whether the issues were remediable, have been addressed, and the likelihood of recurrence.

The Tribunal's Determination on Impairment

Misconduct

86. The Tribunal found proved that Dr Khalil knew that in November 2022 the Interim Order Tribunal (the IOT) had imposed condition 4c on his registration. IOT Condition 4c stated that, Dr Khalil must personally ensure that he notifies the approval lead of his regional Section 12 approval tribunal (if applicable) - or Scottish equivalent. It also found proved that Dr Khalil knew that that his approval to work was more likely to be suspended by the Health Board if he complied with condition 4c. The Tribunal found proved that Dr Khalil was in breach of IOT condition 4c.

87. XXX

88. The Tribunal noted that Dr Khalil had already stopped working in a clinical role that required GMC registration at the time the IOT conditions were imposed. The Tribunal accepted that it was Dr Khalil's belief that he only had to inform the approval board if he returned to medical practice. Further, the Tribunal considered that, as Dr Khalil had removed himself and was not working in medical practice at the time, the suspension of his Section 12 approval would not have been uppermost in his mind. The Tribunal noted Dr Khalil had accepted that his failure to notify the approval lead of his regional Section 12 approval tribunal was a breach of condition 4c and assured the Tribunal that in future he would ensure that he read any determination carefully.

89. Whilst the Tribunal considered that Dr Khalil had a professional duty to have read the IOT determination, it was satisfied that his breach of condition 4c resulted from a misunderstanding and was an oversight on his part, rather than an act of dishonesty.

90. Importantly, the Tribunal observed that Dr Khalil's breach of condition 4c did not place any patients at risk, as he was not engaged in clinical practice at the time. The Tribunal accepted that he had proactively stepped away from any roles requiring GMC registration, ensuring that there was no possibility of patient harm during this period.

91. As a result, the Tribunal has concluded that Dr Khalil's conduct did not fall so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct. The Tribunal considered that a reasonable member of the public, aware of all the circumstances in this case would not be surprised that no finding of serious misconduct was made.

92. Given the submissions made by parties and the Tribunal's findings in relation to misconduct, it did not consider impairment.

93. That concludes this case.

ANNEX A – 19/08/2025

Application to strike out paragraphs 1 – 4 of the Allegation pursuant to Rule 4(5)

94. Prior to the hearing, Dr Khalil submitted a legal argument in relation to paragraphs 1 - 4 of the Allegation. Dr Khalil rehearsed this legal argument during the remote hearing as a preliminary matter. In addition, he submitted further evidence on the day to substantiate his position.

Submissions

Dr Khalil

95. Dr Khalil submitted that the five-year rule was triggered in relation to paragraphs 1-4 of the Allegation which fell outside of the five-year rule. Paragraph 4 (5) of the Fitness to Practise Rules states:

‘No allegation shall proceed further if, at the time it is first made or first comes to the attention of the General Council, more than five years have elapsed since the most recent events giving rise to the allegation, unless the Registrar considers that it is in the public interest for it to proceed.’

96. Dr Khalil provided written submissions in support of his legal argument which are included within the hearing bundle.

97. Dr Khalil made further submissions on the day of the hearing stating that paragraphs 1 – 4 of the Allegation were out of time in accordance with rule 4 (5) and as such should be dismissed by the Tribunal. He accepted paragraphs 5 -8 of the Allegation were within the five-year rule and therefore should proceed.

98. Dr Khalil questioned why, if the GMC had become aware of information serious enough with regard to paragraphs 1-4 of the Allegation potentially amounting to an allegation of impaired fitness to practise, as early as September 2023, the matter was not formally raised until 19 November 2024, which he stated was the first occasion on which became aware of the Allegation.

99. Dr Khalil further submitted an email dated 19 January 2025 which he stated confirmed the GMC only came to a view as to the seriousness of paragraphs 1 -4 of Allegation in January 2025. Dr Khalil submitted that GMC did not make a determination that the matter was sufficiently serious to give rise to an allegation of impaired fitness to practise until January 2025. He argued that, as the events underpinning paragraph 1-4 of the Allegation occurred in March 2019, almost six years prior, rule 4(5) was engaged.

100. Dr Khalil referred the Tribunal to a meeting between Dr D and a GMC Liaison Medical Officer and said he considers that Dr D may have been advised to submit a complaint about

him before the 5-year referral limit was reached and that there could have been a rush to refer him to the GMC. Dr Khalil submitted that the Trust did not undertake the generally recommended local investigation. He added that he was referred to the GMC within a week.

101. Dr Khalil also submitted whilst he was not seeking to adopt an activist stance, he had concerns over the disproportionate referral rates of ethnic minority professionals to the GMC stating this was two to three times more compared to the representation within the medical workforce. He also questioned the apparent urgency surrounding his own referral to the GMC, suggesting deeper systemic issues.

On behalf of the GMC

102. Ms Emsley-Smith, Counsel for the GMC, provided a written response to Dr Khalil's written submissions dated 15 August 2025, which are contained within the hearing bundle.

103. Ms Emsley-Smith provided a response to the submissions made by Dr Khalil on the day of the hearing. Ms Emsley-Smith submitted that in accordance with Rule 4(5) the relevant date for determining the applicability of the five-year rule is the point at which GMC first received sufficient information by way of a complaint or referral, that clearly indicated the alleged conduct could amount to an allegation of impaired fitness to practise.

104. Ms Emsley-Smith stated that matters pertaining to paragraphs 1-4 of the Allegation first came to the GMC's attention when Dr D, the Responsible Officer for Betsi Cadwaladr University Health Board ('the Board'), informed the GMC on 31 August 2023 that Dr Khalil failed to disclose his previous convictions, GMC sanction and more recent IOT conditions in his application to the Board for approval on the Wales Section 12(2) list.

105. Further clarification was sought by the Tribunal regarding the point at which the GMC determined that the information received was serious enough to give rise to an allegation of impaired fitness to practise. Ms Emsley-Smith provided the Tribunal with the Assistant Registrar's decision dated 21 September 2023. Ms Emsley-Smith submitted this document confirmed the GMC made the decision on 21 September 2023 that the information provided by Dr D was sufficiently serious to give rise to an allegation of impaired fitness to practise.

106. Ms Emsley-Smith further submitted that the events underpinning paragraphs 1-4 of the Allegation took place in March 2019. She confirmed as the GMC had decided on 21 September 2023 that the information provided by Dr D was sufficiently serious to give rise to an allegation of impaired fitness to practise. The decision was made within five years of the events in question resulting in rule 4(5) not being engaged.

The Tribunal's Decision

107. The Tribunal received legal advice from the Legally Qualified Chair, who set out the applicable test under rule 4 (5). The Tribunal was also referred to the Supplementary

guidance to support decisions on applying the five-year rule (Doctors) ('the Five-year Rule' Guidance') particularly paragraphs 6, 8, 9 and 33 of the guidance which state the following:

"6. Deciding whether the five-year rule applies is a question of objective fact applying the legal framework. Answering the following questions should assist the Regulator to reach a view on this:

- i. When was the Regulator first notified about the allegation, or when did the allegation first come to the Regulator's attention?*
- ii. What is the date of the most recent events giving rise to the allegation?*
- iii. What is the time period between these two dates? (the 'relevant period')*

...

8. The Regulator first needs to establish the date on which the allegation was made to it or the date on which it otherwise came to its attention.

9. The allegation can only come to the Regulator's attention once the Regulator has sufficient details to decide that the information received is serious enough to give rise to an allegation of impaired fitness to practise. This means that the date the allegation came to the Regulator's attention is not necessarily the same date as when the complaint or referral was received if that did not disclose an allegation.

...

33. Once the Regulator has established both the actual date of the most recent events giving rise to the allegation and the date when the allegation was brought to the Regulator's attention, the period between the two should be calculated. This is the 'relevant period'. If the relevant period is five years or less, the five-year rule does not apply."

108. The Tribunal had regard to the oral submissions by the Parties and a GMC 'Case details' document by the Assistant Registrar, dated 21 September 2023 which considered the information provided by Dr D on 31 August 2023. This document stated:

"I consider that this concern engages section 35C(2) of the Medical Act on the grounds of impaired fitness to practise via misconduct, and the following new allegation is now added to the current case: -

- Dishonesty with colleagues: Dishonestly declared on application form that he had no previous criminal conviction and GMC sanctions."*

109. The Tribunal also considered Dr Khalil may or may not have been informed of the decision to pursue paragraphs 1–4 of the Allegation based on the evidence received, as there was no evidence before the Tribunal to confirm this either way. The Tribunal however did not find this was relevant to the Tribunal's determination under rule 4(5) specifically, the application of the five-year rule in relation to whether the matter was out of time. The crucial point was that the GMC became aware of the complaint by way of a referral in August 2023

and, by 21 September 2023, was satisfied that it had sufficient information to conclude that there was a potential allegation of impaired fitness to practise.

110. The Tribunal was satisfied that the relevant date for the purposes of rule 4 (5) in relation to paragraphs 1-4 of the Allegation was 21 September 2023. Whilst the Tribunal accepted this was not necessarily the date the GMC was first notified of the information. However, the GMC Assistant Registrar had at that stage reviewed the information and evidence submitted and determined that it was sufficiently serious to warrant an allegation of impaired fitness to practise.

111. The Tribunal was satisfied, and both parties agreed, the most recent events gave rise to the facts alleged as set out at paragraphs 1-4 of the Allegation occurred in March 2019.

112. Finally, the Tribunal applied its mind to the relevant period -the time period between these two dates. The Tribunal was satisfied that the relevant period between the events in March 2019 and the GMC's decision on 21 September 2023 was approximately four years and six months. As this fell within the five-year threshold, rule 4(5) was not therefore engaged.

Other preliminary matters raised

113. XXX

114. Dr Khalil made a request for an independent Legal Adviser to be assigned to him for the duration of the hearing by the MPTS. The Tribunal advised Dr Khalil that it was his own responsibility to identify and instruct a suitable legal representative. The Tribunal also noted he was given the opportunity to secure legal representation at the Case Management Meeting. At the time, he confirmed his intention to represent himself during the course of that meeting. The Tribunal Chair notified Dr Khalil that the Tribunal does not provide legal representation to registrants. However, in exceptional circumstances involving a vulnerable witness, the MPTS may instruct a special counsel to cross-examine the vulnerable witness on behalf of a self-represented medical practitioner to ensure fairness and safeguard the witness.

115. Dr Khalil was informed and furnished with relevant documents and guidance including the 'Resource for doctors: New MPT hearings' document about the offering of the MPTS Support Service, the possibility of a 'pro bono' legal adviser for the hearing, his right to have a notetaker and/or a 'McKenzie' friend to support him during the hearing, given that he is self-represented. Following this information, Dr Khalil confirmed he was content to proceed by way of self-representation.

116. Dr Khalil also requested either a copy of the transcript or the audio of the tribunal hearing at the end of each day. He explained that he would find it difficult to take notes while cross-examining a witness as he was unsupported during the hearing. Dr Khalil was advised that it not possible to provide him with the audio recordings on a daily basis. Dr Khalil was

provided with information and the relevant guidance on how to apply to the MPTS for daily transcripts.

ANNEX B – 22/08/2025

Application for abuse of process

117. Dr Khalil made two oral applications. The first was an application to stay the proceedings on the grounds of an abuse of process due to late disclosure of information. Dr Khalil submitted that the GMC documents marked C2 through to C6, which were provided to the Tribunal by GMC witness Ms A, in response to matters arising during her cross-examination, constituted late disclosure. He noted that the GMC's initial disclosure comprised of a 104-page bundle (C1). However, during Ms A's two-day evidence, an additional 85 pages were disclosed, which he asserted were introduced significantly late in the proceedings. Dr Khalil acknowledged that the majority of these additional documents replicated material already contained in C1, albeit presented in a different format. He also accepted that he had initially agreed to the submission of these documents at the time. However, he clarified that this agreement was made under considerable stress due to the nature of the allegations against him and the pressure of the ongoing hearing. Dr Khalil further cited XXX, which he stated had also influenced his decision to consent to the submission of the additional documentation. He explained as a consequence he had not been afforded a proper opportunity to review the newly disclosed material. This he argued, had compromised his ability to address the matters in dispute and encompass relevant information into his defence statement. As a result, he maintained that the late disclosure of these documents had placed him at a significant and unfair disadvantage.

118. Dr Khalil submitted that, should the Tribunal not be minded to stay the proceedings, it should disregard documents C2, C3, C4, C5, and C6, which had been disclosed late by the GMC. Furthermore, in the interest of ensuring a fair hearing, Dr Khalil also requested that the Tribunal disregard documents D2 and D3, which he had himself provided in response to the late disclosure. He expressed particular concerns about the contents of document C2 which included an email and document not previously disclosed.

119. Dr Khalil made a second application that the Tribunal should recuse itself having heard the oral evidence of Ms A as she had provided a considerable amount of speculative evidence, despite not possessing relevant expertise in Information Technology (IT). Dr Khalil submitted that, as a result of the Tribunal hearing this evidence, there was now a real possibility of perceived bias.

120. Ms Emsley-Smith, on behalf of the GMC submitted that Dr Khalil has seen the majority of the new material within the GMC bundle C1. In response to Dr Khalil's comment regarding the unfamiliarity of the email address, Ms Emsley-Smith stated that it was difficult to assess the extent to which Dr Khalil may be prejudiced by this issue, as it still remained

unclear whether he accepted that he sent an email to the approval panel which contained some of the exhibits currently under consideration.

121. In relation to the issue of bias, Ms Emsley-Smith submitted the Tribunal should not recuse themselves due to bias or the possibility of perceived bias. She argued that the Tribunal could disregard any material it deemed irrelevant, focusing solely on the relevant issues in relation to the allegations before the Tribunal. Ms Emsley-Smith maintained that there was no prejudice to Dr Khalil that would warrant recusal, and that the argument advanced in support of such a request lacked any merit.

The Tribunal's Approach

122. The Legally Qualified Chair (LQC) referred to the MPTS Circular dated 12 March 2025 which identifies the key considerations in MPT hearings where a stay is requested due to an abuse of process.

123. The LQC stated that the Supreme Court in *R v Maxwell [2010] UKSC 48* confirmed two principal categories in which a court may stay proceedings on the grounds of abuse of process.

124. The first arises where it is impossible for the Doctor to receive a fair trial. In such cases, the Tribunal must stay the proceedings. If the Tribunal concludes a fair trial can be achieved, it should then move on to consider the second category.

125. The second applies where, although a fair trial may be technically possible, the Tribunal must assess whether, in all the circumstances, continuing with the hearing would offend the Tribunal's sense of justice and propriety. This includes situations where the conduct in question is so improper that proceedings would risk undermining public confidence in the integrity of the Tribunal process, thereby bringing it into disrepute.

126. The LQC outlined test for recusal on the grounds of apparent bias, as established in *Magill v. Porter [2001] UKHL 67*. The test states:

'Whether the fair minded and informed observer, having considered the facts, would conclude that there was real possibility of bias.'

127. Upon his request Dr Khalil was emailed a copy of the MPTS Tribunal Circular dated 12 March 2025, and the hyperlink to *R v Maxwell [2010] UKSC 48*.

The Tribunal's Decision

Late disclosure

128. In considering the application on the grounds of an abuse of process, the Tribunal found no reason that Dr Khalil could not receive a fair hearing. Furthermore, the Tribunal did

not consider that continuing with proceedings would offend its sense of justice and propriety. The Tribunal is of the view, that it is not uncommon for documents to be adduced during a hearing which were not disclosed in advance, and such occurrences do not, in themselves, amount to a procedural impropriety. The Tribunal was satisfied that the nature and timing of the disclosures were not so serious as to bring the Tribunal into disrepute.

129. However, the Tribunal can allow Dr Khalil appropriate time to consider and review the additional documents which he has not previously had sight of. The additional time should give him the opportunity to review any new information arising from those documents, address any relevant matters that were not included in his initial statement, and if necessary, provide written representations on that material prior to proceeding with his oral evidence.

Recusal

130. The Tribunal does not recuse itself on the basis of having heard the oral evidence of Ms A. The Tribunal is satisfied that it remains impartial and that it can continue to adjudicate on this matter fairly and without any bias.

131. Having considered the test for recusal as set out in the case of *Magill v. Porter [2001] UKHL 67* the Tribunal did not consider that a fair-minded and informed observer, having reviewed the facts, would conclude that there was a real possibility of bias.

132. The Tribunal did, however, note Dr Khalil's concerns regarding Ms A's oral evidence straying into speculative areas at times. The Tribunal assured Dr Khalil it is experienced in assessing hearsay and speculative evidence and will attach such weight to it as it considers appropriate, in light of the relevant issues before it.

133. Accordingly, the Tribunal determined that Dr Khalil's application for a stay on the grounds of abuse of process due to late disclosure of information and recusal on the grounds of a bias or perceived bias, is refused.

134. As Dr Khalil had raised concerns about XXX, the Tribunal invited him to submit details of XXX. This was to ensure he could fully engage in the proceedings and that fairness was maintained.

ANNEX C – 27/08/2025

Application to Adjourn

135. The Tribunal noted Dr Khalil's email dated 26 August 2025, timed 05:23, which states:

*'Dear sir/Madam
XXX.'*

136. This email also contained two attachments named 'Easyjet' which the MPTS were unable to open and in the body of the email Dr Khalil also provided information of a hotel booking in London which states:

*'Check in
Sun 24 Aug 2025 from 3pm
Check out
Wed 27 Aug 2025 before 12pm (3 nights)'*

137. The Tribunal also noted a further email from Dr Khalil dated 26 August 2025, timed 05:46, which states:

*'Dear all
I would like to confirm that I am happy to continue assessing my legal arguments in my absence.
Thanks'*

138. The Tribunal sought representations from Ms Emsley-Smith on the relevant information. Ms Emsley-Smith stated that Dr Khalil has waived his right to attend the hearing that morning. She indicated her understanding that Dr Khalil had expressly consented to the Tribunal continuing to assess his legal argument in his absence by way of the second email. Ms Emsley-Smith submitted that the legal principles surrounding abuse of process were not particularly controversial and reminded the Tribunal that it had previously received legal advice on the matter from the Legally Qualified Chair. While Ms Emsley-Smith acknowledged that it would be preferable for Dr Khalil to be present, she confirmed that she was content for the Tribunal to proceed to consider the legal arguments and reach a determination in his absence.

139. Ms Emsley-Smith confirmed to the Tribunal that the GMC has not received any XXX evidence from Dr Khalil in support of his application to adjourn. However, she acknowledged Dr Khalil had engaged with the hearing process to date and his request for transcripts was successful. Ms Emsley-Smith submitted that the GMC maintained a neutral position on the application to adjourn and emphasised that the decision as to whether to grant an adjournment is a matter for the Tribunal.

The Tribunal's Decision

140. The Tribunal noted Dr Khalil's emails dated 26 August 2025. It also noted that the MPTS staff have been unable to contact Dr Khalil via email or telephone today.

141. The Tribunal considered the comments provided directly by Dr Khalil at various points during the hearing regarding XXX. It noted that Dr Khalil's hotel booking in London was valid until tomorrow, Wednesday, 27 August 2025.

142. The Tribunal determined that in light of the information provided by Dr Khalil during the hearing regarding XXX, him having engaged with the hearing up until today and taking into account the broader context of the proceedings, it has no option but to adjourn the hearing until tomorrow, Wednesday 27 August 2025 at 9.30am. However, if Dr Khalil requires a further period of adjournment, he must submit a further application and provide XXX in writing outlining the reason he is unable to engage with this hearing. Dr Khalil should also indicate the specific duration of any subsequent adjournment sought.

143. XXX

144. In relation to the second issue concerning the progression of the legal argument on abuse of process, the Tribunal was not satisfied that Dr Khalil had clearly confirmed his consent for the Tribunal to continue assessing the argument in his absence. Considering this uncertainty, and in order to ensure fairness and avoid any risk of undermining the integrity of the proceedings, the Tribunal determined that it would not progress the legal argument in Dr Khalil's absence. The matter will be revisited when the hearing resumes tomorrow.

ANNEX D – 27/08/2025

Second Application to Adjourn

145. The Tribunal noted Dr Khalil's two emails dated 26 August 2025, timed 20:24 and 20:27, which state:

20:24

Dear all

I appreciate the tribunal decision to adjourn for a day.

Here is the evidence of travelling early morning and would not be home before the afternoon.

I would like to adjourn till Wednesday morning 9:30 and will attend XXX.

Thanks.

20:27

Sorry I mean Thursday morning'

146. Dr Khalil also provided details of today's return flight from London to Belfast and XXX.

147. The Tribunal sought representations from Ms Emsley-Smith on the relevant information. Ms Emsley-Smith stated, given Dr Khalil has not adequately explained why he cannot rejoin the hearing this afternoon. She submitted that the Tribunal ought to continue with the hearing this afternoon.

Legally Qualified Chair's advice

148. The Legally Qualified Chair advised the Tribunal that when considering Dr Khalil's application to adjourn, it should strike a balance between fairness to the doctor and the public interest. This includes having regard to factors such as the efficient progress of the proceedings and use of resources, the history of the case and whether the adjournment would result in the participation of the doctor at the reconvened hearing.

The Tribunal's Decision

149. The Tribunal noted Dr Khalil's emails dated 26 August 2025, timed 20:24 and 20:27 containing his request for a further adjournment. It also noted Dr Khalil's return flight details which departed at 08:15hrs today.

150. The Tribunal previously noted the comments provided directly by Dr Khalil at various points during the hearing regarding XXX.

151. The Tribunal rejected the GMC's argument to reconvene this afternoon. The Tribunal will adjourn the hearing until 9.30am tomorrow, 28 August 2025, for Dr Khalil to attend remotely and participate in the hearing. In reaching this decision the Tribunal has balanced the fairness to Dr Khalil and the public interest. The Tribunal has taken into account the following information:

- XXX
- Dr Khalil has requested an adjournment until 9.30am tomorrow, 28 August 2025, which indicates that XXX.

152. Accordingly, the Tribunal granted Dr Khalil's application to adjourn the hearing.

153. XXX

ANNEX E – 29/08/2025

Second Application on Abuse of Process

154. Dr Khalil made an application on abuse of process, namely that that the entirety of the proceedings against the Doctor amount to an abuse of the process and the Tribunal should grant a permanent stay of the proceedings. Dr Khalil provided the Tribunal with written submissions and made further brief oral submissions at the hearing to support his application.

155. In Dr Khalil's written submissions, he stated that the GMC's decision to prosecute, and the process by which the case was built, is so fundamentally flawed and unfair that it would be unjust and oppressive for him to be required to answer the allegations. He submitted this stemmed from the misconduct of 'NHS Trust BCUHB' (the Betsi Cadwaladr University Health Board - 'the Health Board') and the GMC as a prosecutor.

156. Dr Khalil's written submissions referred the Tribunal to the cases of *R (on the application of Coke-Wallis) v Institute of Chartered Accountants in England and Wales [2011] UKSC 1* and the House of Lords in *R v Maxwell [2010] UKSC 48*. He submitted that the case of *Maxwell* confirmed the two-limb test and that his application was based on the second limb: '*Where it would be unfair for the defendant to be tried, even if a fair trial itself remains possible.*'

157. Dr Khalil in his written submissions confirmed the argument was not that a fair hearing before this Tribunal is impossible, but that the misconduct of the Health Board and the GMC, in constructing the case was so egregious that it would be offensive to justice and a violation of his right to a fair process under Article 6 ECHR for it to continue.

158. Dr Khalil stated that his application on abuse of process was based on three grounds:

- The Health Board's wholly inadequate and unfair investigation
- The GMC's failure as prosecutor and reliance on tainted evidence
- Institutional bias and disproportionality.

Ground One

159. In relation to ground one, Dr Khalil submitted that the Health Board, as the initial referring body, owed a duty to conduct a robust, fair, and impartial investigation into the concerns before making a referral to the GMC. He stated that the Health Board had asserted that it did not have to conduct a robust investigation. He submitted that this assertion was fundamentally wrong and represented a serious abdication of its responsibilities. Dr Khalil stated that in failing to investigate properly the Health Board:

- denied him the opportunity to respond to their concerns at a local level, where context and nuance could have been properly understood and the matter potentially resolved
- failed to gather crucial evidence that could have exonerated him or provided necessary context, thereby fatally undermining the evidence base at the outset
- created a procedurally unfair foundation upon which the entire GMC process has been built.

160. Dr Khalil submitted that a referral to the GMC by the Health Board made on such a basis was inherently abusive. He submitted that the referral by the Health Board was rushed to avoid the GMC's five-year rule. Dr Khalil reminded the Tribunal that the GMC's witness, Ms A confirmed that his contact telephone number(s) were present on his Section 12(2) approval application form. He submitted that the Health Board had failed to telephone him for clarification but instead sent a single email to his personal email address which was not secure and provided no evidence that this email had reached him.

161. Dr Khalil submitted that documentary evidence was either lost or destroyed by the Health Board, such as his initial documents including the declaration and potentially the enhanced DBS, depriving him the opportunity to use the documents as part of his defence.

Ground Two

162. In relation to ground two, Dr Khalil stated that the GMC has a duty to act fairly and with propriety. He submitted that the GMC has an independent duty to satisfy itself that there is a case to answer and referred to the case of *Ishag v General Medical Council [2021] EWHC 862 (Admin)*.

163. Dr Khalil submitted that the GMC's misconduct included the reliance on a single document provided by the Health Board. He submitted that the GMC has failed to conduct any meaningful independent inquiry to verify the contents or authenticity of this document or to seek out countervailing evidence. He submitted that this is a failure of its core prosecutorial function.

164. Dr Khalil submitted that the GMC's Case Examiner, in their reasoning (*'Persistent dishonesty, attempts to conceal, failure to demonstrate any insight, remorse, or remediation'*) for referral to this Tribunal hearing was biased, without any supporting evidence.

165. Dr Khalil submitted that the GMC's entire case hinges on the evidence of a single witness, Ms A. He submitted that Ms A's evidence is not based on direct knowledge but is 'hearsay' evidence. He submitted to base a prosecution that threatens a professional's livelihood on uncorroborated hearsay is manifestly unfair and oppressive.

166. Dr Khalil submitted that the GMC's investigation has taken a disproportionate and unjustifiable amount of time and that an abuse of process therefore arises. He referred the Tribunal to Article 6 (1) of the European Convention on Human Rights which provides the right for an individual to have their case heard within a reasonable time. He submitted that the GMC took from September 2023 until 18 August 2025 to refer his case. Dr Khalil submitted that the alleged events occurred in March 2019.

167. Dr Khalil submitted that an application may be made for a stay, for example the GMC allegedly failing to follow the investigatory process set out in the GMC (Fitness to Practise) Rules 2004 or by a failure or inability to obtain certain evidence. He submitted that, case law has held that a Tribunal must *'Consider whether, in the light of those defects, the public interest in ensuring that standards are upheld and grave crimes are prosecuted is outweighed by the public interest in the integrity and the fairness of the process'*.

168. Dr Khalil submitted that the cumulative effect of the Health Board's failure to investigate, and the GMC's failure to scrutinise, is a case built on a foundation of sand and the process is irredeemably tainted from its origin.

Ground Three

169. In relation to ground three, Dr Khalil submitted that he has been subject to institutional bias and disproportionality. He submitted that it is a matter of public record, and supported by GMC data that, *'doctors from ethnic minority backgrounds are referred to the GMC by their employers at a disproportionately higher rate than their white counterparts'*.

170. Further, Dr Khalil submitted that this statistical disparity raises a legitimate question of whether unconscious or conscious bias played a role in the Health Board's decision to refer without a proper investigation. He submitted that the Health Board's cavalier attitude towards its duties, as stated, is consistent with a process that lacked rigour and fairness, potentially influenced by such biases. Dr Khalil referred to the case of *Dr. Karim v General Medical Council* and submitted that the High Court found evidence supportive of a finding of 'institutional racism' within the GMC's processes. He submitted that whilst each case must be considered on its merits, the finding in *Karim* confirms that the risk of an unfair process stemming from institutional bias is not theoretical but real.

171. Dr Khalil submitted that in his case, the combination of: (a) the Health Board's inadequate investigation, (b) the disproportionate impact on ethnic minority doctors; and (c) the GMC's failure to correct for these errors, creates a compelling picture of a process that is systemically and specifically unfair to him.

172. In summary, Dr Khalil submitted that the misconduct of the Health Board and the GMC has resulted in a prosecution that is unfair, oppressive, and tainted by a flawed and potentially biased investigatory process. Dr Khalil submitted that to require him to defend himself against allegations constructed in such a manner would bring the professional disciplinary system into disrepute and violate the fundamental principles of justice.

173. On behalf of the GMC, Ms Emsley-Smith, Counsel, provided the Tribunal with written submissions and also made oral submissions. In her written submissions Ms Emsley-Smith submitted that the Tribunal has already determined that the additional exhibit evidence provided by Ms A does not generate unfairness such that Dr Khalil cannot have a fair hearing. She stated that it is now being argued that the hearing offends a sense of justice and propriety, and it would be unfair to allow the hearing to proceed further against Dr Khalil. She said that Dr Khalil argued that as such, the hearing should be stopped as an abuse of process.

174. Ms Emsley-Smith referred to the case of *Maxwell* and reminded the Tribunal that a stay will only be granted where it is concluded that in all the circumstances the proceedings will *'offend the court's sense of justice and propriety'* (per Lord Lowry in *R v Horseferry Road Magistrates' Court, Ex p Bennett* [1994] 1 AC 42, 74G) or will *'undermine public confidence in the justice system and bring it into disrepute'* (per Lord Steyn in *R v Latif and Shahzad* [1996] 1 WLR 104, 112F)."

175. Ms Emsley-Smith submitted that, it is clear from the caselaw that the balance must always be struck between the public interest in ensuring that those who are accused of serious misconduct should be subject to fitness to practise proceedings and the competing

public interest in ensuring that misconduct on the part of the GMC does not undermine public confidence in the regulatory system and bring it into disrepute. She submitted that a stay of proceedings is always considered an exceptional outcome and the burden of proving the matters which it is said amount to an abuse of process is on the doctor.

Ground One

176. In relation to ground one, Ms Emsley Smith submitted that it is not accepted, as a matter of principle, that the 'Trust' ('Health Board') was prohibited from reporting Dr Khalil to the GMC until such time as their investigation had concluded. She stated that Dr Khalil's approval had been suspended but could have been reinstated if and when he engaged with the Health Board, and it was felt it was safe so to do. She reminded the Tribunal of Ms A's evidence that the suspension was a holding position in the interests of patient safety. She stated that the matter was discussed with a GMC advisor and only after that discussion was a referral made by Dr D. She submitted that the Health Board cannot be criticised in respect of the timing of the referral to the GMC.

177. Ms Emsley-Smith submitted the evidence is that there was no rush to refer Dr Khalil to the GMC and at the point a decision to refer was made, it was perfectly plain that Ms A was unaware that there was a GMC 5-year rule. She submitted that there is no evidence that supports a conclusion that Ms A or the Health Board wanted to '*fact track*' referral to the GMC. Further, there is no evidence of motive as to why anyone at the Health Board would want to fast track a referral to the GMC.

178. Ms Emsley-Smith reminded the Tribunal that Ms A sent an email to the email address which had been used to successfully communicate with Dr Khalil, and it was perfectly reasonable to believe that it would be a successful mode of communication again. She submitted that Dr Khalil has not demonstrated that he was denied the opportunity to respond to the allegations or that the relevant email went into his junk folder while the email preceding it did not, and he was able to respond to it.

179. Ms Emsley-Smith submitted Dr Khalil has not outlined what crucial evidence should have been gathered by the Health Board which would have '*exonerated*' him. She stated that Ms A made it clear that all documents submitted as part of an Approval application would be stored on the database, including that which had been hand delivered and scanned onto the system. She reminded the Tribunal that Ms A has provided it with all documents sent by Dr Khalil in support of his application and all the documents which were submitted to the Approval Panel for their consideration. She stated that Dr Khalil can give evidence that there were other documents, if that is his case, that would be exculpatory, and the Tribunal can assess that evidence. Ms Emsley-Smith submitted that there is no abuse of process because the Tribunal can hear about other evidence and weigh that into the decision-making process.

180. Ms Emsley-Smith reminded the Tribunal that the Panel who considered Dr Khalil's application for s12(2) did not have his enhanced DBS check. Ms Emsley-Smith submitted that

it is not clear the basis upon which Dr Khalil is asserting that this evidence was lost. What is clear is that it was not submitted along with the application for section 12(2) approval.

Ground Two

181. In relation to ground two, Ms Emsley Smith submitted that Dr Khalil's application form contains a prima facie false declaration. She stated that the GMC wrote to Dr Khalil on 26 September 2024 at the Rule 7 stage of the investigation and asked for his comments and input regarding the evidence. She stated that Dr Khalil made a decision not to engage with the investigation process in any way and the Case Examiners therefore made a decision based on the information provided by the Health Board. Ms Emsley Smith submitted that the GMC cannot be criticised because the doctor refused to engage in the process and provide explanation and evidence which may contextualise the false declaration on the form. Dr Khalil's case was only communicated to the GMC in the week prior to the hearing starting, Dr Khalil having missed his disclosure deadline.

182. Ms Emsley Smith submitted that Ms A did not give hearsay evidence, she produced evidence from the database. She stated that those documents are business documents and so fall within a recognised exception to a rule against hearsay. She reminded the Tribunal that it admitted the evidence as fair and relevant.

183. Ms Emsley Smith submitted that it is not accepted that it has taken a disproportionate and unjustified amount of time to investigate this matter. She stated that the allegations before the Tribunal are only a small aspect of the matters which were originally being investigated by the GMC at the time. She submitted that any delay is not so disproportionate that it could be argued that the integrity of the process has been fatally undermined.

184. Ms Emsley Smith submitted that Dr Khalil has not specified what evidence is missing which would impact the integrity of the system. She submitted that Dr Khalil's lack of engagement with the Health Board and the GMC must be factored in to any decision the Tribunal reach in respect of this application. She submitted that Dr Khalil had a responsibility to engage and chose not to and had he engaged at an earlier point he could have specified which documents existed and where they may be found for the purposes of assisting his defence. He did not do so. Ms Emsley Smith submitted that Dr Khalil can however inform the Tribunal of any such documents, and it can consider his evidence. Ms Emsley Smith submitted that the integrity of the system is not fatally undermined because of unspecified "missing" evidence.

Ground Three

185. In relation to ground three, Ms Emsley Smith submitted that there is no evidence of discrimination in any of the decisions in this case. She submitted that there is a clear prima facie case of dishonesty on the face of the documents, there is a signed false declaration and a failure on the part of the doctor to engage with the GMC investigation. Ms Emsley Smith

stated that the documents would give rise to an investigation irrespective of the ethnicity of the doctor.

186. In summary, Ms Emsley Smith submitted that there is no basis for finding that the integrity of the fitness to practise system has been compromised and a stay is necessary to protect the system, and the application should be refused.

187. In addition, Dr Khalil confirmed in session that his argument was under limb two of *Maxwell*.

188. In response, Ms Emsley-Smith stated that she had reflected that in paragraph two of her written submissions. She stated that Dr Khalil's first application on abuse of process has already been resolved and now the Tribunal is dealing with the limb two of abuse of process argument.

The Tribunal's Approach - Legal Advice

189. The Legally Qualified Chair confirmed to the Tribunal Dr Khalil was seeking an indefinite stay of proceedings on the grounds of abuse of process, as set out in his written submissions.

190. The Legally Qualified Chair explained that a stay can be either indefinite, ending the proceedings entirely or temporary, which pauses the case until certain matters are resolved.

191. The Tribunal was reminded that the power to stay proceedings for abuse of process is an exceptional remedy. The leading authority of *R v Maxwell [2011] 1 WLR 1837* was cited setting out the two limbs to the test which are:

- *Where the [doctor] cannot receive a fair hearing in the circumstances (limb one)*
- *Where it would be unfair for the [doctor] to be tried because it would offend the [tribunal's] sense of justice and propriety to 'try the accused' in the particular circumstances of the case (limb two).*

192. The Tribunal was advised that the burden of proof lies with the doctor, who must establish on the balance of probabilities, that one or both limbs of the *Maxwell* tests are engaged. The Legally Qualified Chair confirmed Dr Khalil advanced his legal argument for the proceedings to be stayed based on limb two of the *Maxwell* Test.

193. The Legally Qualified Chair advised the Tribunal that Article 6 of the European Convention on Human Rights applies to regulatory proceedings, outlining its key protections.

194. The Legally Qualified Chair advised the Tribunal that delay alone does not justify a stay of proceedings, citing *Attorney General's Reference (No 2 of 2001)* and *Ishag v GMC [2021] EWHC 862 (Admin)* to confirm that only delay causing serious prejudice to fairness

warrants a stay. Additionally, the Legally Qualified Chair referenced *R v Brian Selwyn B [2003]*, which establishes that no fixed period of delay is determinative.

195. The Tribunal were reminded under Rule 34 of the GMC (Fitness to Practise) Rules 2004, that hearsay evidence is admissible if it is fair and relevant. In assessing such evidence and attaching such weight to it as considered appropriate, the Tribunal must consider whether it is first-hand, whether the witness is available for cross-examination, and whether there is corroboration and overall procedural fairness.

196. The Tribunal were also reminded they must assess whether alleged discrimination has affected fairness. Although Dr Khalil cited *Karim v GMC [2024] EWCA Civ 770* in his submissions, the Legally Qualified Chair advised the Tribunal this case was remitted for rehearing with no finding of institutional racism being determined by the Court of Appeal.

197. The Legally Qualified Chair advised the Tribunal, as confirmed in *Warren v AG of Jersey [2012] 1 AC 22*, even serious misconduct by authorities does not automatically justify a stay. The Tribunal were reminded they must weigh the fairness of proceedings against the public interest in resolving serious allegations.

198. The Legally Qualified Chair also reminded the Tribunal to consider whether key evidence was reasonably obtainable, whether its absence resulted from the GMC or the Health Board's conduct, and whether the Doctor has suffered any material disadvantage as a consequence.

The Tribunal's Decision

Ground One

199. The Tribunal received no evidence regarding the Health Board's policies and procedures in relation to how the concerns should have been investigated.

200. The Tribunal therefore had no evidence as to whether the Health Board's investigation was in line with their policies or procedures. However, the Tribunal considered that even if the investigation was not robust, that in and of itself would not amount to conduct that would compromise the integrity of the GMC's proceedings or undermine public confidence in the regulatory process. The Tribunal considered that the concerns raised by the Health Board to the GMC were sufficiently serious to warrant an independent investigation by the GMC. The GMC was therefore entitled to assess the allegations on their own merits once a referral had been made.

201. The Tribunal noted that although the Health Board had Dr Khalil's phone number and home address, they relied solely on email, which had previously been effective. While this may have reduced Dr Khalil's opportunity to respond promptly, the Tribunal found the conduct did not reach the level of serious impropriety required to engage limb two of the

Maxwell test in that it was so seriously improper that it brings the administration of justice into disrepute.

202. The Tribunal noted that Dr Khalil has not identified the specific information that the Health Board failed to gather or is missing which is relevant and if obtained would have exonerated him. In addition, the Tribunal found no evidence to suggest that the Health Board was influenced by the GMC's "five-year rule," and therefore there was no basis to conclude that the investigation was improperly expedited as a result.

203. Applying these findings to limb two of the *Maxwell* test, the Tribunal concluded that the threshold for an abuse of process on ground one had not been met.

Ground Two

204. The Tribunal bore in mind the legal advice provided by the Legally Qualified Chair in the case of *Ishag* which confirmed delay alone does not justify a stay in proceedings. Referring to *Ishag*, the Tribunal noted that delay must cause serious prejudice to the fairness of the hearing or harm the integrity of justice. The Tribunal found no such prejudice as there was no evidence the delay in the referral being made prejudiced Dr Khalil. The Tribunal therefore did not find there had been a breach of Article 6(1) of the European Convention on Human Rights and reconfirmed that delay alone is insufficient to justify a stay in proceedings. The Tribunal also noted *R v Brian*, which confirmed that actual, not potential prejudice must be shown, and that no fixed period of delay is determinative. Accordingly, the Tribunal was not satisfied that limb two of the *Maxwell* test was met, as there was no evidence that Dr Khalil suffered prejudice as a result of the delay.

205. The Tribunal considered Rule 34(1) of the Fitness to Practise Rules which states:

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

206. Rule 34(1), permits hearsay evidence. While the GMC presented only one live witness, the case was supported by additional documentary evidence, some of which was introduced during the hearing. The Tribunal found that this did not amount to manifest unfairness or oppression. The Tribunal would be able to attribute appropriate weight to any hearsay evidence given in the witness's oral evidence.

207. Further, the Tribunal was not persuaded by Dr Khalil's claim that the GMC's case relied solely on one document, noting reliance on multiple documents, including some introduced during the hearing and testimony from GMC witness Ms A. It also noted that the facts alleged in paragraphs 5–8 of the Allegation do not rely solely on one document. The Tribunal also considered the claims of bias and speculation by the GMC Case Examiner, finding they did not meet the threshold under the limb two of the *Maxwell* test as the conduct complained of did not render the proceedings unjust.

208. The Tribunal applied limb two of the *Maxwell* test and found no evidence that the GMC had acted unfairly or improperly by relying on tainted evidence. It concluded that the threshold for an abuse of process on ground two had not been met.

Ground Three

209. The Tribunal considered that Dr Khalil had not provided any evidence of discrimination. The Tribunal noted the letter containing the GMC Case Examiner's reasoning for referral to a Tribunal. The Tribunal concluded there was no evidence of personal hostility or procedural irregularity as to compromise the fairness of the process.

210. The Tribunal reviewed all available data concerning referral rates of ethnic minority doctors to the GMC, including submissions addressing whether conscious or unconscious bias may have influenced decisions to refer without adequate investigation. The Tribunal concluded that there was no evidence to suggest such bias had affected the referral in this case.

211. Having applied the second limb of the *Maxwell* test to the findings, the Tribunal found no evidence of institutional bias or discrimination. It therefore concluded that the threshold for establishing an abuse of process on ground three had not been satisfied.

212. Accordingly, the Tribunal refused Dr Khalil's second application of abuse of process.

ANNEX F - 29/08/2025

Third Application to Adjourn

213. Dr Khalil made an application to adjourn the hearing for a period of two months XXX. He stated that he needed the time to start reviewing the Tribunal's decision on his second abuse of process application (Annex E) because he could not process it, and XXX.

214. XXX.

215. XXX

216. Dr Khalil said that he does not have the means to employ a barrister so he must represent himself. He said he was requesting an adjournment to give him time to XXX to allow him to represent himself in the best way.

217. Dr Khalil stated that if the Tribunal refused his application he would withdraw from the hearing. XXX

218. Ms Elmsley-Smith submitted that XXX.

219. XXX

220. XXX. She argued that a document of this nature would be insufficient to justify an adjournment in a Crown Court setting and similarly fails to meet the evidentiary standards required by the Tribunal.

221. Ms Emsley-Smith reminded the Tribunal that the case had been ongoing for 9 days and one would have thought, given the narrow issue in the case, that further progress would have been made. She submitted whilst she made no criticism of anybody for that position, progress now needed to be made. She stated that this hearing has been listed for some time now, XXX. Ms Emsley-Smith submitted that it is the GMC's position that the information is not there to justify any further delay in these proceedings.

222. Accordingly, Ms Elmsley-Smith submitted that the GMC opposes Dr Khalil's application for an adjournment.

The Tribunal's Decision

223. The Tribunal received an email in which he stated:

'I would to start a new request of adjournment for two months.
XXX.'

XXX

224. XXX

225. Following his oral application to adjourn the hearing, the Legally Qualified Chair referred to, and Dr Khalil was provided with a further copy of, the Tribunal Circular '*Adjournments in MPT and IOT hearings*' dated 17 March 2022 outlining the principles established in *Hayat v GMC*, XXX. Dr Khalil was given an opportunity to reread the circular and asked whether he wished to submit further evidence, but he declined to do so.

226. Dr Khalil indicated that he possessed additional XXX evidence which he was willing for the Tribunal to consider but declined to share this information with the GMC. The Tribunal determined that it would not review this information without affording the GMC an opportunity to examine it and offer any comments to ensure fairness to both Parties. As a result, the Tribunal did not consider this further information.

227. XXX

228. XXX

229. In reaching its decision, the Tribunal applied the *Hayat* principles which require a careful balance between the fairness to the practitioner and the public interest in timely proceeding. XXX

230. Accordingly, the Tribunal has refused Dr Khalil's third application to adjourn the hearing for a period of two months.

ANNEX G – 01/09/2025

Application to proceed in absence

231. Dr Khalil is not present and not represented.

232. Dr Khalil was present and self-represented from 18 August 2025 to 29 August 2025, save for 26 and 27 August 2025 when the Tribunal granted his two applications to adjourn.

233. The Tribunal was informed that MPTS staff attempted to contact Dr Khalil by email once and telephone on two occasions, using his contact details used throughout the hearing so far, with no response.

234. Ms Emsley-Smith made an application to proceed in Dr Khalil's absence.

235. Ms Emsley-Smith told the Tribunal that the GMC has also made attempts to contact Dr Khalil by email and telephone, using his contact details used throughout the hearing so far, with no response.

236. Ms Emsley-Smith referred the Tribunal to Rule 31 which gives it the power to proceed in the absence of a practitioner, providing it is satisfied that the practitioner has been given due notice of the hearing. She submitted that the Tribunal can be satisfied in this case because Dr Khalil has attended for two weeks of the hearing.

237. Ms Emsley-Smith reminded the Tribunal that, Dr Khalil, when making his application to adjourn last week XXX, stated that in the event that his adjournment application was not successful, it was his intention to withdraw from the proceedings.

238. Ms Emsley-Smith referred the Tribunal to the cases of *GMC v Adeogba* [2006] EWCA Civ 162, and *R v Jones* 2002 UKHL 5, wherein it was observed that it is a matter for the Tribunal's discretion. She stated that discretion should be exercised with great care, particularly when dealing with a Doctor who is unrepresented, such as Dr Khalil. She submitted that, firstly the Tribunal should consider the nature and the circumstances of the doctor's behaviour in absenting himself from the hearing. In particular, whether his behaviour was deliberate, voluntary and as such, it could be said that he has waived his right to participate. She submitted that the overwhelming inference from the sequence of events

is that Dr Khalil has been true to his word last week and is choosing not to continue to engage with the process.

239. Ms Emsley-Smith submitted that the case law further requires the Tribunal to consider whether an adjournment might result in Dr Khalil voluntarily re-engaging with the proceedings, and it would appear from his comments last week that would only happen at least after two months have elapsed. She submitted that the Tribunal cannot be certain that there would be re-engagement at that stage. She argued that the Tribunal lacked sufficient information about XXX. She submitted that Dr Khalil has been either unwilling or unable to produce that information for the Tribunal. She said that in terms of whether a delay would assist in his engagement, that cannot be answered in the affirmative.

240. Ms Emsley-Smith submitted that the Tribunal may also consider whether an absent Doctor would wish to be legally represented or by his conduct has waived his right to representation. She reminded the Tribunal that it has investigated various routes by which Dr Khalil could be assisted at both the beginning and during the hearing, and ultimately none of those routes worked for him for whatever reason, and so he made a choice to represent himself. Ms Emsley-Smith submitted that any delay would not assist Dr Khalil in obtaining representation and the Tribunal does not have the evidence or the information to suggest that it would.

241. Ms Emsley-Smith submitted that the Tribunal may wish to consider the degree of disadvantage Dr Khalil might face if he is unable to provide his own account. Ms Emsley-Smith accepted that there may be a potential disadvantage to Dr Khalil in not being able to give his account but submitted that he has made that decision to withdraw from the proceedings. She stated that the Tribunal has the documents that Dr Khalil submitted while he was participating, so it has some insight into what he would say in oral evidence, had he remained engaged. She reminded the Tribunal that it saw Dr Khalil cross examine the only GMC witness and so it has a sense from that process, of his case. She submitted that the Tribunal could take that into consideration when determining whether the facts have been found proved.

242. Ms Emsley-Smith submitted that the Tribunal must consider the general public interest, the protection of patients and the reputation of the profession, in concluding fitness to practise hearings within a reasonable time. She submitted that this hearing needs to make some real, substantive progress and the Tribunal has the opportunity to do that in the time remaining this week. She submitted it is for those reasons and against that criteria that this hearing should proceed in Dr Khalil's absence.

The Legally Qualified Chair's Advice

243. The Legally Qualified Chair advised the Tribunal has the power to proceed in the absence of Dr Khalil under Rule 31 of GMC's Fitness to Practise Rules 2004. In deciding whether to proceed, the Tribunal should consider:

- whether Dr Khalil has received proper notice
- the seriousness of the case and possible consequences for the Doctor
- the general public interest in the expeditious disposal of the case
- whether Dr Khalil's absence is voluntary or due to circumstances beyond his control.

244. The Legally Qualified Chair confirmed that the primary concern for the Tribunal is to ensure that the proceedings are conducted in a fair and just manner. This involves assessing the reason for any absence, any explanation given, and whether an adjournment is appropriate.

The Tribunal's Decision

245. The Tribunal must consider whether it would be appropriate to continue with this hearing in Dr Khalil's absence. The Tribunal took account of Rules 29(2) and 31 of the GMC's Fitness to Practise Rules, which state:

'29(2) Where a hearing of which notice has been served on the practitioner in accordance with these Rules has commenced, the Committee or Tribunal considering the matter may, at any stage in their proceedings, whether of their own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as they think fit.'

31. Where the practitioner is neither present nor represented at a hearing, the Committee or Tribunal may nevertheless proceed to consider and determine the allegation if they are satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with these Rules.'

246. The Tribunal noted that both the GMC and the MPTS staff emailed and telephoned Dr Khalil this morning (using the contact details used throughout the hearing) to enquire whether he would be attending the hearing today. There was no response from Dr Khalil to either the emails or telephone calls. The Tribunal was satisfied that all reasonable efforts, under Rule 31, have been made to contact Dr Khalil and he has received proper notice of the hearing.

247. The Tribunal noted that Dr Khalil has not sought an adjournment this morning.

248. The Tribunal took account of the relevant case law in determining whether to proceed in the absence of a practitioner, in particular the cases of *GMC v Adeogba* [2006] EWCA Civ 162 and *R v Jones* 2002 UKHL 5.

249. The Tribunal was conscious that the discretion to proceed in the absence of the Doctor should be exercised with care and caution, balancing the interests of the Doctor with the wider public interest and ensuring fairness to both parties.

250. In deciding whether to continue with this hearing in Dr Khalil's absence, the Tribunal carefully considered all the relevant factors and weighed them accordingly with the information before it.

251. The Tribunal noted on Friday 29 August 2025 Dr Khalil made a third application to adjourn the hearing (Annex F). During his submissions on the application Dr Khalil indicated that if his application to adjourn was refused he would no longer engage in the hearing. The Tribunal provided Dr Khalil with a further opportunity to provide relevant XXX evidence before considering the adjournment application, to satisfy the Tribunal why an adjournment for two months would resolve the matter. Dr Khalil declined the opportunity and asked the Tribunal to consider his adjournment application on the evidence provided by him.

252. The Tribunal noted that the case of *Jones* which reinforces the premise that the Tribunal may continue in absence if it satisfied that the absent party's rights are protected and should only continue if it is fair and just to do so in all the circumstances.

253. XXX

254. The Tribunal considered that there may be circumstances for Dr Khalil's non-attendance, but the Tribunal has not been provided with any additional information regarding his absence.

255. The Tribunal considered the extent of the disadvantage to Dr Khalil, in that he would be unable to present his account of events in oral evidence or provide supplementary evidence-in-chief following the disclosure of further documents given during the GMC's witness's cross examination. However, the Tribunal found that Dr Khalil has had the opportunity to cross examine the GMC witness, Ms A. Dr Khalil provided an account by way of his witness statement and was given a further opportunity to provide a supplementary witness statement to address any issues raised in the new documents but declined to do so. Further, the Tribunal considered that throughout his two applications on abuse of process and the preliminary argument under Rule 4(5) Dr Khalil made further representations in addition to his witness statement, in relation to the Allegation.

256. The Tribunal having been satisfied that Dr Khalil was aware that the hearing would be reconvening this morning, considered that he has waived his right to participate in the hearing in the knowledge that it may continue in his absence.

257. The Tribunal next considered the overriding requirement by assessing the reasons for Dr Khalil's absence. It has borne in mind that the public interest in the expeditious disposal of this hearing.

258. The Tribunal has no information as to whether Dr Khalil would meaningfully engage in the event of an adjournment today or whether an adjournment would resolve the matter. The Tribunal considered that a delay in and of itself would not be in the public interest and would undermine the administration of justice.

259. The Tribunal concluded that an adjournment today would not serve any useful purpose. In the absence of any information from Dr Khalil, the Tribunal was satisfied it is in the public interest for this hearing to continue without further delay and that it would be in the interests of justice to proceed in the absence of Dr Khalil.

260. The Tribunal having balanced the interests of the Doctor with the wider public interest and having considered the fairness to both parties determined that it would be fair and just for the hearing to continue in Dr Khalil's absence.

261. Accordingly, the Tribunal has granted Ms Elmsley-Smith's application to proceed in Dr Khalil's absence.

SCHEDULE 1

4. 'He must personally ensure that the following persons are notified of the conditions listed at 1 to 3:'
 - c. 'the approval lead of his regional Section 12 approval tribunal (if applicable) - or Scottish equivalent'