

**PUBLIC RECORD****Dates:** 17/03/2025 - 19/03/2025**Doctor:** Dr Lorraine HUTCHINSON-GALE**GMC reference number:** 6154178**Primary medical qualification:** BM BS 2007 Universities of Exeter and Plymouth

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Not Impaired

**Summary of outcome**

No warning

**Tribunal:**

Legally Qualified Chair:	Miss Gillian Temple-Bone
Lay Tribunal Member:	Mr Chris Weigh
Registrant Tribunal Member:	Mr Julian Williams

Tribunal Clerk:	Ms Ciara Fogarty
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**Attendance and Representation:**

Doctor:	Present, represented
Doctor's Representative:	Mr Stephen Brassington, Counsel, instructed by the MDDUS
GMC Representative:	Ms Colette Renton, Counsel

**Attendance of Press / Public**

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

### Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

### Determination on Facts - 18/03/2025

#### Background

1. Dr Hutchinson-Gale qualified as a nurse in 1982, obtained a Bachelor of Medicine and Surgery in 2007 from the Universities of Exeter and Plymouth and in 2013 her MRCGP. Prior to the events which are the subject of the hearing Dr Hutchinson-Gale has worked as a GP from 2013. At the time of the events Dr Hutchinson-Gale was practising as a self-employed GP for two organisations providing a range of GP healthcare services.
2. Dr Hutchinson-Gale was recruited by Devon Doctors on a locum basis from 20 July 2011. She was contracted as a self-employed medical practitioner and worked as a General Practitioner (GP). Dr Hutchinson-Gale's first shift on record appeared to be 9 February 2013. Between August 2017 and February 2018, Dr Hutchinson-Gale was the Clinical Lead Clinician for Devon Doctors.
3. In December 2022 Devon Doctors closed and the work they had previously undertaken was carried out by two organisations, Hertfordshire Urgent Care ('HUC') and Practice Plus Group ('PPG'). PPG was commissioned by NHS England to run services previously provided by Devon Doctors. PPG won the contract to manage Devon's out-of-hours GP services through a competitive tender process in 2022. Dr Hutchinson-Gale was recruited and given a PPG login for the IT systems on 5 January 2023. Her work as a self-employed GP began for PPG on 30 January 2023.
4. HUC South West took over part of the Devon Doctors contract in 2022, and is known as Devon Doctors in the South West. HUC and PPG are two different service providers in the South West and are not connected. Doctors such as Dr Hutchinson-Gale could offer their services for the rotas and then each organisation would allocate shifts to them individually. The functions of the prior organisation (Devon Doctors) of Out-of-Hours GP service, a

## Record of Determinations – Medical Practitioners Tribunal

Discharge to Assess (D2A) patients service, Devon Ambulance Revalidation Service, a NHS 111 service were undertaken from January 2023 by the two different organisations. PPG undertook the GP Out-of-Hours and NHS 111 services. HUC undertook the other services. On occasions referrals were made between the services such as a GP taking a call from the ambulance service might refer the patient to the GP Out-of-Hours Service.

5. The allegations that have led to Dr Hutchinson-Gale's hearing relate to her conduct. It is alleged by the General Medical Council (GMC) that, between 30 January 2023 and 18 March 2023, Dr Hutchinson-Gale undertook simultaneous shifts for both HUC and PPG on a number of dates as set out Schedule 1. It is alleged that Dr Hutchinson-Gale's actions were dishonest. HUC and PPG are two different service providers in the South West.

6. It is also alleged by the GMC that, on 19 March 2023, Dr Hutchinson-Gale was booked to attend a shift at PPG and failed to attend and failed to inform PPG that she would not be attending.

7. The initial concerns were raised with the GMC on 8 August 2023 by Dr A, GP within the PPG and Medical Director for the Primary Care division of PPG. She stated that the first overlapping shift had been identified on 18 March 2023 by the IT system for PPG during the shift. The PPG shift manager telephoned Dr Hutchinson-Gale to ask whether she was working for both PPG and HUC simultaneously and advising that she should not be doing so. Dr B, the local Medical Lead for PPG's Integrated Urgent Care service in Devon emailed Dr Hutchinson-Gale on 19 March 2023 asking her to comment on the apparently overlapping shifts on 18 March 2023. This led to a local investigation that was carried out by Dr A on behalf of PPG, in which she said that she had identified that Dr Hutchinson-Gale had worked 92 hours concurrently for both HUC and PPG between January and March 2023.

### **The Allegation and the Doctor's Response**

8. The Allegation made against Dr Hutchinson-Gale is as follows:

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

1. Between 30 January 2023 and 18 March 2023, you undertook simultaneous shifts for both Hertfordshire Urgent Care ('HUC') and Practice Plus Group ('PPG') on one or more of the dates and times set out in Schedule 1.

**Admitted and found proved**

2. You knew that you should not have undertaken simultaneous shifts for both HUC and PPG on the dates and times set out in Schedule 1.

**To be determined**

3. Your actions as set out at paragraph 1 were dishonest by reason of paragraph 2.

**To be determined**

4. You were booked to attend a shift at PPG on 19 March 2023 and you failed to:

- a. attend the shift;

**Admitted and found proved**

- b. inform PPG that you would not be attending the shift.

**Admitted and found proved**

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

**The Admitted Facts**

9. At the outset of these proceedings, through her counsel, Mr Brassington, Dr Hutchinson-Gale made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the GMC (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

**The Facts to be Determined**

10. In the light of Dr Hutchinson-Gale's response to the Allegation made against her, the Tribunal is required to determine whether Dr Hutchinson-Gale's undertaking simultaneous shifts for both ('HUC') and ('PPG') was knowingly dishonest.

**Witness Evidence**

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

- Dr A, GP within the PPG and Medical Director for the Primary Care division of PPG. Her witness statements were dated 8 December 2023 and 12 December 2024.
- Dr C, Clinical Director at HUC. Her witness statements were dated 29 December 2023 and 6 December 2024.

12. Dr Hutchinson-Gale provided her own witness statement and gave oral evidence.

### **Documentary Evidence**

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

- Correspondence from PPG to Dr Hutchinson-Gale from March 2023;
- Correspondence from Dr B to Dr A and Dr Hutchinson-Gale from March and August 2023;
- Lists of Dr Hutchinson-Gale's shifts at PPG;
- Correspondence between Dr Hutchinson-Gale and the Devon Rota Team at PPG;
- Correspondence from Dr A to the GMC from February 2024;
- Email dated 18 December 2023 from HUC confirming Dr Hutchinson-Gale's first shift;
- Confirmation of shifts undertaken by Dr Hutchinson-Gale at HUC;
- Various correspondence between Dr C and the GMC; and
- Record of how the shifts Dr Hutchinson-Gale worked at HUC were booked.

### **The Tribunal's Approach**

14. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Hutchinson-Gale does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

15. The Tribunal were advised that it is upon this body of evidence that the Tribunal must make its findings. The Tribunal is entitled to draw inferences, but the Tribunal ought not to speculate as to whatever other evidence may have been available.

16. The Tribunal does not have to determine every issue that has arisen during the course of the hearing, only such matters as will enable the Tribunal to say whether the allegations at paragraphs 2 and 3 made against Dr Hutchinson-Gale are proved. The Tribunal will do that by having regard to the whole of the evidence and forming its own judgment about the documentary evidence before the Tribunal and which evidence is reliable and which is not.

17. The Tribunal must consider each allegation separately on its merits. It is possible (depending on the circumstances) that the Tribunal's decision on one of the allegations might assist it in coming to a conclusion on another of the allegations. Nevertheless, the Tribunal should reach a separate, independent, decision on each of the allegations, having focused on each separately and having formed a separate decision about it.

18. The Tribunal were reminded of relevant case-law namely the words of Hoffman LJ in the case of *Re: B [2008] UKHL 35* at paragraph 2. '*If a legal rule requires a fact to be proved (a "fact in issue"), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened.'*

19. The Tribunal were advised that inferences that may be properly drawn from the evidence the case of *Malhar SONI v GMC [2015] EWHC 364* is relevant. The Tribunal must be mindful that when drawing inferences, it has been able to safely exclude, as less than probable, any other possible explanations for the charges against Dr Hutchinson-Gale.

20. The Tribunal were reminded that Dr Hutchinson-Gale has attended and given evidence in her own defence. In so doing she does not adopt any burden to disprove these charges. The Tribunal must approach all of this evidence in precisely the same fair and dispassionate way as every piece of evidence that has been placed before it.

21. The Tribunal must determine at this stage in relation to the allegation at paragraph 3 is whether Dr Hutchinson-Gale's conduct in paragraph 1 which has been proved, and paragraph 2, if found to be proved, she knew was dishonest. Dishonesty is a state of mind which, unless admitted, can only be inferred from conduct. In many cases a Tribunal is very

well placed, with its experience of the world and common sense, to determine what is dishonest by ordinary decent standards.

22. The Tribunal were advised that the legal test for dishonesty was set out by the Supreme Court in *Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67*. This was restated in *Bux v GMC [2021] EWHC 762 Admin*. It is a 2-stage test.

- (i) Ascertain the doctor's actual knowledge or belief in terms of findings of fact on the evidence presented to the tribunal – what does the tribunal find that the doctor genuinely believed – what was the doctor's actual state of mind?;
- (ii) Having found the doctor's actual state of mind was the doctor dishonest by the standards of ordinary decent people?

23. The Tribunal was advised when considering the test for dishonesty in *Ivey*: the objective standards of ordinary and decent people must involve the expectation that registered professionals will have at least some regard to the professional standards under which they are required to operate, pursuant to a system of regulation that is designed to protect the public (*Professional Standards Authority for Health and Social Care v GDC, Mohamed Amir [2021] EWHC 3230*).

24. The Tribunal were reminded that there is no requirement for the Tribunal to find that the doctor must appreciate that what the doctor has done by the standards of ordinary decent people was dishonest. The reasonableness of the doctor's belief is a matter of evidence going to whether the doctor genuinely held the belief but it is not a requirement that the belief must be a reasonable one.

25. In this case the Tribunal should take into consideration Dr Hutchinson-Gale's good character. She has practised in the UK as a nurse from 1982 and as a doctor since 2007 and no other complaints or referrals have been made against her or her practice.

### The Tribunal's Analysis of the Evidence and Findings

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

#### Paragraph 2

27. The Tribunal first considered if Dr Hutchinson-Gale knew that she should not have undertaken simultaneous shifts for both HUC and PPG on one or more occasions.
28. The Tribunal considered the evidence of Dr Hutchinson-Gale. It accepted her evidence that the work she undertook for both HUC and PPG was exactly the same as the work she had undertaken 30 days prior on the previous booking system. It understood this was Dr Hutchinson-Gale's first time using the new booking system and accepted that she has made no attempts to conceal the double booking.
29. The Tribunal accepted Dr Hutchinson-Gale's evidence that she was unfamiliar with the new booking system, the name Devon Doctors still appeared at the bottom of the correspondence from PPG, and there were at times referrals from one service to the other. The quantity of work and nature of her work was the same. It accepted that she had not been explicitly informed using both systems simultaneously was prohibited. It noted that Dr Hutchinson-Gale did not seek a double payment for her shifts and so she made no financial gain. It noted there was no allegation of harm caused to a patient as a consequence. The Tribunal took into consideration her personal circumstances at the time and accepted her evidence that her organisational skills were 'muddled'. The Tribunal therefore determined there was insufficient evidence to establish on a balance of probabilities, that she was aware she should not have worked overlapping shifts for both HUC and PPG.
30. The Tribunal noted that there had been a delay in the booking system, meaning Dr Hutchinson-Gale could not have been aware that she had double-booked at the time she bid for the shifts. It also considered this was out of character for Dr Hutchinson-Gale and noted that she ceased the practice of undertaking simultaneous shifts as soon as she became aware of her mistake.
31. The Tribunal found the good character direction to be relevant, acknowledging that Dr Hutchinson-Gale has worked in the medical profession for 42 years, both as a nurse and a practitioner, without any previous complaints. It also accepted her evidence that she believed the two companies had been affiliated, as the services they offered had been previously delivered by Devon Doctors a single organisation until 30 days prior.
32. The Tribunal determined that the GMC have not discharged the burden of proof in relation to paragraph 2.
33. Accordingly, the Tribunal determined paragraph 2, is not found proved.

Paragraph 3

34. The Tribunal considered whether Dr Hutchinson-Gales' conduct at paragraph 1 was dishonest by paragraph 2.

35. The Tribunal considered its previous findings that Dr Hutchinson-Gale was unaware that she should not have undertaken simultaneous shifts for HUC and PPG. It reminded itself that she had never explicitly been told she could not work in this manner, and she had been carrying out exactly the same work 30 days prior without issue because the services previously offered had been run by the same organisation. The Tribunal found that due to a delay in a booking system, she could not have been aware of the double booking at the time she applied for the shifts. The Tribunal accepted the written and oral evidence of Dr Hutchinson-Gale that she believed the two companies, PPG and HUC were affiliated.

36. The Tribunal noted this was out of character for Dr Hutchinson-Gale and that she stopped immediately upon realising her mistake. The Tribunal noted the significant emotional impact on Dr Hutchinson-Gale, accepting that she was so horrified by her mistake that she was unable to work the following day. Given her unblemished 42-year career in the medical profession as both a nurse and a practitioner, the Tribunal found the good character direction to be relevant.

37. The Tribunal applied the test set out in *Ivey*. It concluded that she had a genuinely held belief that she was permitted to work for both HUC and PPG simultaneously. Having established her state of mind, the Tribunal considered whether her state of mind was dishonest by the standards of ordinary decent people. The Tribunal concluded that her conduct was not dishonest under the test.

38. Accordingly, the Tribunal found this paragraph of the Allegation not proved.

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

39. The Tribunal has determined the facts as follows:

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

**Record of Determinations –  
Medical Practitioners Tribunal**

1. Between 30 January 2023 and 18 March 2023, you undertook simultaneous shifts for both Hertfordshire Urgent Care ('HUC') and Practice Plus Group ('PPG') on one or more of the dates and times set out in Schedule 1.

**Admitted and found proved**

2. You knew that you should not have undertaken simultaneous shifts for both HUC and PPG on the dates and times set out in Schedule 1.

**Determined and found not proved.**

3. Your actions as set out at paragraph 1 were dishonest by reason of paragraph 2.

**Determined and found not proved.**

4. You were booked to attend a shift at PPG on 19 March 2023 and you failed to:

- a. attend the shift;

**Admitted and found proved**

- b. inform PPG that you would not be attending the shift.

**Admitted and found proved**

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

**Determination on Impairment – 19/03/2024**

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

**The Evidence**

41. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary, and the submissions regarding impairment.

**Submissions**

Submissions on behalf of the GMC

42. Ms Renton, Counsel on behalf of the GMC, made no positive submissions on impairment in the light of the findings of fact. She did not seek to persuade the Tribunal that the threshold of serious misconduct has been met in respect of the paragraphs of the Allegation that have been found proved.

Submissions on behalf of Dr Hutchinson-Gale

43. Mr Brassington, Counsel on behalf of Dr Hutchinson-Gale, submitted that the allegations admitted and found proved do not amount to misconduct. He reminded the Tribunal of the case of *Nandi v General Medical Council [2004] EWHC 2317 (Admin) (04 October 2004)*, in which serious misconduct was described as ‘...conduct which would be regarded as deplorable by fellow practitioners.’

44. Mr Brassington reminded the Tribunal of its findings at the fact stage, namely that when Dr Hutchinson-Gale was told that she should not be working simultaneous shifts, she was horrified, and it took a significant emotional toll upon her such that she was unable to work the follow day. Mr Brassington submitted that it was regrettable that a shift was missed but it would be adverse in the circumstances for this to amount to serious professional misconduct.

45. Mr Brassington submitted there is insufficient material before the Tribunal that could reasonably amount to misconduct. Mr Brassington submitted that, in those circumstances, there can be no finding of misconduct in this case and accordingly there can be no consideration of current impairment.

**The Relevant Legal Principles**

46. 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.

47. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct, and that the misconduct was serious, and then whether the finding of that misconduct which was serious, could lead to a finding of impairment.

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

49. The Tribunal were reminded that there will be cases where, for example, a Tribunal can properly conclude that the act of misconduct was an isolated error on the part of the medical practitioner and that the chance of it being repeated in the future is so remote that their fitness to practice has not been impaired.

50. The Tribunal were advised that the courts have said that four reasons for unfitness tend to recur and on the facts of some cases more than one of them will apply. They are that:

- (i) the doctor presents a risk to patients;
- (ii) she has brought the profession into disrepute;
- (iii) she has breached one of the fundamental tenets of the profession
- (iv) her integrity cannot be relied upon.

51. The Tribunal were advised to adopt the two-step process set out by Cranston J. in *Cheatle -v- General Medical Council. [2009] EWHC 645 (Admin)* at paragraphs 19 and 21:

Paragraph 19: "*Whatever the meaning of impairment of fitness to practise, it is clear from the design of section 35C that a Tribunal must engage in a two-step process. First, it must decide whether there has been misconduct, deficient professional performance or whether the other circumstances set out in the section are present. Then it must go on to determine whether, as a result, fitness to practise is impaired. Thus it may be that despite a doctor having been guilty of misconduct, for example, a Fitness to Practise Tribunal may decide that his or her fitness to practise is not impaired.*"

Paragraph 21: "*There is clear authority that in determining impairment of fitness to practise at the time of the hearing regard must be had to the way the person has acted or failed to act in the past ...*"

52. The Tribunal had regard to the case of *Roylance v General Medical Council (No.2) [2000] 1 AC 311 (UKPC)* which states:

*'Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [medical] practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word professional which links the misconduct to the profession [of medicine]. Secondly, the misconduct is qualified by the word serious. It is not any professional misconduct which would qualify. The professional misconduct must be serious.'*

53. The Tribunal were advised to consider that misconduct amounts to conduct falling seriously short of what the public has a right to expect from a doctor.

54. The Tribunal had regard to the case of *Remedy UK Ltd, R (on the application of) v General Medical Council* [2010] EWHC 1245 (Admin); which states:

*'Misconduct is of two principal kinds. First, it may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur out with the course of professional practice itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession.'*

55. The Tribunal had regard to the case of *General Medical Council v Meadow* [2006] EWCA Civ 1390 (26 October 2006) which reminds the Tribunal whilst the current legislation does not state serious misconduct, the omission of the word was not intended to dilute the test for misconduct. Therefore, the misconduct, if found, must be serious. Furthermore, considering the issue of misconduct in relation to the standards of the profession, the Tribunal should have regard to Good Medical Practice (GMP) (April 2013 version) to consider whether any paragraphs might be engaged.

56. The Tribunal also had regard to the case of *Nandi v General Medical Council* [2004] EWHC 2317 (Admin) in which serious misconduct was described as '*...conduct which would be regarded as deplorable by fellow practitioners.*' If and only if, the Tribunal makes a finding of serious misconduct, should it go on to consider current impairment.

57. In considering impairment, the Tribunal will take account of the misconduct and consider it in light of all other relevant factors in answering whether the doctor's fitness to

practise is currently impaired by reason of the misconduct. The Tribunal is required to look forward, not back, but in order to form a view as to current fitness to practise, it may need to take account of the way the doctor has acted or failed to act in the past.

58. The Tribunal was reminded of the guidance of Dame Janet Smith provided in the Fifth Shipman Report which was adopted by Mrs Justice Cox in the High Court case of *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin*, which provided:

- (a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- (b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or;*
- (c) *has in the past committed a breach (other than one which is trivial) of one of the fundamental tenets of the medical profession and/or is liable to do so in the future; and/or*
- (d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

59. Finally, the Tribunal was invited to have regard for the guidance of Silber J. in *Cohen -v- GMC [2008] EWHC 581 Admin*, that any approach to the issue of whether a Doctor's fitness to practise is to be regarded as "impaired" must take account of the need to give substantial weight to the public interest, including the protection of patients, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct and behaviour.

### The Tribunal's Determination on Impairment

#### Misconduct

60. The Tribunal considered whether Dr Hutchinson-Gale's actions amount to misconduct. The Tribunal considered the conduct admitted and found proved. The Tribunal had regard to its determination on facts. The Tribunal first determined whether the facts found proved in relation to paragraphs 1 and 4 of the allegation amounted to misconduct.

61. The Tribunal noted that while Dr Hutchinson-Gale admitted to paragraph 1 of the Allegation, the key basis of that Allegation was whether her conduct was dishonest as set out in paragraphs 2 and 3 which were found not proved by the Tribunal. The Tribunal reminded itself of its previous findings that Dr Hutchinson-Gale was not dishonest and held a genuine belief at that time, that she could undertake simultaneous shifts.

62. The Tribunal considered the conduct admitted in paragraph 1 of the Allegation and determined it did not amount to misconduct. It noted that Dr Hutchinson-Gale held a genuine belief, and the Tribunal determined this belief to be reasonable given Dr Hutchinson Gale's work history, the nature and quantity of which had not changed, and her personal circumstances at the time.

63. The Tribunal considered paragraph 4 of the Allegation, which concerned Dr Hutchinson Gale's failure to attend a shift and inform the organisation, PPG, of her absence. The Tribunal reminded itself of its previous findings that Dr Hutchinson-Gale was so shocked upon receiving information on 18 March 2023 that she should not have been working for both organisations, that she was unable to attend work the following day. The Tribunal noted in her admission alongside her statement, that whilst she had not followed the correct procedure to inform the organisation of her unavailability for work, by email, that she telephoned but no-one answered her call. The Tribunal found this to be an isolated error and considered Dr Hutchinson-Gale's admission to be understandable given the circumstances. Her omission to properly inform PPG of her unavailability for work that day did not amount to misconduct. The Tribunal found that her conduct would not be regarded by fellow practitioners or the public, as deplorable nor could it amount to serious misconduct. There was no morally culpable behaviour. It could not identify any paragraphs of GMP which were engaged or breached by Dr Hutchinson-Gale's conduct.

64. The Tribunal concluded that Dr Hutchinson-Gale's conduct did not fall short of what was expected of a registered medical practitioner. There were no elements of seriousness identified. The conduct proved could not properly be described as misconduct and therefore also not as serious misconduct.

65. The Tribunal did not therefore, in the absence of finding any misconduct, consider whether Dr Hutchinson-Gale's fitness to practise is currently impaired.

66. The Tribunal concluded that Dr Hutchinson-Gale's fitness to practise is not currently impaired.

**Determination on Warning - 19/03/2024**

67. The Tribunal considered whether in accordance with Section 35D(3) of the Medical Act 1983, a warning was required. It explained to the parties that in these circumstances they must give consideration to issuing a warning.

### Submissions

68. On behalf of the GMC, Ms Colette Renton, Counsel submitted that a warning should not be imposed on Dr Hutchinson-Gale.

69. On behalf of Dr Hutchinson-Gale, Mr Stephen Brassington, Counsel submitted that there was no need to impose a warning and no further action should be taken.

### The Tribunal's Determination on Warning

70. The Tribunal has considered the relevant legislation and guidance on warnings including:

- Paragraph 17(2)(n) Fitness to Practise Rules (GMC Council Amendment Order 2015) 2004;
- Paragraph 61b of the Sanction's Guidance, dated November 2020;
- GMC Guidance on Warnings, April 2024 ('Warnings Guidance') in particular at paragraphs 11, 16, 20(c), 25 and 33.

**11** . Warnings allow the GMC and MPTS tribunals to indicate to a doctor that any given conduct, practice or behaviour represents a departure from the standards expected of members of the profession and should not be repeated. They are a formal response from the GMC and MPTS tribunals in the interests of maintaining good professional standards and public confidence in doctors.

**16** *A warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:*

- *there has been a significant departure from Good medical practice, or*
- *there is a significant cause for concern following an assessment of the doctor's performance.*

**33** ‘However, if the decision makers are satisfied that the doctor’s fitness to practise is not impaired or that the realistic prospect test is not met, they can take account of a range of aggravating or mitigating factors to determine whether a warning is appropriate. These might include:

- *the level of insight into the failings.*
- a.     *A genuine expression of regret/apology.*
- b.     *Previous good history.*
- c.     *Whether the incident was isolated or whether there has been any repetition.*
- d.     *Any indicators as to the likelihood of the concerns being repeated.*
- e.     *Any rehabilitative/corrective steps taken.*
- f.     *Relevant and appropriate references and testimonials.’*

71.     The Tribunal, having considered the relevant guidance determined that in applying the guidance, there is no need to issue a warning in regard to Dr Hutchinson-Gale.

72.     The Tribunal considered it would be disproportionate having regard to the findings within its determination on facts and impairment to impose a warning on Dr Hutchinson-Gale.

73.     XXX

74.     The Tribunal concludes this case by taking no further action.

**SCHEDULE 1**

1. 30 January 2023 (8 hours between 09:00-16:59);
2. 1 February 2023 (8 hours between 09:00-16:59);
3. 2 February 2023 (8 hours between 09:00-16:59);
4. 7 February 2023 (4 hours between 09:00-12:59);
5. 12 February 2023 (8 hours between 09:00-16:59);
6. 18 February 2023 (8 hours between 09:00-16:59);
7. 19 February 2023 (8 hours between 09:00-16:59);
8. 20 February 2023 (8 hours between 09:00-16:59);
9. 25 February 2023 (8 hours between 09:00-16:59);
10. 15 March 2023 (8 hours between 09:00-16:59);
11. 17 March 2023 (8 hours between 09:00-16:59);
12. 18 March 2023 (8 hours between 09:00-16:59).