

PUBLIC RECORD

Dates: 03/07/2024 - 11/07/2024
17/03/2025 – 20/03/2025

Medical Practitioner's name: Dr Srinivasa Rao KUNA

GMC reference number: 7659889

Primary medical qualification: MBBS 1995 Dr. NTR University of Health Sciences - Osmania Medical College

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

Summary of outcome
No action (warning not considered)

Tribunal:

Legally Qualified Chair	Ms Alice Moller
Lay Tribunal Member:	Mrs Jane Johnson
Medical Tribunal Member:	Dr Suzanne Joels

Tribunal Clerk:	Sewa Singh
-----------------	------------

Attendance and Representation:

Medical Practitioner:	Present, not represented
Medical Practitioner's Representative:	None
GMC Representative:	Ms Ceri Widdett, 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 - 20/03/2025

1. Throughout the decision-making process the Tribunal bore in mind the statutory overarching objective in section 1 of the Medical Act 1983 (the 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.

Background

2. Dr Kuna qualified in 1995 from Osmania Medical College, Hyderabad, in India. He worked as an Assistant Surgeon in Accident & Emergency ('A&E') in Hyderabad in March 1996. In April 1998 he worked as an SHO at the Good Hope Hospital in the UK for six months. Then he returned to India to work as an Assistant Surgeon in Orthopaedics and Trauma. Dr Kuna became a consultant in India in Orthopaedics and Trauma in May 2009.

3. In October 2018, Dr Kuna began an International Training Fellowship ('the MCh programme') in Trauma and Orthopaedics at the Edge Hill University under the sponsorship of Whiston Hospital, St Helen's and Knowsley Teaching Hospitals NHS Trust ('the Trust'). He was working as a Foundation Year 2 ('FY2') doctor in Orthopaedics at relevant times.

4. The Allegation against Dr Kuna is that, at a performance review meeting on 24 July 2019 ('the PRM'), which formed part of the assessment of his performance on the MCh programme and as an FY2 doctor, he relied on a Training Log in which he had 'falsely recorded' his role as 'surgeon' in one or more procedures listed in Schedule 1. It is alleged that Dr Kuna knew that one or more of these entries in the Training Log were false because he knew he was not the surgeon for those procedures. It is further alleged that Dr Kuna's conduct was dishonest in relation to these actions.

5. These matters came to the attention of the GMC after a referral by the Trust.

The Outcome of Applications Made during the Facts Stage

6. On day three of the hearing, the Tribunal granted an application by Dr Kuna to rely on his written statement in response to the Allegation, under Rule 34(1) of the General Medical

Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). The Tribunal's full decision with reasons is at Annex A.

7. On day four of the hearing, the Tribunal granted an application by Ms Ceri Widdett, Counsel for the GMC, to rely on the supplemental statement of Dr A dated 5 July 2024, under Rule 34(1). The Tribunal's decision is at Annex B.

8. Also on day four of the hearing The Tribunal granted an application by Ms Widdett to adjourn the hearing until 10 July 2024 to allow the GMC an opportunity to make further inquiries into matters raised by Dr Kuna, under Rule 29. The Tribunal's decision on the application is included at Annex C.

9. On day six of the hearing the Tribunal granted an application by Ms Widdett to adjourn the hearing until 11 July 2024 to allow the GMC an opportunity to make further inquiries into relevant matters, under Rule 29. The Tribunal's decision is at Annex D.

10. Also on day six of the hearing the Tribunal granted an application by Ms Widdett to amend Schedule 1 of the Allegation to include a patient's reference number at row 17, under Rule 17(6). The Tribunal's decision is at Annex E.

11. On day seven of the hearing the Tribunal granted an application by Ms Widdett to adjourn the hearing for several weeks, to allow the GMC an opportunity to make further inquiries into relevant matters, under Rule 29. The Tribunal's decision is at Annex F.

12. On day eight of the hearing, the Tribunal granted an uncontested application by Dr Kuna to rely on a statement (obtained by the GMC) from Mr C, dated 25 February 2025, in relation to the Opera IT System, under Rule 34(1). The Tribunal's full decision is at Annex G.

The Allegation and the Doctor's Response

13. The Allegation made against Dr Kuna is as follows:

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

1. In 2018 you enrolled on an International Training Fellowship in Trauma and Orthopaedics (the MCh programme) at Edge Hill University. You were placed as a Foundation Year 2 (FY2) doctor in the Orthopaedics Department at Whiston Hospital, St Helen's and Knowlsey Teaching Hospitals NHS Trust, from around September or October 2018. **To be determined**
2. At a performance review meeting on 24 July 2019 (the PRM) which formed part of the assessment of your performance on the MCh programme and as an FY2 doctor you relied on the contents of a Training Log in which you had falsely recorded your role as 'surgeon' in one or more procedures as set out in Schedule 1. **To be determined**

3. You knew that one or more of the entries you recorded in your Training Log as to your role in the procedures as set out at Schedule 1 were false in that you knew you were not the surgeon for those procedures. **To be determined**
4. Your conduct in paragraph 2 was dishonest by virtue of paragraph 3.
To be determined

And in relation to the above your fitness to practice is impaired because of your misconduct. **To be determined**

The Admitted Facts

14. No facts were admitted.

The Facts to be Determined

15. The Tribunal had to determine whether the Allegation, or any part of it, was proved.

Factual Witness Evidence

16. The Tribunal received evidence from the following GMC witnesses:
 - Statement of Professor B dated 4 November 2019, with exhibits.
 - Statements of Dr A dated 6 January 2021, 16 February 2023, 12 December 2023 and 5 July 2024, with exhibits.

Professor B and Dr A also gave oral evidence.

17. The Tribunal received evidence from the following witnesses on behalf of Dr Kuna:
 - Statement in response to Allegation of Dr Kuna dated 4 July 2024.
 - Statement of Mr C, Head of Information for West Mersey and West Lancashire Teaching Hospitals NHS Trust dated 25 February 2025.
 - Statement of Mr D, Chief Strategy Officer, MedPlus Health Services Ltd, dated 18 March 2024.
 - Statement of Dr E, Director-Research, Regenerative Research Sciences.

18. The Tribunal did not hear oral evidence from Dr Kuna or his witnesses.

Documentary Evidence

19. The Tribunal took account of relevant documents including:

- Dr A's Evaluation of Dr Kuna's abilities as an orthopaedic surgeon dated 10 January 2019;
- Correspondence from Dr Kuna's (former) colleagues and others at the Trust in relation to his competence and conduct;
- Notes of meetings between Dr A and Dr Kuna on 26 March 2019 and 1 August 2019;
- Dr A's report on Dr Kuna's performance, dated 23 May 2019;
- Professor B's note of concerns after a performance review meeting with Dr Kuna on 26 July 2019;
- Training Log provided by Dr Kuna in relation to surgery;
- Operation notes relating to procedures involving Dr Kuna;
- Dr Kuna's email to Mr F dated 19 September 2023, raising concerns about how he was treated by Orthopaedic colleagues;
- Dr Kuna's IELTS (International English Language Testing System) Test Report Form dated 7 April 2018;
- Dr Kuna's application form for the International Training Fellowships and Admission to MCh or MMED Programmes, dated 13 November 2017;
- Dr Kuna's pass certificates for Masters Degree in Medicine and Orthopaedics;
- Dr Kuna's letter to Professor B dated 19 August 2019, explaining his reasons for departure from Whiston Hospital.

The Tribunal's Approach

20. The Legally Qualified Chair's (LQC) gave the following legal advice. There was no comment on it from Ms Widdett or Dr Kuna and the Tribunal accepted it.

At this stage the Tribunal is required to determine whether the facts alleged, or any of them, have been proved. After deliberating in private, the Tribunal will announce its decision.

The burden of proving disputed facts is on the GMC. Dr Kuna does not need to disprove anything in the Allegation. A doctor is only obliged to answer specific allegations against him and no others: *Roomi v GMC* [2009] EWHC 2188. The standard of proof required is the civil standard: the balance of probabilities.

The more improbable it is that a doctor would have behaved as alleged, the more cogent or credible the evidence may need to be to prove on the balance of probabilities that Dr Kuna did as alleged: *Virdee v GPhC* 2015 EWHC 169. Where an event is inherently improbable, it may take better evidence to prove it. This goes to the quality of evidence: *Byrne v GMC* [2021] EWHC 2237.

Submissions are not evidence, and the Tribunal should draw its own conclusions from what it has seen and heard. It is for the Tribunal to identify any discrepancies in conflicting accounts of events and then to decide what evidence to accept in relation

to each specific allegation in the Allegation.

A Tribunal may accept unsupported evidence from any witness, but such an account should be given more weight if it has been tested in cross-examination.

Corroboration may also be considered to increase the likelihood of a particular assertion being accurate. The Tribunal may take account of conflicts in evidence between witnesses, denials or reasons why an allegation could not be true: *Khan v GMC* [2021] EWHC 374.

The Tribunal is entitled to draw inferences and to reach common sense conclusions based on reliable evidence that the Tribunal accepts. The Tribunal must distinguish between reaching conclusions based on reliable evidence, on one hand, and speculation as to matters on which there is no, or insufficient evidence, on the other. The Tribunal cannot speculate.

In *R v Barton & Booth* [2020] EWCA Crim 575 the Court of Appeal confirmed that the test for dishonesty is that set out in *Ivey v Genting Casinos* 2017 UKSC 67. The tribunal must first ascertain Dr Kuna's actual, genuine beliefs as a matter of evidence and then ask whether, given those beliefs, his conduct was objectively honest or dishonest.

Although it does not provide a defence, good character is an important factor capable of assisting Dr Kuna in two ways: in relation to credibility as well as propensity. First, he has given evidence. Good character is a positive feature of Dr Kuna which the Tribunal will take account of when considering whether his evidence is accepted as credible. Second, the fact that he has no previous adverse regulatory findings, cautions or convictions goes to the likelihood of him acting as alleged by GMC.

Wisson v HPC [2013] EWHC 1036 confirmed that good character is clearly relevant when the credibility of a doctor is an issue. Judging the weight to be given to Dr Kuna's good character and its relevance at the Facts stage is a matter for the Tribunal.

The Tribunal must consider, separately, the evidence in relation to each allegation. If it finds one allegation proved, or not proved, it does not follow that the Tribunal will reach the same conclusion in relation to other allegation/s. The Tribunal must be satisfied that each element of a paragraph has been made out before finding a specific allegation proved.

The Tribunal's Analysis of the Evidence and Findings

21. The Tribunal has considered each paragraph of the Allegation separately and has evaluated the evidence to make factual findings.

Paragraph 1 of the Allegation

In 2018 you enrolled on an International Training Fellowship in Trauma and Orthopaedics (the MCh programme) at Edge Hill University. You were placed as a Foundation Year 2 (FY2) doctor in the Orthopaedics Department at Whiston Hospital, St Helen's and Knowlsey Teaching Hospitals NHS Trust, from around September or October 2018.

22. The Tribunal took account of Dr Kuna's application form for the International Training Fellowship in Trauma and Orthopaedics (the MCh programme) dated 13 November 2017. This supported the GMC's assertion that Dr Kuna had enrolled on an International Training Fellowship in Trauma and Orthopaedics (the MCh programme) at Edge Hill University and that he was placed in the Orthopaedics Department at Whiston Hospital, St Helen's and Knowlsey Teaching Hospitals NHS Trust, from around September or October 2018.

23. Dr Kuna did not dispute that, in 2018, he had enrolled on an International Training Fellowship in Trauma and Orthopaedics (the MCh programme) at Edge Hill University. However, he submitted that he was placed as a Specialty Training 'ST3' doctor, not an FY2 doctor, in the Orthopaedics Department at Whiston Hospital, St Helen's and Knowlsey Teaching Hospitals NHS Trust, from around September or October 2018.

24. Dr Kuna submitted that paragraph 1 of the Allegation should be found not proved, because he was not placed as an FY2 doctor from around September or October 2018. However, his written statement dated 4 July 2024 undermined his contention that he was placed at Specialty Training (ST) 3 level, not FY2. In his witness statement dated 4 July 2024 Dr Kuna acknowledged that he was 'downgraded' to work at FY2 level:

'I was recruited to work at ST3 level but was downgraded to FY2 and was put first on call. This did not serve the purpose of my fellowship training. I wanted to quit the job right at the beginning of fellowship. However, Mr A who was Clinical Director of St Helens and Knowlsey Teaching Hospitals Trust at that time convinced me to continue with the fellowship.'

25. The Tribunal also took account of evidence from Professor B. His statement dated 4 November 2019 said:

'As head of clinical training, I oversee doctors who are doing the MCh MMed programme (master of surgery/masters of medicine). The Trust sponsors international students to join the MCh MMed programme and come to the UK as Clinical Fellows. Dr Kuna applied for an International Training Fellowship. I enclose a copy of Dr Kuna's application documents at Exhibit 'SRM/01'.'

26. In his record of Dr Kuna's Performance Review on 29 July 2019 Professor B said:

'It appears that he [Dr Kuna] does not have an insight into his deficiencies. We were in agreement that he was not able to take on the role of an ITF year 2/Registrar level.'

27. Professor B's notes (made at the time) indicate that Dr Kuna was not working at ST 3 level as he was not perceived to be able to do so by more senior colleagues.
28. The Tribunal also took account of the way in which Dr Kuna put his case when cross examining GMC witnesses. Dr Kuna asked Professor B to confirm that he was told he would be working at ST3 level but was then asked to work at FY2 level. Dr Kuna asked Dr A a similar question.
29. The Tribunal considered that, in all the circumstances, the GMC had discharged the burden on it to prove to the civil standard that Dr Kuna was placed as a Foundation Year 2 (FY2) doctor in the Orthopaedics Department at Whiston Hospital, St Helen's and Knowsley Teaching Hospitals NHS Trust, from around September or October 2018.
30. The Tribunal found paragraph 1 of the Allegation proved.

Paragraph 2 of the Allegation

At a performance review meeting on 24 July 2019 (the PRM) which formed part of the assessment of your performance on the MCh programme and as an FY2 doctor you relied on the contents of a Training Log in which you had falsely recorded your role as 'surgeon' in one or more procedures as set out in Schedule 1.

31. Dr Kuna submitted that the GMC had not proved that he falsely recorded his role as surgeon in his Training Log. He asked the Tribunal to take account of Mr C's evidence as corroborative of his evidence.

32. The Tribunal took account of Dr Kuna's statement dated 4 July 2024:

'At the performance review meeting on 24 July 2019 (the PRM), I submitted the Training Log which was system generated from Hospital records. It was not prepared by me.'

'The systems might have falsely recorded the roles of lead surgeon and assistant surgeon. The details could have been verified by perusing operation notes.'

'The entries recorded in Training Log cannot be edited by me. For no fault of mine, it was interpreted as though I falsely fabricated the Training log. I can't [be] accused for the systems fault.'

33. This statement was made by Dr Kuna prior to receipt of evidence from Mr C, Head of Information for West Mersey and West Lancashire Teaching Hospitals NHS Trust. Therefore, Dr Kuna cannot have tailored his account to reflect the evidence obtained subsequently from Mr C. This added credibility to Dr Kuna's explanation.

34. The Tribunal took account of Mr C's statement dated 25 February 2025:

‘Role based information is collected in two parts to the Opera system. One part is the Procedure section which is filled in partly by the TCI Admin Team (this ‘to come in’ team arranges dates for a patient’s surgery) and completed by the Theatre Team. This flows to the Operations Note which is the only opportunity the clinical team have to make any changes themselves. The second part is the Personnel information which is filled in by the Theatre Team. Data from the Personnel section flows to the logbook.’

*‘The logbook is a report pulled through from data in the personnel tab. From looking at **Exhibit RB1**, it seems that the logbook has been pulled into an excel sheet by Dr Kuna. It will have been generated via the internal reporting website, the website automatically knows the doctors username and can generate a list of all the operations they’ve been involved in for the selected date period. The logbook can then be exported to Word or Excel. Quite often doctors export it to Excel and print it. Once it’s in Excel it’s out of the system. However, by re-running the report we can see whether the logbook was amended.’*

*‘It can be seen throughout pages 3 to 23 of **Exhibit RB3** that the Procedure section of the system (red) has Dr Kuna either not present in that section of the system or down as the ‘Assisting Surgeon’. The Operation Note, which feeds from the Procedure section, is the only part of the system surgeons have access to change and forms part of the patient’s paper medical record, so is seen as the de facto record of who took part in the operation. The Personnel section of the system (blue) has Dr Kuna consistently down as a Surgeon, again, this data was inputted by theatre staff, which has been pulled through to the logbook.’*

35. In conclusion, Mr C said: *‘I can confirm from looking at the trail (discussed below) that the logbook was not amended by Dr Kuna.’*

36. The Tribunal gave weight to the evidence of Mr C, an IT expert for the Trust, who corroborates Dr Kuna’s account of events. It did not consider evidence from Dr Kuna’s clinical colleagues to be relevant to explain how the Opera system functioned.

37. The Tribunal gave weight to the uncontested evidence of Mr C that *‘the logbook was not amended by Dr Kuna’* as Dr Kuna had said in his statement of 4 July 2024.

38. The Tribunal concluded that the GMC had not discharged the burden on it to prove that Dr Kuna had falsely record his role as ‘surgeon’ in one or more procedures in Schedule 1. The Tribunal found paragraph 2 of the Allegation not proved.

Paragraph 3 of the Allegation

You knew that one or more of the entries you recorded in your Training Log as to your role in the procedures as set out at Schedule 1 were false in that you knew you were not the surgeon for those procedures.

39. In his statement dated 4 November 2019, Professor B said:

‘I have never witnessed Dr Kuna doing any independent surgeries but I have never worked with him at the hospital. At the performance review, Dr Kuna had a logbook with him, which will detail any independent surgeries done. I looked in the logbook but cannot recall the contents in relation to independent surgeries. Mr A told me that Dr Kuna had not done any independent surgery whilst at the Trust; he only assisted on surgeries. I know that Dr Kuna had done independent surgeries in India, as this information was on his application form.’

40. The Tribunal was aware that the logbook was available at the Performance Review meeting. However, Professor B implies that the logbook was not examined in detail. In his oral evidence, Professor B was unable to recollect what, if any, discussions had taken place in relation to the logbook in the Performance Review meeting. Professor B’s evidence does not support or undermine the allegation that Dr Kuna knew that one or more of the entries Dr Kuna recorded in his Training Log was false.

41. In relation to Dr Kuna’s state of mind, the Tribunal took account of his clear denial in his statement dated 4 July 2024, as set out above.

42. Dr Kuna refers to the operation notes as being an important source of information. These would record who the surgeon was. Dr Kuna distanced himself from preparation of the Training Log by indicating that it was generated from Hospital records. The Tribunal considered that a diligent clinician would check any Training Log relating to their practice, verifying their accuracy by cross-referring to the operation notes as necessary. Any inaccuracies should have been identified by Dr Kuna before his Performance Review.

43. However, the allegation asserts that Dr Kuna knew that one or more of the entries he recorded in his Training Log as to his role in the procedures in Schedule 1 were false, not that he was careless or reckless as to the accuracy of his Training Log.

44. In relation to the veracity of Dr Kuna’s account of events, the Tribunal took account of his good character and the evidence of Mr C, whose witness statement dated 25 February 2025 partially corroborates the explanation given last year by Dr Kuna.

45. Dr A’s statement dated 16 February 2023 said:

‘I cannot recall us discussing Dr Kuna’s training log, although I would assume that we did discuss it. I don’t recall whether we discussed the training log with Dr Kuna or if we reviewed it with any other clinicians.’

46. Professor B’s evidence does not shed light on whether Dr Kuna knew that one or more of the entries recorded in his Training Log as to his role in the procedures as set out at Schedule 1 were false and that he was not the surgeon in those procedures.

47. The Tribunal was unable to determine whether Dr Kuna knew that there were errors in his Training Log, or whether he was careless or reckless as to the accuracy of the Training Log. His evidence was that it was generated by the Hospital IT system and evidence from Mr C confirms that this was subject to error.

48. The Tribunal concluded that the GMC had not discharged the burden on it to prove that Dr Kuna knew that one or more of the entries he recorded in his Training Log as to his role in the procedures in Schedule 1 were false in that he knew he was not the surgeon for those procedures.

49. The Tribunal found paragraph 3 of the Allegation not proved.

Paragraph 4 of the Allegation

Your conduct in paragraph 2 was dishonest by virtue of paragraph 3.

50. Paragraph 4 was not amenable to proof as the Tribunal found paragraphs 2 and 3 not proved.

51. The Tribunal therefore found paragraph 4 of the Allegation not proved.

The Tribunal's Overall Determination on the Facts

52. The Tribunal has determined the facts as follows:
That being registered under the Medical Act 1983 (as amended):

1. In 2018 you enrolled on an International Training Fellowship in Trauma and Orthopaedics (the MCh programme) at Edge Hill University. You were placed as a Foundation Year 2 (FY2) doctor in the Orthopaedics Department at Whiston Hospital, St Helen's and Knowlsey Teaching Hospitals NHS Trust, from around September or October 2018.

Found proved

2. At a performance review meeting on 24 July 2019 (the PRM) which formed part of the assessment of your performance on the MCh programme and as an FY2 doctor you relied on the contents of a Training Log in which you had falsely recorded your role as 'surgeon' in one or more procedures as set out in Schedule 1.

Determined and found not proved

3. You knew that one or more of the entries you recorded in your Training Log as to your role in the procedures as set out at Schedule 1 were false in that you knew you were not the surgeon for those procedures.

Determined and found not proved

4. Your conduct in paragraph 2 was dishonest by virtue of paragraph 3.

Determined and found not proved

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

Determination on Impairment - 20/03/2025

1. The Tribunal had to decide in accordance with Rule 17(2)(l) whether, on the basis of facts found proved, Dr Kuna's fitness to practise is impaired by reason of misconduct.

The Evidence

2. The Tribunal took account of all evidence received at the facts stage of the hearing, both oral and documentary. No further evidence was submitted at this stage.

Submissions for the GMC

3. Ms Widdett reminded the Tribunal of the two-stage process when considering impairment. The GMC will not advance a positive case that the facts asserted at paragraph 1 of the Allegation, found proved by the Tribunal, amount to a serious departure from the conduct expected of a registered medical practitioner. Ms Widdett said that the GMC is not alleging misconduct in relation to paragraph 1, so cannot submit that current fitness to practise is impaired by reason of misconduct. Paragraphs 2, 3 and 4 were found not proved.

Submissions by Dr Kuna

4. Dr Kuna submitted that the facts found proved do not amount to misconduct and said that he is fit to practise medicine safely. He said that he is working as a consultant in India.

The Tribunal's Approach and Relevant Legal Principles

5. The Legally Qualified Chair (LQC) gave the following legal advice, below. There was no comment on it from Ms Widdett or Dr Kuna and the Tribunal accepted it.

The Tribunal must follow a staged process in regulatory proceedings. It has made findings of fact, so must next consider misconduct, then impairment. The fact that the second part of this stage is separate from the first indicates that not every case of misconduct results in a finding of impairment: *Cohen v GMC* 2008 EWHC 581.

The word misconduct in section 35C(2)(a) of the Medical Act 1983 indicates a serious breach indicating that a doctor's fitness to practise was impaired. Misconduct was

described as a wrongful or inadequate mode of performance of professional duty in *Mallon v GMC* 2007 CSIH 17.

In *Remedy UK v GMC* 2010 EWHC 1245 the High Court said that misconduct is of two principal kinds. First, misconduct going to fitness to practise in the exercise of professional medical practice. Second, morally culpable or otherwise disgraceful conduct, outside or within professional practice. Conduct falls into the second category if it attracts condemnation.

Impaired is an ordinary word in common use, not defined in the Medical Act. At the impairment stage, there is no burden or standard of proof. It is a question of judgment for the Tribunal.

In determining impairment the Tribunal must consider whether or not the facts found by the tribunal indicate any risk of harm, breach of a fundamental tenet of the [medical] profession or bringing it into disrepute or likely future issues: *CHCRE v NMC & Grant* [2011] EWHC 927.*

Chaudhary 2017 EWHC 2561 reminds Tribunals of the importance of the overarching objective: the need to protect the public, uphold standards and maintain confidence in the medical profession.

6. The Tribunal may also take account of any relevant sections of *Good Medical Practice* (GMP)(2013 version).

The Tribunal's Decision

7. The Tribunal considered whether the facts found proved at paragraph 1 of the Allegation amounted to misconduct. In other words, was Dr Kuna's enrolment, as an FY2 doctor, on an International Training Fellowship in 2018, in any way culpable?

8. Many doctors study or train in one or more countries. Provided that such doctors are entitled to be in the relevant country, no culpability attaches to such enrolment. The GMC included paragraph 1 as part of the context of the allegations in paragraphs 2, 3 and 4 of the Allegation, all found not proved.

9. Although the GMC accepted that Dr Kuna's enrolment as an FY2 doctor on an International Training Fellowship in 2018 did not fall below the standards expected of a medical practitioner, it is for the Tribunal to determine whether Dr Kuna's current fitness to practise is impaired by reason of misconduct.

10. The Tribunal found that Dr Kuna was placed as a Foundation Year 2 (FY2) doctor in the Orthopaedics Department at Whiston Hospital, St Helen's and Knowsley Teaching Hospitals NHS Trust, from around September or October 2018. His enrolment was an unremarkable part of training and attracts no culpability.

11. The Tribunal concluded that Dr Kuna's enrolment did not amount to misconduct. His fitness to practise cannot therefore be impaired by reason of misconduct in relation to facts found proved by this Tribunal.
12. The Tribunal notes that there is interim order of conditions on Dr Kuna's registration. The interim order is revoked with immediate effect.
13. That concludes the case.

ANNEX A – 05/07/2024

Application under Rule 34 to adduce evidence

1. On day three of the hearing, 5 July 2024, Dr Kuna made an application under Rule 34(1) of the Rules, for the Tribunal to consider his witness statement Exhibit D1(b) dated 4 July 2024.

Application by Dr Kuna

2. Dr Kuna asked the Tribunal to allow him to rely on his witness statement dated 4 July 2024 as it is his response to the Allegation by the GMC. He apologised for its late provision and said that he assumed the GMC would be aware of relevant Hospital IT systems used by the NHS and how training logs were generated.

3. Dr Kuna added that the GMC could have checked operation notes to see that he had not made false claims as alleged. Dr Kuna said that the most relevant parts of his statement were at paragraphs 4, 5 and 6, adding that he had not been dishonest. Dr Kuna said that this evidence was the only thing that could save him.

Submissions by Counsel for the GMC

4. Ms Ceri Widdett said that the GMC opposed the application for several reasons. Dr Kuna had been given several months to provide witness statements and any other evidence in support of his case. As Dr Kuna had not complied with directions or deadlines from the MPTS, the GMC had been deprived of opportunity to investigate points now raised by Dr Kuna in his statement.

5. Ms Widdett submitted that, as Dr Kuna now states that the Log Book was prepared by someone else, the GMC needs time to verify this. Also, if Dr Kuna had let the GMC know in advance that his case was that *'systems might have falsely recorded the roles of lead surgeon and assistant surgeon'* and that he could not edit *'entries recorded in [the] Training Log'*, the GMC would have investigated and identified any rebuttal evidence, on which counsel would base supplemental questions to GMC witnesses and/or cross-examination (or written questions) to Dr Kuna.

6. Ms Widdett added that Dr Kuna has been aware of the Allegation against him for some time. To allow the application would be prejudicial to the GMC (representing the public interest) taking account of the fact that Dr Kuna has given no good reason for his failure previously to disclose his case or provide statements.

7. However, Ms Widdett acknowledged that the Tribunal must ensure fairness to Dr Kuna as well as to the GMC, when considering this application, taking account of the provisions of Article 6 of the European convention.

8. The GMC recognised that paragraphs 4-6 of Dr Kuna's statement are central to his case. However, Ms Widdett submitted that their contents were not previously disclosed and the GMC would require time to investigate their veracity, with a view to relying on any evidence that may undermine assertions by Dr Kuna.

Legal Advice

9. The Legally Qualified Chair (LQC) drew attention to relevant legal principles, and Rule 34(1) of the Rules:

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

10. The Tribunal should consider whether the statement is relevant to the Allegation. If deemed relevant, the Tribunal must consider whether it is fair to the GMC to allow Dr Kuna to rely on it, taking account of the stage reached in the proceedings and other circumstances.

The Tribunal's Decision

11. The Tribunal took account of Rule 34(1) and its discretion to admit any evidence it considers fair and relevant to this case, whether or not it would be admissible in another court or tribunal.

12. The Tribunal took account of submissions from Dr Kuna and Ms Widdett, as well as the following factors:

- Dr Kuna has had several months to draft a witness statement in response to the Allegation. He is unrepresented;
- GMC witnesses, including Dr A, may be asked supplemental questions in relation to assertions by Dr Kuna in his statement;
- The GMC has not yet closed its case so is able to adduce further written or oral evidence on disputed issues or to apply to adjourn to investigate;
- Counsel for the GMC may also put questions to Dr Kuna in writing, or cross-examine him subject to permission from the Indian Government, requested by MPTS on 11 March 2024;
- In addition, the GMC may make submissions in relation to the weight to be given to Dr Kuna's statement if it is not rigorously tested by oral questions and in the context of its relatively late production.

13. The Tribunal considered the contents of Dr Kuna's statement to be directly relevant to the Allegation. Further, it concluded that it would not be unfair to the GMC, in all the circumstances, to allow Dr Kuna to rely on his statement dated 4 July 2024.

14. The Tribunal therefore determined to grant Dr Kuna's application to adduce his witness statement (Exhibit D1(b)).

ANNEX B – 10/07/2024

Application to adduce further evidence: Rule 34

GMC application

1. On 8 July 2024, Ms Widdett applied under Rule 34(1) of the Rules for the GMC to rely on a fourth statement from Dr A dated 5 July 2024.
2. A copy of this statement (Exhibit C2) was provided to Dr Kuna so that he could decide how to respond to the GMC application. Ms Widdett said that Exhibit C2 was directly relevant to the Allegation. The GMC considered the statement to undermine or rebut Dr Kuna's written evidence. Ms Widdett submitted that the GMC was not able to elicit Dr A's evidence in relation to this information at an earlier stage as Dr Kuna had not disclosed his position in advance.

Response of Dr Kuna

3. Dr Kuna said he did not oppose the application. He confirmed that he had read the statement, adding 'we are all on the same page'. Dr Kuna said that Dr A's further evidence could assist him, particularly in the context of Exhibit C1, pages 75-77.

Legal Advice

4. The Legally Qualified Chair (LQC) drew attention to relevant legal principles, and Rule 34(1) of the Rules:

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

5. The Tribunal should consider whether the statement is relevant to the Allegation. If deemed relevant, the Tribunal must consider whether it is fair to Dr Kuna to allow the GMC to rely on it, taking account of the stage reached in the proceedings and other circumstances.

The Tribunal's Decision

6. Tribunal took account of Rule 34(1) and its discretion to admit any evidence it considers fair and relevant to this case, whether or not it would be admissible in another court or Tribunal. The Tribunal took account of the submissions from Ms Widdett and Dr Kuna.
7. The Tribunal considered that the contents of the supplementary statement were relevant to the Allegation and that it would not be unfair to allow the GMC to rely on Dr A's fourth statement, taking account of submissions.

8. The Tribunal granted the GMC application to adduce Exhibit C2, a further statement from Dr A dated 5 July 2024.

ANNEX C – 10/07/2024

Application to adjourn: Rule 29

1. On 8 July 2024 Ms Widdett applied to adjourn the hearing until 10 July 2024, citing Rule 29 of the Rules.
2. Ms Widdett asked the Tribunal to take account of the late provision of Dr Kuna's written response to the Allegation. He had not complied with directions to provide evidence in advance of the hearing. This meant that the GMC had been unable to anticipate realistic lines of enquiry or to obtain rebuttal evidence at an earlier stage. Dr Kuna had made relevant assertions in his written statement dated 4 July 2024. His cross-examination of Dr A had also put his case in relation to the Opera system and Dr Kuna's Log Book.
3. Ms Widdett submitted that it would be fair to adjourn the hearing, to allow GMC Legal to make enquiries it had not been able to make before Dr Kuna had disclosed key elements of his case. The GMC should be given time to contact potential witnesses at the Trust who may be able to give evidence about Opera. Time may be required for witness statements to be prepared.

Submissions by Dr Kuna

4. Dr Kuna adopted a neutral position and did not object to the application to adjourn until Wednesday 10 July 2024.

Legal Advice

5. The Tribunal should consider the provisions of Rule 29(2) of the Rules:

'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.'

The Tribunal's Decision

6. The Tribunal was aware that there was no objection to the GMC application.
7. The Tribunal accepted that the GMC required time to investigate Dr Kuna's assertions and to contact potential Trust witnesses to ascertain if anyone could give relevant evidence about Opera and the way in which Log Books were prepared.
8. As time may also be required for witness statements to be taken, the Tribunal considered that it was not unfair to Dr Kuna to grant the GMC application for a short adjournment, so that it may present any evidence it considered relevant to rebut his

assertions. If Dr Kuna considered that any further evidence could be used to support his case, he may also rely on it.

9. The Tribunal granted the GMC application and adjourned the hearing until 10am on Wednesday 10 July 2024.

ANNEX D – 10/07/2024

Application - further application to adjourn: Rule 29

1. On 10 July 2024 Ms Widdett made a further application to adjourn the hearing until 11 July 2024 at 11am, citing Rule 29 of the Rules.

2. Ms Widdett applied for more time for the GMC to make further inquiries in relation to Opera and how Log Books were prepared. Ms Widdett said that each inquiry the GMC had made so far had led to further inquiries and that additional time was required to identify a potential witness to give evidence relevant to Opera and Log Books. Time would be needed to prepare their statement today, with a view to calling them to give evidence tomorrow. Ms Widdett added that, if the GMC is unable to proceed tomorrow at 11am, there may be further an application to adjourn for longer.

Submissions by Dr Kuna

3. Dr Kuna said: ‘I agree’ and did not object to Ms Widdett’s application, made on behalf of the GMC, to adjourn to Thursday 11 July 2024.

Legal Advice

4. The Tribunal should consider the provisions of Rule 29(2) of the Rules:

‘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.’

The Tribunal’s Decision

5. The Tribunal took account of the lack of objection to the GMC application.

6. The Tribunal understood that the GMC reasonably required further time to investigate Dr Kuna’s assertions and to contact potential Trust witnesses to ascertain if anyone could give relevant evidence about Opera and the way in which Log Books were prepared. It took account of the fact that inquiries are ongoing.

7. As time would be required for any witness statement to be taken, the Tribunal considered that it was not unfair to Dr Kuna to grant the GMC application for a further short adjournment, so that the GMC may present any evidence it considered relevant to rebut his assertions. If Dr Kuna considered that any further evidence could be used to support his case, he may also rely on it.

8. The Tribunal granted the GMC application and adjourned the hearing until 11am on Thursday 11 July 2024.

ANNEX E – 10/07/2024

Application to amend allegation under Rule 17(6)

GMC application to amend the Allegation, Schedule 1

1. On 10 July 2024, Ms Widdett made an application under Rule 17(6) of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004 ('the Rules'), to amend the Allegation by adding a number to identify the relevant patient, in row 17 of Schedule 1. Ms Widdett said that the amendment would assist the Tribunal to locate relevant documents and evidence. The GMC regards Schedule 1 as part of the Allegation.

2. Ms Widdett said the proposed changes had been provided to Dr Kuna. The specific amendment to Schedule 1 would be:

17	21/03/2019 <u>XXX</u>	Not involved in procedure [CONSULTANT: Mr G	Surgeon
----	--------------------------	--	---------

Response of Dr Kuna

3. Dr Kuna adopted a neutral position in relation to this application by the GMC.

The Tribunal's Decision

4. The Tribunal considered Rule 17(6) of the Rules which states:

'Where, at any time, it appears to the Medical Practitioners Tribunal that—

(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and

(b) the amendment can be made without injustice,

it may, after hearing the parties, amend the allegation in appropriate terms.'

5. The Tribunal took account of points made by Ms Widdett and Dr Kuna, who did not object to the application. The GMC sought to clarify the Allegation, as opposed to adding any allegation/s or making a substantive change. As the proposed change would not make it easier for the GMC to prove the Allegation, the Tribunal consider that Dr Kuna would not be placed at a disadvantage by reason of the amendment.

6. Allowing the GMC application would cause no injustice to Dr Kuna. Therefore the Tribunal granted the GMC's application to amend Schedule 1 of the Allegation as set out in the table above.

ANNEX F – 11/07/2024

Application - further application to adjourn: Rule 29

1. On 11 July 2024 Ms Widdett made a further application to adjourn the hearing, citing Rule 29 of the Rules.
2. Ms Widdett applied for extra time for the GMC to continue its investigations in relation to Opera and how Log Books were prepared. Ms Widdett said that the GMC had made numerous inquiries with the Trust, speaking to staff in the HR and IT departments, the Responsible Officer and clinical team. However, they were not able to assist with how the Opera system worked or how Log Books were generated. The GMC is reluctant to place undue pressure on Hospital staff but needs to speak to individuals at the Trust with knowledge of Opera. Ms Widdett said that this would take more than a day or two. Time would also be needed to prepare statements and provide them to Dr Kuna.
3. Ms Widdett said that this situation had arisen due to the late disclosure of Dr Kuna's witness statement. If Dr Kuna did not liaise with the GMC to minimise the risk of future adjournments, the GMC would be entitled to make an application for costs.

Submissions by Dr Kuna

4. Dr Kuna did not oppose the GMC's application to adjourn and said: *'Let them take time to thoroughly investigate'*.

Legal Advice

5. The Tribunal should consider the provisions of Rule 29(2) of the Rules:

'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.'

The Tribunal's Decision

6. The Tribunal took account of submissions made by Ms Widdett. It also noted that Dr Kuna did not object to the GMC application.
7. The Tribunal understood that the GMC needed more time to investigate Dr Kuna's assertions and to take statements from potential Trust witnesses in relation to the Opera system and Log Books. The Tribunal took account of the fact that the GMC has not delayed making inquiries but requires extra time to obtain answers.

8. The Tribunal considered that it was not unfair to Dr Kuna to grant the GMC application for a longer adjournment, so that the GMC may present any evidence it considered relevant to rebut his assertions. If Dr Kuna considered that any further evidence could be used to support his case, he may also rely on it.
9. The Case Management Team has not yet received a response (from the Indian Government) to the MPTS' request made on 11 March 2024, for Dr Kuna to be allowed to give oral evidence to the Tribunal from India. The Tribunal made a strong request for MPTS Case Management staff to contact the Indian Government by email and telephone, to obtain consent for Dr Kuna to give evidence from India.
10. The Tribunal estimated that it will require another ten days to conclude Dr Kuna's case, to allow time for evidence to be heard from additional GMC witnesses. All involved will provide their available dates between now and May 2025 to the MPTS. Dates for reconvening will then be agreed and communicated to Dr Kuna and the GMC.
11. The Tribunal granted the GMC application to adjourn the hearing.

ANNEX G – 20/03/2025

Application to adduce further evidence: Rule 34

1. On 17 March 2025, Dr Kuna applied under Rule 34(1) of the Rules to adduce the statement of Mr C, Head of Information for Mersey and West Lancashire Teaching Hospitals NHS Trust, dated 25 February 2025.
2. A copy of the statement with supplemental note (Exhibit C3 and C3a) was provided to Dr Kuna and to the Tribunal by the GMC following its investigation into the Opera IT System used in the NHS. Dr Kuna submitted that Mr C's statement was relevant to his case and that it was fair to allow him to rely on it as it was 'vital'.

Response of GMC

3. Ms Ceri Widdett, counsel for the GMC, did not oppose the application. The statement had been obtained by the GMC and disclosed to Dr Kuna as it may assist his presentation of his case and had potential to undermine the Allegation.

Legal Advice

4. The Legally Qualified Chair (LQC) reminded the Tribunal of Rule 34(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.'

5. The Tribunal should consider whether the statement is relevant to the Allegation. If deemed relevant, the Tribunal must consider whether it is fair to allow it to be adduced by Dr Kuna, taking account of the stage reached in the proceedings and other circumstances.

The Tribunal's Decision

6. Tribunal took account of Rule 34(1) in the context of submissions by Dr Kuna and Ms Widdett.
7. The Tribunal considered that the contents of Mr C's statement were relevant to paragraphs 2, 3 and 4 of the Allegation, because it explained how the Opera IT system (used by the NHS at relevant times) functioned. As the GMC acknowledged that Mr C's evidence was relevant and did not oppose Dr Kuna's application, the Tribunal concluded that it would be fair to allow it to be adduced.
8. The Tribunal therefore granted Dr Kuna's application to adduce Exhibits C3 and C3a, the statement from Mr C dated 25 February 2025, with supplemental note.

SCHEDULE 1

Number	Date of procedure and Patient identification (All Patients were in Trauma and Orthopaedics)	Dr Kuna's actual role in the procedure	Dr Kuna's record of his role as recorded in his training log
1	06/12/2018 XXX	Assisting surgeon 1	surgeon
2	24/12/2018 XXX	Not involved in procedure [CONSULTANT: Mr H]	surgeon
3	04/01/2019 XXX	Assisting surgeon 1	surgeon
4	08/01/2019 XXX	Assisting surgeon 1	surgeon
5	08/01/2019 XXX	Assisting surgeon 1	Surgeon
6	31/01/2019 XXX	Assisting surgeon 1	surgeon
7	31/01/2019 XXX	Assisting surgeon 1	surgeon
8	08/02/2019 XXX	Assisting Surgeon 1	surgeon
9	21/02/2019 XXX	Not involved in procedure [CONSULTANT: Miss I]	surgeon
10	21/02/2019 XXX	Assisting surgeon 1	surgeon
11	21/02/2019 XXX	Assisting surgeon 1	surgeon
12	18/03/2019 XXX	Assistant surgeon [CONSULTANT: Mr G]	surgeon
13	18/03/2019 XXX	Assisting surgeon 1	surgeon
14	18/03/2019 XXX	Not involved in procedure [CONSULTANT: Mr G]	surgeon
15	21/03/2019 XXX	Assisting surgeon 1	surgeon
16	21/03/2019 XXX	Assisting surgeon 1	surgeon
17	21/03/2019	Not involved in procedure [CONSULTANT: Mr G]	surgeon

Record of Determinations –
Medical Practitioners Tribunal

18	01/04/2019 <u>XXX</u>	Not involved in procedure [CONSULTANT: Mr G]	surgeon
19	01/04/2019 XXX	Assisting surgeon 2	surgeon
20	24/06/2019 XXX	Assisting surgeon 1	surgeon
21	24/06/2019 XXX	Assisting surgeon 1	surgeon