PUBLIC RECORD

Dates: 02/04/2024 to 10/04/2024;
15/05/2024 to 16/05/2024

Medical Practitioner's name: Dr Julian KENYON

GMC reference number: 1467655

Primary medical qualification: MB ChB 1970 University of Liverpool

Type of case
New - Misconduct

Outcome on facts
Facts relevant to impairment found proved

Outcome on impairment
Impaired

Summary of outcome
Erasure
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mrs Aaminah Khan
Lay Tribunal Member:	Mr George McLean
Medical Tribunal Member:	Dr Ammar Ghouri

Tribunal Clerk:	Mr Sewa Singh (02/04/2024 to 10/04/2024) Mrs Anne Bhatti (15/05/2204 to 16/05/2024)

Attendance and Representation:

Medical Practitioner:	Present, not represented - (02/04/2024 to 05/04/2024) Not present, not represented - (08/04/2024 to 10/04/2024 and 15/05/2024 to 16/05/2024)
GMC Representative:	Ms Amy Rollings, 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 - 08/04/2024

1. Throughout the decision-making process the Tribunal bore in mind the statutory overarching objective as set out in s1 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 Kenyon qualified in 1970 at the University of Liverpool. At the time of the events which are the subject of the Allegation in this case, Dr Kenyon was the Medical Director at The Dove Clinic for Integrated Medicine in Hampshire ('the Dove Clinic').

3. The Allegation against Dr Kenyon is that following a consultation with Patient A, on 31 May 2022, he recommended a treatment plan, set out in schedule 1, for prostate cancer which was inappropriate. It is alleged that Dr Kenyon failed to advise Patient A adequately about the uncertainties regarding the use of the treatments in schedule 1 or to discuss alternative conventional medical treatments, when he ought to have done so. Further, it is alleged (in the alternative) that Dr Kenyon failed to refer Patient A to an oncologist specialising in the management of prostate cancer.

4. These matters came to the attention of the GMC on or around 6 June 2022 following an online complaint form completed by Patient A's daughter, Miss C.

5. Patient A had been diagnosed with stage 4 metastatic prostate cancer in December 2019. He was receiving conventional medical treatment through the NHS and had already received androgen deprivation therapy, chemotherapy and radiotherapy to the prostate. Dr D, a close family friend was assisting Patient A to find some alternative treatment options. Dr D and Patient A began looking at some options for Ozone treatment in Germany and Patient A was considering travelling there for treatment. However, it was considered that the travel might be too much for Patient A. Dr D came across Dr Kenyon who provided Ozone treatment in the UK. Patient A agreed to explore this before deciding whether to go to Germany for treatment. Dr D contacted the Dove Clinic and arranged a consultation with Dr Kenyon.

6. Patient A attended the consultation on 31 May 2022, accompanied by his wife (Mrs B) and Dr D. Dr D met with Dr Kenyon initially for around fifteen minutes before Patient A and his wife were also called into the consultation room. During the consultation, Dr Kenyon recommended a treatment plan for Patient A that included the use of cannabidiol, claricell, and similase, as well as Sonodynamic/photodynamic therapy. Dr Kenyon informed Patient A that he had around six to nine months to live and allegedly advised Patient A that he should start his treatment sooner rather than later, as he did not have much time. Dr Kenyon informed Patient A that the treatment would initially cost in the region of £13K, but if it were unsuccessful, then further treatment would cost £20K. During the consultation, it is alleged that Dr Kenyon also told Patient A that he would need to have some blood tests which would cost £750.

7. It is stated by Patient A that he felt slightly uncomfortable by the costs for blood tests and the treatment for prostate cancer, as well as feeling under pressure. Dr D told Dr Kenyon that Patient A would sort out the blood tests separately. Patient A paid Dr Kenyon's consultation fee and left the clinic, with a view to considering the treatment options recommended by Dr Kenyon. Later the same day, Dr Kenyon sent an email to Patient A dated 31 May 2022 in which he set out the treatment options discussed and to which he attached some research papers which related to the treatment options he had recommended to Patient A.

8. Patient A later spoke to Miss C, who is a medical doctor and explained to her what took place at the consultation and the cost of the alternative treatment recommended by Dr Kenyon. Miss C had some reservations about the cost and decided to 'google' search Dr Kenyon, and she later advised Patient A not to go ahead with the treatment recommended by Dr Kenyon. Miss C also advised Patient A that she would make a complaint about Dr Kenyon in relation to the consultation.

9. Approximately a week later, it is alleged that Dr Kenyon contacted Patient A to inquire as to when Patient A would like to commence treatment. Patient A advised Dr Kenyon that as he was due to undergo kidney surgery at the time, he would consider and contact Dr Kenyon about the treatment for prostate cancer after that.

10. In the end, Patient A decided not to go ahead with the treatment recommended by Dr Kenyon. Patient A sadly died on 8 May 2023.

The Outcome of Applications Made during the Facts Stage

11. The Tribunal granted an application, made by Ms Amy Rollings, Counsel for the GMC, on day one of the hearing, pursuant to Rule 34(1) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to admit the witness statements of Patient A, Mrs B and Miss C. The Tribunal's full decision on the application is included at Annex A.

12. The Tribunal permitted Dr Kenyon to give his evidence-in-chief by way of oral evidence, in lieu of a formal witness statement, pursuant to Rule 34(11)(c). Following the conclusion of Dr Kenyon's evidence, the Tribunal granted the GMC's application, made pursuant to Rule 34(1) of the Rules, for additional documents, namely Patient A's medical records, to be admitted as evidence. The Tribunal also permitted the calling of the witness Miss C, despite a hearsay application in respect of her statement having been granted. The Tribunal's full decision on these applications is included at Annex B and Annex C respectively.

The Allegation and the Doctor's Response

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

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

1. On 31 May 2022, following a consultation with Patient A, you recommended the treatment plan set out at Schedule 1 ('the Treatment Plan'):
Admitted and found proved

a. which was inappropriate in that:

i. Patient A had recently started treatment by way of Enzalutamide;
To be determined

ii. the Treatment Plan's efficacy, cited in your email of 31 May 2022 and set out in Schedule 2, had an inadequate evidential basis;
To be determined

b. and you failed to:

i. adequately:

1. advise Patient A about the uncertainties regarding the use of the treatments in Schedule 1;
To be determined

2. discuss alternative conventional medical treatments with Patient A;
To be determined

ii. refer Patient A to an oncologist specialising in the management of prostate cancer, in the alternative to paragraph 1bi2.

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

Schedule 1
Therapy, comprising of cannabidiol, claricell, similase. Sonodynamic/photodynamic therapy.

Schedule 2
"In Cancer Immunotherapies where the Cancer [has] spread, 10% get a complete response, no tumour. 40% get increased survival, 50% get no response. It is completely without side effects,…"

The Admitted Facts

14. At the outset, Dr Kenyon admitted the stem of paragraph 1. The Tribunal announced this as admitted and found proved, in accordance with Rule 17(2)(e) of the Rules.

The Facts to be Determined

15. In light of the above, the Tribunal had to make a determination in relation to each of the disputed paragraphs of the Allegation, as set out above.

Factual Witness Evidence

16. The Tribunal received on behalf of the GMC the witness statements of Patient A, dated 1 September 2022 and Mrs B, dated 1 September 2022, and their statements were admitted into evidence as hearsay. In addition, the Tribunal received a written statement from Miss C, dated 1 November 2023, together with associated exhibits, who was also called to give oral evidence at the hearing.

17. Dr Kenyon gave oral evidence at the hearing, which included oral evidence-in-chief.

Expert Witness Evidence

18. The Tribunal received oral evidence from Dr E, who provided an expert report dated 5 May 2023. Dr E has been a Consultant Oncologist in the field of Uro-Oncology for twenty years, specialising in the treatment of prostate cancer.

Documentary Evidence

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

- An email from Dr Kenyon to Patient A, dated 31 May 2022, together with consent form and research papers;
- Online complaint form completed by Miss C, with accompanying documents;
- WhatsApp messages from Dr D to Miss C;
- Emails from Dr Kenyon to the GMC, dated 1 February 2024, 28 February 2024 and 6 March 2024;
- Extracts from medical records of Patient A, including records from the Dove Clinic.

The Tribunal's Approach

20. The Tribunal accepted the Legally Qualified Chair's (LQC) legal advice relating to the facts stage of the proceedings, which in summary was as follows.

21. The LQC advised that it was the Tribunal's task at this stage to consider the evidence and submissions and make findings in relation to the factual allegations, which are in dispute. Each paragraph of the Allegation has to be considered separately and in turn.

22. Whilst the Tribunal has to reach a conclusion on each paragraph separately, it is entitled, in determining whether or not each paragraph is proved, to have regard to relevant evidence in regard to any other paragraph. It may consider the evidence in the round.

23. Where a failure is alleged, as in paragraphs 1b of the Allegation, namely a failure to adequately advise Patient A, the Tribunal should first consider if there was a duty on the doctor in the circumstances to act in that manner. If there is a requirement to so act, it should then go on to consider if the doctor did, in fact, fail to do what was required of them.

24. The Tribunal is required to make decisions based on the whole evidence, deciding what evidence to accept, what to reject and what weight to attach to evidence, assessing all of the evidence that has been presented, both witness evidence (including that admitted as hearsay), the expert evidence and documentary evidence.

25. The Tribunal was advised that reasonable inferences can be drawn from the evidence, but the Tribunal was reminded that it must not speculate on matters that it has not heard evidence about or speculate about what other evidence might have been called.

26. In reaching its decision on facts, the Tribunal is required to bear in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Kenyon 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.

27. Where possible, factual findings should be based on objective facts as shown by contemporaneous documents. However, corroborating documentary evidence is not always required or available. Where the case turns upon which oral account to accept, the approach

of first considering documentary evidence before assessing the credibility of a witness's oral account has less significance; *Byrne v General Medical Council* [2021] EWHC 2237 (Admin).

28. When considering the credibility of a witness, the Tribunal should bear in mind the recent guidance that was given in the case of *Dutta v GMC* [2020] EWHC 1974. This case warns Tribunals against assessing credibility based largely on demeanour, as well as warning not to make the errors that (1) the stronger or more vivid a recollection the more likely it is to be accurate and also (2) the more confident a person is in their recollection, the more likely it is to be accurate; a confident witness can have a false memory of an event.

29. The Tribunal should also bear in mind that credibility can be divisible and it is open to the Tribunal to accept parts of a witness's evidence and not others.

The Tribunal's Analysis of the Evidence and Findings

30. 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 1(a)(i)

31. This part of the Allegation related to an allegation that the treatment plan that Dr Kenyon recommended to Patient A (therapy, comprising of cannabidiol, claricell, similase and sonodynamic/photodynamic therapy), was inappropriate, as Patient A had recently started treatment by way of Enzalutamide (a type of hormone therapy for patients with prostate cancer that has spread to other parts of the body).

32. The Tribunal heard evidence from the GMC's expert witness Dr E, who stated that at the time of the consultation with Dr Kenyon, Patient A was being treated for metastatic prostate cancer, following a diagnosis in December 2019. Patient A had previously been treated with androgen deprivation therapy, chemotherapy and radiotherapy to the prostate. Patient A had only recently started a relatively new treatment for prostate cancer, Enzalutamide, in March 2022, two months before the consultation with Dr Kenyon and the effectiveness of this is typically reviewed after a period of three months. Therefore, at the time of the consultation with Dr Kenyon, Patient A's response to Enzalutamide had not been assessed and it was not known how well the Enzalutamide was working. Patient A was due to have a review appointment with his oncology team in the month or so after the consultation.

33. Dr E's evidence was that Enzalutamide has proven benefits in prostate cancer response and survival. In addition, there are other licenced conventional treatments available, other than Enzalutamide, which Patient A had not yet tried, such as Cabazitaxel, Abiraterone and Radium 223.

34. Dr Kenyon denied that the treatment plan that he had recommended to Patient A was inappropriate. In relation to Patient A being on Enzalutamide, Dr Kenyon gave evidence that whilst he was aware that Patient A had recently started this treatment, Patient A had

informed him that he had stopped taking it due to the side effects that he had experienced. When asked questions regarding this issue, Dr Kenyon stated that Patient A had informed him that he suffered from weariness and that he was '*totally wiped out with it'*, which Dr Kenyon stated he was aware was a common side effect. When asked regarding the lack of entries in Patient A's medical records regarding any issues that Patient A had with Enzalutamide, Dr Kenyon responded that the side effects could accumulate over time and regardless of what was in his GP records, Dr Kenyon maintained that this is what Patient A had told him in the consultation.

35. The Tribunal had regard to Patient A's medical records obtained from the Dove Clinic, which included a patient questionnaire completed by Patient A shortly before the consultation (signed and dated 31 May 2022), as well as Dr Kenyon's contemporaneous notes of the consultation. The medical records also included Patient A's GP records and hospital letters from the relevant time period.

36. The Tribunal noted that Patient A was in regular contact with his GP at around this time and there was no mention in these records of Patient A either stopping taking Enzalutamide, nor of having any side effects, such as weariness, from this medication. The Tribunal noted that there were relevant parts of the Dove Clinic patient questionnaire where this information could have been recorded by Patient A, for example a section headed 'Systemic Enquiry', which required Patient A to tick if he had any of a detailed list of symptoms. The Tribunal noted that Patient A had only ticked 'poor concentration' despite there being a symptom listed of 'low energy', which would be the closest in the list to weariness, which was not ticked by Patient A. The Tribunal further considered it significant that Enzalutamide was listed by Patient A in the section of the questionnaire which was headed 'current medication' (which emphasised the word current in bold type), rather than in the 'past medical history' section of the form, which asked for past treatments to be listed.

37. Included within the Dove Clinic's documentation was the contemporaneous notes made by Dr Kenyon from the consultation with Patient A, in which it had been observed by Dr Kenyon that Patient A '*looks well*'. The notes went on to summarise the consultation and although relatively brief, they did not record that Patient A had stopped or wanted to stop his conventional treatments, including Enzalutamide, nor any mention of side effects from it. The Tribunal was of the view that if Patient A had stated this in the consultation, this would be important information for Dr Kenyon to have recorded and it was significant that there was no mention of it.

38. The Tribunal also had regard to the follow up email that Dr Kenyon sent to Patient A shortly after the consultation, dated 31 May 2022, which attached research papers relating to Dr Kenyon's recommended treatment plan. Dr Kenyon's email stated that, "*You have Stage 4 Prostate Cancer, you have had all the standard treatments and you are running out of treatment options*". However, the Tribunal considered that this was a misleading statement, as it accepted the evidence of Dr E that treatment options had not been exhausted and had Patient A been suffering from any side effects or issues with Enzalutamide, there were other alternative conventional treatments that could have been tried. Furthermore, if Patient A had

suffered side effects, the dose of Enzalutamide could have been reduced or replaced with a similar alternative that may have been more tolerable. None of these options had been explored by Patient A's oncology team, as Patient A had only recently commenced Enzalutamide and at the time of the consultation with Dr Kenyon, Patient A was awaiting a review appointment, where the efficacy of the treatment regimen would have been considered. The Tribunal considered it was inherently unlikely in these circumstances that Patient A would have decided to stop taking Enzalutamide, before the oncology review appointment, when he did not know at that time how well it was working.

39. In addition to the above, the Tribunal also had regard to the evidence of Miss C, Patient A's daughter and a medical doctor, who was involved in Patient A's treatment and would often discuss matters with his medical team. Miss C emphasised in her evidence how her father was looking for complementary options from Dr Kenyon, to work alongside, and not to replace, his conventional treatments and that he had trust in his conventional doctors. Further, Miss C's evidence was that she was not aware of her father suffering from any side effects of the Enzalutamide, nor had he indicated to her that he wished to stop conventional treatment. Miss C's evidence was that Patient A continued with conventional treatment up until he sadly died.

40. The Tribunal also had before it the witness statements of Patient A and his wife Mrs B, which had both been admitted into evidence as hearsay. The Tribunal was mindful that as their evidence had not been tested, this affected the weight that could be attached to it. However, it was notable that both Patient A and Mrs B described the background to the consultation with Dr Kenyon and neither made any mention of Patient A suffering side effects to Enzalutamide and/or that he was stopping conventional treatments.

41. Whilst Dr Kenyon was adamant that Patient A had been suffering from side effects and had told him in the consultation that he wanted to stop all convention treatments, the Tribunal considered that there was nothing to corroborate Dr Kenyon's version of events in any of the contemporaneous documents that were before the Tribunal.

42. Considering all of the above and the weight of the evidence in this case, the Tribunal concluded that it was more likely than not that at the time of the consultation with Dr Kenyon, Patient A was still taking the Enzalutamide and was not intending to stop taking it. In those circumstances, with Patient A only having recently started Enzalutamide and having not yet had the efficacy of that treatment reviewed, the Tribunal accepted the expert evidence of Dr E that Dr Kenyon's recommended treatment plan, as set out in schedule 1, was inappropriate. Accordingly, the Tribunal found Paragraph 1(a)(i) proved.

Paragraph 1(a)(ii)

43. This part of the Allegation related to an allegation that the treatment plan that Dr Kenyon recommended to Patient A was inappropriate, as its efficacy, as cited in Dr Kenyon's email to Patient A on 31 May 2022, had an inadequate evidential basis. The efficacy that had been cited by Dr Kenyon to Patient A was, "*In Cancer Immunotherapies where the Cancer*

[has] spread, 10% get a complete response, no tumour, 40% get increased survival, 50% get no response. It is completely without side effects…".

44. The Tribunal noted that Dr Kenyon and the GMC expert Dr E did not agree upon the use of the phrase immunotherapy, with Dr Kenyon's view being that sonodynamic/photodynamic therapy was a cancer immunotherapy. Conversely, Dr E did not accept that sonodynamic/photodynamic therapy was an immunotherapy, in the conventional use of the term.

45. Dr E's evidence was that whilst sonodynamic/photodynamic therapy is used for some types of surface cancers, such as skin cancer, it was not a conventional treatment for prostate cancer. Dr E gave clear evidence to the Tribunal that there was no evidence that sonodynamic/photodynamic therapy is effective for prostate cancer. Dr E opined that the claims of efficacy Dr Kenyon made to Patient A in his email dated 31 May 2022 are unverifiable and extremely unlikely, with the evidence for the statement being so poor '*it in effect makes this a total fabrication*.' Dr E reviewed the literature that Dr Kenyon had sent to Patient A regarding sonodynamic/photodynamic therapy and was of the opinion that it was '*of no use in this case*' stating that,

> '*There is no control group to the treatment and although evidently well tolerated, the outcome measures are of no use as to whether the treatment has any efficacy. Normal outcome measures in the study of prostate cancer would include PSA response, radiographic progression-free survival, overall survival. Patient-reported outcomes included pain progression and quality of life.*'

46. Dr E was of the view that it could not be said that treatment would be completely without side effects, as even placebos have side effects. In relation to the other parts of the treatment plan such as cannabinol, Dr E opined that whilst cannabinol may relieve some symptoms, the evidence for its efficacy in the treatment of prostate cancer was very limited. Dr E's opinion was that claricell and similase neither had any proven activity in prostate cancer.

47. Dr Kenyon's response to this part of the allegation was that there was an adequate evidential basis for the treatment plan that he had recommended to Patient A. He referred to the published articles that he sent to Patient A attached to his email dated 31 May 2022. He stated that these articles, in which he was either the sole author or lead author, had been peer reviewed, published and had been cited extensively. Dr Kenyon explained that the efficacy statement that he had quoted to Patient A ("*In Cancer Immunotherapies where the Cancer [has] spread, 10% get a complete response, no tumour…*"etc) came from two sources, namely cancer immunotherapy literature and his review of results from the 500 cases where he had treated patients at the Dove Clinic with sonodynamic/photodynamic therapy over the past 20 years or so. Dr Kenyon, when asked about the opinions of Dr E, stated that Dr E did not know anything about sonodynamic/photodynamic therapy.

48. The Tribunal evaluated both the evidence of Dr E and Dr Kenyon on this issue. The Tribunal found that Dr E's evidence was clear, rational and persuasive. He had considerable experience as a Consultant oncologist, having treated approximately 5,000 patients with prostate cancer over the course of his career. The Tribunal considered that Dr E gave expert evidence that was balanced, objective and that Dr E would acknowledge areas which were outside his field of expertise. The Tribunal found that Dr E explained his criticisms of the evidential basis for Dr Kenyon's treatment plan, for example the lack of similar patients with the same type and stage of cancer as Patient A, in a clear and rational manner. The Tribunal accepted the view of Dr E that there were so few patients that were comparable with Patient A in the studies done by Dr Kenyon, that the quality of this research was poor.

49. In relation to Dr Kenyon's evidence on this issue, the Tribunal bore in mind that Dr Kenyon gave evidence as a party to these proceedings and not as an objective expert. Whilst Dr Kenyon gave evidence that he has treated cancer patients in his clinic for many years, he accepted that he has no experience in clinical oncology. The Tribunal found Dr Kenyon's evidence on the issue of the treatment plan's efficacy to be unpersuasive and it did not address the key criticisms of Dr E, for example criticisms regarding the quality of the sample, the lack of a control group and that it was not based upon a randomised trial. Furthermore, the Tribunal noted that Dr Kenyon made concessions whilst giving evidence that his research groups, upon which he had based the articles, was not as large as he would have ideally liked. The Tribunal further noted that Dr Kenyon was currently working on further studies abroad, in order to improve the evidential basis for sonodynamic/photodynamic therapy.

50. The Tribunal was of the view that the treatment plan's efficacy, as cited by Dr Kenyon to Patient A, was misleading and inconsistent with other advice given by Dr Kenyon. For example, it referred to how "10% get a complete response, no tumour" which would not appear to apply to Patient A, as Dr Kenyon's evidence is that he had advised Patient A that the treatment was '*non-curative*'. Furthermore, the Tribunal considered that Dr Kenyon only gave Patient A articles, written by himself, which were supportive of the treatments recommended, when he accepted that there would likely be other contrary papers that disagreed with his view of the efficacy of the treatments recommended. It was the view of the Tribunal that without giving Patient A alternative views, this information was not the complete picture.

51. Considering all of the above matters, the Tribunal accepted the clear and persuasive evidence of the expert witness Dr E and having done so, was satisfied that Dr Kenyon's treatment plan for Patient A was inappropriate, as it had an inadequate evidential basis. Accordingly, the Tribunal found Paragraph 1(a)(ii) proved.

Paragraph 1(b)(i)(1)

52. This part of the Allegation related to an alleged failure by Dr Kenyon to adequately advise Patient A about the uncertainties regarding the use of the treatments recommended by him in the treatment plan (as set out in schedule 1). In making its decision, the Tribunal

first considered whether there was a requirement for Dr Kenyon to adequately advise Patient A of the uncertainties of the use of the treatments included in the treatment plan.

53. The Tribunal noted that there is a requirement within Good Medical Practice ('GMP') for doctors to communicate with patients relevant information relating to their condition and treatment, including any associated risks and uncertainties. Paragraph 49 of GMP states,

> *'49 You must work in partnership with patients, sharing with them the information they will need to make decisions about their care, including:*
>
> *a. Their condition, its likely progression and the options for treatment, including associated risks and uncertainties*.'

54. The Tribunal was therefore satisfied in the circumstances that there was a requirement upon Dr Kenyon to advise Patient A about the uncertainties regarding the use of the treatments in the recommended treatment plan (as set out in Schedule 1). Taking this into account, the Tribunal went onto consider whether Dr Kenyon had failed to adequately do so.

55. The Tribunal referred back to its findings above, in relation to the efficacy of the treatment plan being effectively overstated by Dr Kenyon to Patient A. The Tribunal was of the view that Dr Kenyon ought to have been clear with Patient A regarding the uncertainties of the efficacy of the treatment being recommended. The Tribunal noted that there had been a caveat put into the consent form for starting cannabidiol, which read,

> "*I have explained the nature of complementary medicine. In particular, I have explained that Complementary medicine treatments may not be as evidence based, or as well researched as conventional treatments. Some of our diagnostic techniques and treatment approaches are based on the theories underpinning traditional Chinese medicine and homoeopathy. These approaches are outside the standard biomedical model. We work in a holistic way. We may not have specific clinical trial evidence for your particular illness, or for each diagnostic blood test or treatment that we may carry out. We do not claim that any of our treatments are cures. I have explained that complementary treatments may not be scientifically verifiable or verified at all*."

56. Whilst this statement, in and of itself, was described as reasonable by Dr E and it highlighted the uncertainty of the evidential basis for the treatment being recommended, the Tribunal noted that this was not included in the main body of the email sent by Dr Kenyon to Patient A on 31 May 2022. Rather, the body of the email contained the misleading statement of efficacy (set out in schedule 2), which the Tribunal has found had an inadequate evidential basis. These two statements are at odds with each other and the Tribunal was of the view that this caveat in the consent form was not adequate advice when looking at the communications as a whole between Dr Kenyon and Patient A, which were contradictory. The Tribunal was of the view that the information that Dr Kenyon did provide Patient A with, namely the research articles, was not helpful for patients, in that it was very technical and

not easily accessible to non-medical professionals . The Tribunal agreed with the submission of the GMC, that this could have had the effect of '*bamboozling*' Patient A into agreeing to have the treatment.

57. The Tribunal considered that one of the uncertainties that Patient A ought to have been advised about was the potential side effects of the treatments being recommended. The Tribunal was of the view that Dr Kenyon had made an inaccurate and misleading statement in his email dated 31 May 2022 to Patient A regarding the treatment plan being '*completely without side effects'*. The Tribunal accepted the evidence of Dr E that there would have been potentially some side effects, which appeared to be conceded by Dr Kenyon, who during his evidence stated that he 'may have overplayed his hand' by stating that there we no side effects at all. The Tribunal bore in mind Dr E's evidence that the risk of side effects could have been heightened from the 'cocktail' of treatments being recommended and it would not have been clear how they would have interacted with each other. The Tribunal was of the view that Patient A should have been accurately warned of potential side effects of the treatment plan, in order that he could have made an informed decision.

58. The Tribunal was satisfied that there was a duty upon Dr Kenyon to adequately advise Patient A about the uncertainties regarding the use of the treatments that he recommended in the treatment plan (as set out in schedule 1), particularly when Dr Kenyon was offering these treatments on a private basis at a significant cost. Furthermore, considering all of the above matters, the Tribunal concluded that Dr Kenyon had failed to adequately advise Patient A regarding the uncertainties of the treatment plan he recommended, particularly as he gave Patient A misleading and contradictory advice regarding the efficacy of the treatment and the potential side effects.

59. Accordingly, the Tribunal found paragraph 1(b)(i)(1) of the Allegation proved.

<u>Paragraph 1(b)(i)(2)</u>

60. This part of the Allegation related to an alleged failure by Dr Kenyon to adequately discuss alternative conventional medical treatments with Patient A. In making its decision, the Tribunal first considered whether there was a requirement for Dr Kenyon to adequately discuss alternative conventional medical treatments with Patient A, before going on to consider whether he did not do so.

61. The Tribunal considered that paragraph 49 of GMP, referred to above, also applies here, as it requires doctors to share information with patients regarding their options for treatment. The Tribunal considered Dr E's evidence, which was that,

> "*The only treatment options discussed were those available at the Dove Clinic and did not include a discussion of conventional treatment. If Dr Kenyon was not in a position to discuss conventional treatment, then this should have been discussed with Patient A and a referral made to an Oncologist specialising in the management of prostate*

cancer. Give the treatment recommended has a very poor evidence base and is not licenced then these uncertainties should have been discussed."

62. In his evidence, Dr Kenyon accepted that he did not discuss alternative conventional medical treatments with Patient A, as although he was aware of them, Patient A had specifically stated that he did not want to discuss them, as he did not want any further conventional treatment. Furthermore, Dr Kenyon highlighted that Patient A was already under the care of an oncologist and so there was no point in discussing conventional treatments or a referrral.

63. The Tribunal had regard to the fact that Dr Kenyon's clinic was one that specialised in alternative treatments for cancer, rather than providing conventional medical treatments. Nonetheless, the Tribunal was of the opinion that if it appeared that there was some merit in a patient considering alternative conventional treatments, these still ought to have been discussed, as that may be in the best interests of the patient.

64. The Tribunal considered Dr Kenyon's account that he did not discuss alternative conventional treatments with Patient A as this was at Patient A's request. The Tribunal noted that there was no record in Dr Kenyon's contemporaneous notes of the consultation of any attempt by him to discuss alternative conventional treatments with Patient A and his wish not to do so. The Tribunal was of the view that had Patient A declined to discuss alternative conventional treatments that may have been available, this would have been important information to document in the patient records.

65. The Tribunal referred back to its earlier findings, set out above, that it was found more likely than not that Patient A was still having conventional treatments at the time of the consultation. The Tribunal considered that it was not the case that Patient A had exhausted all of his options in respect of conventional treatments. In these circumstances, the Tribunal was satisfied that there was a duty upon Dr Kenyon to have discussed with Patient A that there remained options in relation to conventional medical treatments, provided that Dr Kenyon had the knowledge to do so (if not then the alternative allegation under paragraph 1(b)(ii) would need to be considered). The Tribunal bore in mind that during his evidence Dr Kenyon had stated that he was aware of the alternative conventional treatments and only did not discuss them with Patient A, at his request, not because he did not have the knowledge to do so. Accepting Dr Kenyon's evidence on the extent of his knowledge and ability to have had a discussion on alternative conventional medical treatments with Patient A, albeit he was not an oncologist, the Tribunal was satisfied that Dr Kenyon had a duty to have had that discussion with Patient A regarding alternative conventional treatments and failed to do so.

66. Accordingly, the Tribunal found paragraph 1(b)(i)(2) of the Allegation proved.

Paragraph 1(b)(ii)

67. As paragraph 1(b)(i)(2) was found proved, and this paragraph of the Allegation was in the alternative to that paragraph, it was not necessary for the Tribunal to go on to make findings in relation to paragraph 1(b)(ii).

The Tribunal's Overall Determination on the Facts

68. The Tribunal has determined the facts as follows:

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

1. On 31 May 2022, following a consultation with Patient A, you recommended the treatment plan set out at Schedule 1 ('the Treatment Plan'): **Admitted and found proved.**

a. which was inappropriate in that:

i. Patient A had recently started treatment by way of Enzalutamide; **Determined and found proved**

ii. the Treatment Plan's efficacy, cited in your email of 31 May 2022 and set out in Schedule 2, had an inadequate evidential basis; **Determined and found proved**

b. and you failed to:

i. adequately:

1. advise Patient A about the uncertainties regarding the use of the treatments in Schedule 1; **Determined and found proved**

2. discuss alternative conventional medical treatments with Patient A; **Determined and found proved**

ii. refer Patient A to an oncologist specialising in the management of prostate cancer, in the alternative to paragraph 1bi2. **Not determined (alternative charge)**

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 - 10/04/2024

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

2. Dr Kenyon was not present at this stage of the proceedings. The Tribunal determined, after considering an application made by Ms Rollings under Rule 31 of the Rules, to proceed in Dr Kenyon's absence. The Tribunal's reasoning is set out in Annex D.

The Evidence

3. In reaching its determination, the Tribunal took into account all the evidence received during the facts stage of the hearing.

4. There was no further evidence received at this stage of the hearing.

Submissions on Impairment

The GMC

5. On behalf of the GMC, Ms Rollings submitted written submissions on impairment, which she took the Tribunal through. Ms Rollings submitted that Dr Kenyon's fitness to practise is currently impaired. She referred the Tribunal to relevant case law, and the test to be applied when considering impairment and reminded it of the two-stage process. She submitted that the Tribunal must first consider whether there has been professional misconduct, and whether that misconduct was serious. Ms Rollings said that there was no doubt that the misconduct in this case could properly be described as professional misconduct because it occurred in a clinical setting whilst caring for a vulnerable patient. She added that Dr Kenyon's actions are linked to the profession of medicine, and that he held himself out as a doctor to Patient A and offered his services as a member of the medical profession.

6. Ms Rollings submitted that Dr Kenyon was guilty of serious misconduct involving a terminally ill patient who turned to Dr Kenyon at a difficult time. She submitted that Dr Kenyon's conduct was poor and exploitative both during the consultation with Patient A and afterwards by his actions in his email communication with Patient A.

7. In relation to insight, Ms Rollings went on to say that Dr Kenyon's conduct during these proceedings was poor, adding that he showed no insight into his actions, but instead sought to advance a new defence which centred on Patient A's alleged poor level of English and his desire to cease conventional medicine. Ms Rollings said that Dr Kenyon's actions caused further distress to Patient A's grieving family. She added that Dr Kenyon's misconduct has been compounded by what appears to be a complete lack of insight regarding the

seriousness of his conduct towards Patient A. In this regard, she referred the Tribunal to the email of 31 May 2022 sent from Dr Kenyon to Patient A.

8. Ms Rollings submitted that Dr Kenyon's actions breached fundamental tenets of the profession and referred the Tribunal to Good Medical Practice (GMP) (2019 version). She highlighted paragraphs 16(a) and 16(b), 49(a), 68, 77, 78 and 79 of GMP which she submitted were engaged. She also drew the Tribunal's attention to paragraph 53 of its determination on the facts, where the Tribunal had made findings in respect of paragraph 49(a) of GMP.

9. Ms Rollings referred the Tribunal to the relevant parts of the test for impairment as set out in paragraph 76 in the case of *CHRE v NMC & Grant* (2011) EWHC 927 (Admin), and submitted that factors a), b) and c) were all engaged in this case (set out in the legal advice below). Ms Rollings reminded the Tribunal that it must have regard to the three limbs of the overarching objective and submitted that all three limbs were engaged in this case. Ms Rollings said that Dr Kenyon's actions did not protect and maintain Patient A's safety and well-being. She added that Dr Kenyon's actions did not protect, promote and maintain the health, safety and well-being of the public, but instead, his actions were to the contrary, and they undermined public confidence in the medical profession.

10. Ms Rollings reminded the Tribunal that whilst Dr Kenyon was on the Medical Register, he does not hold a licence to practise, he remained active in global research. She referred the Tribunal to Dr Kenyon's evidence in respect of his speaking at an event in Tokyo and being involved in research in Melbourne.

11. In all the circumstances, Ms Rollings invited the Tribunal to find Dr Kenyon's fitness to practise is impaired by reason of misconduct.

The Relevant Legal Principles

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

13. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: firstly, whether the facts as found proved amounted to misconduct , which was serious. Secondly, whether a finding of serious misconduct (if found), led to a finding of current impairment.

14. The Tribunal bore in mind that misconduct can be classed as some act or omission falling short of what would be proper in the circumstances; the proper standard can be found by reference to those rules and standards ordinarily required to be followed by the professional, such as those set out in Good Medical Practice ('GMP'). Where a Tribunal finds misconduct, the Tribunal should be clear on whether this amounts to a serious departure from the guidance in Good Medical Practice.

15. The Tribunal was mindful that it does not automatically follow that fitness to practise would be impaired; this needs to be considered as a separate and distinct concept. In order to determine whether Dr Kenyon's fitness to practise is impaired today, the Tribunal took into account his conduct at the time of the events and any relevant factors since then, such as whether the matters were remediable, had been remedied and whether there was any likelihood of repetition.

16. Insight is a key aspect in assessing these matters. The fact that a doctor has contested these proceedings does not necessarily mean a lack of insight but it does mean that any refusal to accept the misconduct makes insight more difficult to establish.

17. The LQC advised the Tribunal of the relevance of Dr Kenyon retiring to the issue of impairment and fitness to practise, with reference to the case of *GOC v Clarke* [2018] EWCA 1463. The LQC advised that the Tribunal ought to consider the issue of impairment on the basis of whether the risks had been remedied, regardless of whether the doctor may have retired or not. Whilst if a doctor ceases practise this may lower the risk of repetition, it does not follow they are fit to practise if they chose to return to practice. Furthermore, when a doctor has retired, it may be more difficult for the Tribunal to assess current fitness to practise, as it will affect their ability to provide evidence of current practice. However, it is necessary to assess fitness to practise, including insight and remediation, based upon the evidence before it (as per *Henning v The General Dental Council* [2022] EWHC 175 (Admin)).

18. Throughout its deliberations, the Tribunal has been mindful of its responsibility to uphold the overarching objective as set out in the Medical Act 1983 (as amended). That objective is the protection of the public and involves the pursuit of the following:

a. to protect, promote and maintain the health, safety, and wellbeing of the public
b. to maintain public confidence in the profession
c. to promote and maintain proper professional standards and conduct for members of the profession

19. The Tribunal considered the overall risk to public safety and the impact of its findings on all three elements of the overarching objective. This overarching objective should be considered as a whole, not giving excessive weight to any one limb. It also considered whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of current impairment was not made.

20. The Tribunal was assisted by the guidance provided by Dame Janet Smith in the Fifth Shipman Report, as adopted by the High Court in *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin*. The Tribunal noted:

'..the tribunal should consider whether the findings of fact in respect of the doctor ... show that his fitness to practise is impaired in the sense that he:

a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
d. has in the past acted dishonestly / or is liable to act dishonestly in the future.'

The Tribunal's Determination on Impairment

Misconduct

21. The Tribunal first considered whether the facts found proved amounted to misconduct.

22. The Tribunal had regard to its findings at the facts stage. It reminded itself that Dr Kenyon had admitted the stem of the Allegation. The Tribunal had found that Dr Kenyon had recommended the treatment plan, set out in schedule 1, which was inappropriate given that Patient A had recently started treatment by way of Enzalutamide, and that the efficacy of the treatment plan recommended had an inadequate evidential basis. Further, the Tribunal found that Dr Kenyon failed to advise Patient A about the uncertainties regarding the use of the treatments which he had recommended, or discuss alternative conventional medical treatment with Patient A.

23. The Tribunal had regard to the following paragraphs of GMP, which it considered were relevant in this case:

'16 In providing clinical care you must:

a prescribe drugs or treatment, including repeat prescriptions, only when you have adequate knowledge of the patient's health and are satisfied that the drugs or treatment serve the patient's needs

b provide effective treatments based on the best available evidence

…..'

'49 You must work in partnership with patients, sharing with them the information they will need to make decisions about their care, including:

a. their condition, its likely progression and the options for treatment, including associated risks and uncertainties.'

'68 You must be honest and trustworthy in all your communication with

patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.'

'78 You must not allow any interests you have to affect the way you prescribe for, treat, refer or commission services for patients.

79 If you are faced with a conflict of interest, you must be open about the conflict, declaring your interest formally, and you should be prepared to exclude yourself from decision making.'

24. The Tribunal was of the view that all of these paragraphs of GMP were engaged in this case, by Dr Kenyon's recommendation to Patient A of an inappropriate treatment plan, which was not an effective treatment based on the best available evidence. In addition, Dr Kenyon gave inadequate advice to Patient A, which did not share information regarding the associated risks and uncertainties and information Dr Kenyon shared with Patient A was misleading and inaccurate. The Tribunal considered that the literature Dr Kenyon sent to Patient A could have had the effect of '*bamboozling*' Patient A into agreeing to have the treatment. Furthermore, as Dr Kenyon was the Medical Director of the Dove Clinic, the Tribunal considered that he had a financial interest in recommending the treatment plan, rather than referring Patient A back to conventional treatment available on the NHS, which appeared to affect the advice given.

25. The Tribunal considered Ms Rollings' submission that paragraph 77 of GMP is also engaged in this case, which requires doctors to be honest in financial and commercial dealings. The Tribunal noted that the GMC had not advanced any allegation of dishonesty, and no such findings had been made by the Tribunal in relation to Dr Kenyon's financial dealings with Patient A. The Tribunal was not satisfied that this was directly relevant to the facts of this case, as found proved.

<u>In relation to Paragraph 1(a)(i) of the Allegation</u>

26. The Tribunal reminded itself of its findings at the facts stage in relation to the treatment plan which Dr Kenyon recommended for Patient A, as set out in schedule 1.

27. The Tribunal noted that Patient A had only recently started Enzalutamide, in March 2022, for the treatment of prostate cancer. This was some two months before his consultation with Dr Kenyon. It also noted that the response to the treatment is usually assessed three months after its uptake. In the patient questionnaire completed by Patient A shortly before the consultation on 31 May 2022, Patient A listed Enzalutamide as one of the medical treatments he was receiving at the time. Further, the response to Enzalutamide had not been assessed.

28. The Tribunal had sight of Patient A's GP records which showed that he was in regular contact with his GP, and was so at the time of his consultation with Dr Kenyon. There was no

mention in the GP records of Patient A either stopping taking Enzalutamide, nor of having any side effects.

29. The Tribunal had regard to the GMC expert's evidence that Enzalutamide has proven benefits as a response to prostate cancer and survival. He also stated that there are other licenced conventional treatments available, other than Enzalutamide, which Patient A had not yet tried, such as Cabazitaxel, Abiraterone and Radium 223.

30. The Tribunal was mindful of Miss C's evidence that her father was looking for complementary options from Dr Kenyon to work alongside, and not to replace, his conventional treatments and that he had trust in the conventional treatments prescribed by his doctors. Further, Miss C was not aware of her father suffering from any side effects of the Enzalutamide, nor had he indicated to her that he wished to stop conventional treatment.

31. The Tribunal did not accept Dr Kenyon's evidence that whilst he was aware that Patient A had recently started this treatment, Patient A had informed him that he had stopped or wished to stop taking Enzalutamide due to the side effects that he had experienced. The Tribunal was not presented with any evidence to corroborate Dr Kenyon's version of events in any of the documents placed before it.

32. In the email of 31 May 2022 to Patient A, the Tribunal found it was misleading for Dr Kenyon to state '*You have Stage 4 Prostate Cancer, **you have had all the standard treatments and you are running out of treatment options***' (emphasis added). The Tribunal accepted Dr E's evidence that all treatment options had not been exhausted. Had Patient A been suffering from any side effects or issues with Enzalutamide, there were other alternative conventional treatments that could have been tried. Patient A was awaiting an oncology review appointment, where the efficacy of the treatment regimen would have been considered, and it was therefore unlikely, in the circumstances, that Patient A would have decided to stop taking Enzalutamide, before the review appointment, when he did not know the response to the Enzalutamide. The Tribunal found that it was not appropriate for Dr Kenyon to recommend the treatment plan set out in schedule 1.

33. The Tribunal also had regard to the conclusions of the expert witness, Dr E, specifically that Dr Kenyon's management of Patient A fell seriously below the level expected of a reasonably competent doctor. Dr E stated that,

> '*From the GMC document "Good Medical Practice" there are several areas that Dr Kenyon's actions in the case of Patient A fell seriously below the expected standard of a reasonably competent doctor*.
>
> …
>
> *Given that the Patient A had recently started a new conventional therapy that would serve the patients need, that is in treating the cancer, recommending an additional treatment with no proven efficacy would not serve the patient's needs.*'

34. In the circumstances, the Tribunal considered that Dr Kenyon's actions were, and would be considered by fellow professionals and the public to be, wholly unacceptable, morally culpable and disgraceful conduct. In light of this, the Tribunal concluded that Dr Kenyon's actions fell far below the standards expected and amounted to serious misconduct.

In relation to Paragraph 1(a)(ii) of the Allegation

35. The Tribunal again reminded itself of its findings at the facts stage regarding the efficacy of the treatment plan which Dr Kenyon recommended for Patient A, as set out in schedule 1.

36. In his email to Patient A, dated 31 May 2022, Dr Kenyon stated:

> *'In Cancer Immunotherapies where the Cancer [has] spread, 10% get a complete response, no tumour, 40% get increased survival, 50% get no response. It is completely without side effects…'*.

37. The Tribunal accepted Dr E's evidence that the claims of efficacy Dr Kenyon made to Patient A in his email of 31 May 2022 are unverifiable and extremely unlikely, with the evidence for the statement being so poor *'it in effect makes this a total fabrication.'*

38. The Tribunal had regard to Dr E's evidence that it could not be said that treatment would be completely without side effects, as even placebos have side effects. In relation to the other parts of the treatment plan such as cannabidiol, Dr E was of the opinion that whilst cannabidiol may relieve some symptoms, the evidence for its efficacy in the treatment of prostate cancer was very limited. Further, Dr E's opinion was that neither claricell nor similase had any proven activity in prostate cancer.

39. The Tribunal found that Dr Kenyon overstated the efficacy of the treatment plan to Patient A. His communication with Patient A was not clear regarding the uncertainties of the efficacy of the treatment being recommended.

40. The Tribunal found that there was inadequate evidential basis for Dr Kenyon's statement set out above. The Tribunal was of the view that Dr Kenyon's actions by overstating the efficacy of the recommended treatment plan may have given false hope to Patient A, who was terminally ill and vulnerable. It also received evidence from Miss C that Patient A was distressed following the consultation and felt pressured to undertake the expensive treatment Dr Kenyon was offering.

41. The Tribunal had regard to the expert evidence of Dr E that Dr Kenyon's actions fell seriously below the expected standard of a reasonably competent doctor. With specific reference to the efficacy cited by Dr Kenyon of the treatment plan, Dr E's evidence was that the treatment plan

'*could in no way be described as based on the best available evidence. The evidence the treatment plan was based upon would be considered of a poor quality and as such should not be used to recommend treatment outside of a clinical trial.*'

42. In the circumstances, the Tribunal considered that Dr Kenyon's actions were, and would be considered by fellow professionals and the public to be, wholly unacceptable, morally culpable and disgraceful conduct. In light of this, the Tribunal concluded that Dr Kenyon's actions fell far below the standards expected and amounted to serious misconduct.

In relation to Paragraph 1(b)(i)(1) of the Allegation

43. The Tribunal determined that Dr Kenyon failed to advise Patient A adequately about the uncertainties regarding the use of the treatments in the recommended treatment plan (as set out in Schedule 1). It took account of paragraph 49 of GMP as set out above.

44. The Tribunal determined that Dr Kenyon ought to have been clear with Patient A regarding the uncertainties of the efficacy of the treatment he had recommended for Patient A and the potential side effects, so that he could make an informed decision. Further, the Tribunal was of the view that the information that Dr Kenyon provided to Patient A, namely the research articles, was not helpful for Patient A in that it was very technical and not easily accessible to him. Further, Dr Kenyon failed to present the full range of medical opinion on the efficacy or otherwise of the treatment.

45. The Tribunal had regard to the opinion of Dr E that Dr Kenyon's actions fell below the standards of a reasonably competent doctor. In relation to this part of the Allegation Dr E opined that,

'*Given the treatment recommended has a very poor evidence base and is not licenced then these uncertainties should have been discussed*.'

46. In the circumstances, the Tribunal considered that Dr Kenyon's actions were, and would be considered by fellow professionals and the public to be, wholly unacceptable, morally culpable and disgraceful conduct. In light of this, the Tribunal concluded that Dr Kenyon's actions amounted to serious professional misconduct.

In relation to Paragraph 1(b)(i)(2) of the Allegation

47. The Tribunal had regard to its findings at the fact stage. It found that Dr Kenyon failed to adequately discuss alternative conventional medical treatments with Patient A, despite his evidence that he was aware of alternative treatments such as Enzalutamide.

48. The Tribunal had regard to its conclusion in relation to paragraph 1(a)(i) above, in that from Patient A's GP records, and the form he completed at the consultation, there was no evidence to suggest that he wanted to stop conventional medical treatments or stop Enzalutamide. Further, there was no record in Dr Kenyon's contemporaneous notes of the

consultation of any attempt by him to discuss alternative conventional treatments with Patient A and his wish not to do so. The Tribunal formed the view that had Patient A not wished to discuss alternative conventional medical treatments, it would have been important information for Dr Kenyon to record in his contemporaneous notes of the consultation.

49. The Tribunal had regard to the opinion of Dr E that Dr Kenyon's actions were seriously below the standard expected. The only treatment options discussed were those available at the Dove Clinic and that he ought to have discussed conventional treatment options, or referred to a specialist if he was not in a position to do so.

50. The Tribunal determined that Dr Kenyon did not discuss alternative conventional medical treatments with Patient A when he ought to have done so and this was a failure in his duty as a doctor. The Tribunal concluded that Dr Kenyon's conduct in the management of Patient A fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct. The Tribunal determined that given the fact that Patient A was vulnerable, and was made to feel under pressure to have expensive treatment that was not in his best interests, that the misconduct was serious.

51. In the circumstances, the Tribunal considered that Dr Kenyon's actions were, and would be considered by fellow professionals and the public to be, wholly unacceptable, morally culpable and disgraceful conduct. In light of this, the Tribunal concluded that Dr Kenyon's actions amounted to misconduct, which was serious.

Impairment by reason of misconduct

52. The Tribunal having found that the facts found proved amounted to serious misconduct, went on to consider whether, as a result of that misconduct, Dr Kenyon's fitness to practise is currently impaired. Throughout its deliberations, the Tribunal had regard to all three limbs of the statutory overarching objective, as set out above.

53. The Tribunal considered whether the misconduct was remediable, had been remedied by Dr Kenyon and whether there was any likelihood of repetition. The Tribunal was of the view that given that the misconduct was of a clinical nature, it could be remediable, had Dr Kenyon reflected and developed insight into his actions. The Tribunal considered that Dr Kenyon could have taken steps to remediate, such as attending courses with an open mind, accepted the new knowledge and changed his approach. However, there is no evidence to suggest that Dr Kenyon had sought to do so.

Insight

54. The Tribunal noted that whilst Dr Kenyon engaged with these proceedings (up to the conclusion of the facts stage) and during his oral evidence, he did not accept any wrongdoing. He did not express any apology or regret for the treatment he provided to Patient A or to his family, for any distress they had suffered, nor express any sympathy for their loss. He maintained that Patient A had told him that he had stopped or wanted to stop

taking Enzalutamide because of the side effects, despite the objective evidence before the Tribunal indicating otherwise. Dr Kenyon maintained that it was Patient A's wish not to discuss alternative conventional medical treatments. Further, he maintained that the treatment plan he recommended for Patient A was appropriate. As a result of his evidence, it was necessary for the GMC to call Miss C to give, in essence, rebuttal evidence.

55. The Tribunal was mindful that denying the allegations did not prevent a doctor from reflecting and developing insight, however there was no evidence that Dr Kenyon had sought to reflect or develop insight in this case.

56. The Tribunal considered that if Dr Kenyon had developed some understanding of why the concerns identified about his clinical practice had been raised, and adopted the right approach to his clinical practice, it may be possible that his actions, though serious, could be remediable. However, the Tribunal has been provided with no evidence of any steps Dr Kenyon has taken to remediate his misconduct or to develop insight into his actions. During his oral evidence, Dr Kenyon was adamant his approach and the treatment plan he had recommended for Patient A was right, despite the expert opinions of Dr E indicating to the contrary. Dr Kenyon has not provided any evidence to demonstrate that he understood the impact his actions had or could have had on Patient A at the time, on the medical profession, and the wider public interest and the public's confidence in the medical profession.

Remediation and Risk of Repetition

57. Dr Kenyon has provided no evidence at all to demonstrate the steps, if any, he has taken to remediate his misconduct. There was no evidence of personal reflections from Dr Kenyon to persuade the Tribunal that he understood the impact of his actions on Patient A or his family. Nor was there an acknowledgment of the shortfalls in his knowledge about conventional medical treatments for the treatment of prostate cancer.

58. The Tribunal noted that Dr Kenyon whilst still on the Medical Register no longer holds a licence to practise. However, it took into account that during his oral evidence, Dr Kenyon stated that he remained active in global research. By his own evidence, he told the Tribunal that he was to attend as a guest speaker at an event in Tokyo and was involved in research in Melbourne.

59. The Tribunal was mindful that whilst Dr Kenyon was not currently practising, that position could change in future should Dr Kenyon choose to return to clinical practice in the UK. The Tribunal had regard to the guidance in the case of *GOC v Clarke*, referred to above, and that whilst retiring may make it more difficult for a doctor to show remediation, the Tribunal had to assess impairment based upon the evidence before it.

60. In view of his non-acceptance of any wrongdoing, lack of insight, reflection and remediation and in light of its findings, the Tribunal considered that there was a high risk of Dr Kenyon repeating his misconduct, should he return to practice. The Tribunal was concerned that if he was in a similar position again he would repeat his actions.

61. The Tribunal considered that factors (a), (b) and (c) in the test of *Grant* was engaged in this case:

> *'Do our findings of fact in respect of the doctor's misconduct, show that his fitness to practise is impaired in the sense that he:*
>
> *'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 or is liable in the future to bring the medical profession into disrepute; and/or*
>
> *c. Has in the past breached or is liable to breach in the future one of the fundamental tenets of the medical profession; and/or*
>
> *d. …'*

62. The Tribunal considered that Dr Kenyon's conduct had put Patient A at unwarranted risk of harm, brought the medical profession into disrepute and breached fundamental tenets of the medical profession.

63. The Tribunal reminded itself of the purpose of the overarching objective, in particular:

a. to protect, promote and maintain the health, safety, and wellbeing of the public
b. to maintain public confidence in the profession
c. to promote and maintain proper professional standards and conduct for members of the profession

64. The Tribunal was of the view that given its finding of serious misconduct and Dr Kenyon's lack of insight and remediation, a reasonably informed observer would be concerned if a finding of impairment were not made.

65. The Tribunal determined that Dr Kenyon's fitness to practise is impaired on all three limbs of the overarching objective. The Tribunal therefore considered that a finding of impairment was needed to protect, promote and maintain the health, safety, and wellbeing of the public, to maintain public confidence in the profession and to uphold proper professional standards.

66. The Tribunal therefore determined that Dr Kenyon's fitness to practise is impaired by reason of his misconduct.

Determination on Sanction - 16/05/2024

60. Having determined that Dr Kenyon's fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 22(1)(h) of the Rules what action, if any, it should take with regard to Dr Kenyon's registration.

The Outcome of Applications Made During the Sanction Stage

Service and proceeding in absence

61. Dr Kenyon was neither present nor represented at the hearing. Ms Amy Rollings, Counsel on behalf of the GMC, made submissions inviting the Tribunal to find that Dr Kenyon had been properly served under the General Medical Council (Fitness to Practise) Rules 2004, ('the Rules') with notification of this hearing. Further, Ms Rollings applied for the Tribunal to proceed to hear the case in Dr Kenyon's absence in accordance with Rule 31. The Tribunal determined that the notice of hearing had been served in accordance with the Rules and also granted Mr Rollings' application to proceed in the absence of Dr Kenyon, pursuant to Rule 31. The Tribunal's decisions and reasons relating to both of these matters are contained in Annex F.

The Evidence

62. The Tribunal has taken into account the background to the case and the evidence received during the earlier stages of the hearing where relevant to reaching a decision on what action, if any, it should take with regard to Dr Kenyon's registration.

63. The Tribunal received further evidence on behalf of the GMC including:

- Record of determination dated 8 February 2013;
- Record of determination 9 December 2014;
- Reflective statement from Dr Kenyon dated 18 November 2015;
- Record of determination dated 11 December 2015;
- Information from The Dove Clinic website, taken on 18 April 2024;
- Information and article linked to Dr Kenyon website, taken on 18 April 2024.

Submissions

On behalf of the GMC

64. On behalf of the GMC, Ms Rollings submitted that the only appropriate sanction in this case was for Dr Kenyon's name to be erased from the Medical Register.

65. Ms Rollings took the Tribunal through the findings of two previous fitness to practise Tribunal proceedings against Dr Kenyon. The 2013 Tribunal had found that Dr Kenyon had failed to provide good clinical care to a patient. The 2013 Tribunal had found several significant departures of Good Medical Practice. Dr Kenyon was given a warning which indicated to him that his behaviour should not be repeated.

66. The second fitness to practise proceedings took place in 2014 and arose from Dr Kenyon's interactions with a patient and an undercover journalist between September and December 2012. During these proceedings Dr Kenyon's fitness to practise was found to be impaired. Some of the allegations in the 2014 Tribunal hearing were incredibly similar to allegations in these current proceedings. In particular, similar wording was used by Dr Kenyon in emails to a cancer patient with significant metastases regarding the efficacy of the sonodynamic/photodynamic therapy ('SPDT') treatment he offered. Following the consultation, in an email to a patient, Dr Kenyon stated in relation to his proposed treatment of him involving the use of SPDT, '*I am not claiming we can cure you, but there is a strong possibility that we would be able to increase your median survival time with the relatively low-risk approaches described here.*'

67. On 18 December 2012, an undercover journalist from the Sunday Times newspaper visited Dr Kenyon at the Dove Clinic posing as the husband of a fictitious female patient who had been diagnosed with breast cancer with metastases in her hip. Dr Kenyon did not know he was a journalist. During that consultation Dr Kenyon told the journalist that SPDT was able to achieve tumour cell death in 80% of cases involving deep-seated tumours and that there is a slightly less than 10% complete response rate in cancer patients treated with SPDT.

68. The 2014 Tribunal accepted the evidence from an expert Dr F that a claim of 80% cell death in deep seated tumours was unwarranted because this information had been extrapolated from preclinical studies. The 2014 Tribunal found Dr Kenyon's statement to have been misleading, albeit not dishonest. The 2014 Tribunal found that Dr Kenyon failed to give a balanced view of SPDT and had exploited the patient's vulnerabilities and lack of medical knowledge. The 2014 Tribunal found that Dr Kenyon had shown very limited insight and imposed conditions on Dr Kenyon's registration, with an element of supervision of his practice and a review hearing was directed.

69. Thereafter, there was a reflective statement provided by Dr Kenyon, dated the 18 November 2015. It stated that Dr Kenyon attended a medical communication course on three occasions. This allowed him to reflect on his communication with patients and rethink the methods he used. He also described how he adapted his communication methods on sensitive cases such as late-stage cancer patients. Ms Rollings submitted that the reflective statement was particularly relevant to these proceedings because it demonstrated that despite the wording that he had used in this reflective statement, he had repeated his behaviour nine years later.

70. At a review hearing held in December 2015, the conditions were revoked. The 2015 review Tribunal found that Dr Kenyon had achieved everything that was expected of him in relation to his remediation and insight. It was evident that he had proactively engaged with the regulatory process and targeted the areas that were a cause for concern. It found increased insight and remediation and found that the risk of Dr Kenyon repeating his misconduct and misleading the patients was now minimal. The review Tribunal concluded that Dr Kenyon was no longer impaired and he should be allowed to return to unrestricted practice.

71. Ms Rollings referred the Tribunal to a statement found on Dr Kenyon's Dove Clinic website that announced that he had closed the clinic on 1 February 2023. However, she highlighted that on 12 October 2023, he had submitted an abstract in relation to a research paper that he had been involved in in relation to medicinal cannabis. Ms Rollings reminded the Tribunal of Dr Kenyon's own oral evidence during the facts stage, where he stated that he would be speaking at an event in Tokyo and would be involved in the clinical research papers.

72. During her submissions Ms Rollings referred the Tribunal to relevant paragraphs of the Sanctions Guidance dated 5 February 2024 ('SG'). Ms Rollings submitted that the starting point was the nature and seriousness of the various departures from GMP. She submitted that it could not be disputed that Dr Kenyon should have been familiar with the provisions of GMP because he had previously been before MPTS on two separate occasions.

73. Ms Rollings submitted that there were no mitigating factors in this case. She submitted that the aggravating factors were Dr Kenyon's lack of insight, he had not remediated, he did not accept any wrongdoing, and had not expressed apology or regret. As a result of Dr Kenyon's position, Miss C had to be called to give oral witness evidence, which had caused further distress to her and the family of Patient A. Ms Rollings submitted that Dr Kenyon had shown no insight into either the impact of his actions on Patient A's family, nor the wider public interest.

74. Dr Kenyon's misconduct was persistent and repetitive, particularly when taking into account the 2014 GMC proceedings where very similar accusations had been raised against Dr Kenyon. Dr Kenyon had abused his professional position and Patient A was a vulnerable patient. Ms Rollings reminded the Tribunal that it had also found that there was a high risk of repetition.

75. Ms Rollings submitted that taking no action was not appropriate given the seriousness of the findings. She submitted that conditions would also be unsuitable because they were not appropriate, proportionate, workable or measurable. She submitted that Dr Kenyon had no insight and a period of retraining and/or supervision was unlikely to be the most appropriate way of addressing any findings.

76. Turning to suspension, Ms Rollings submitted that Dr Kenyon's conduct was fundamentally incompatible with continued registration and for those reasons suspension

was not the appropriate sanction. She submitted that over a prolonged period there had been repetition of similar behaviour in the 2013, 2014 and today's Tribunal proceedings.

77. Ms Rollings submitted that Dr Kenyon's conduct was a particularly serious departure from the principles set out in GMP. The behaviour was difficult to remediate. She reminded the Tribunal of its findings, that it had found Dr Kenyon's behaviour to be morally culpable, as he had dealt with a vulnerable patient in a disgraceful way. Dr Kenyon had abused his position of trust and put his own interests (namely his financial interests) before those of the patient. Further, Dr Kenyon had not considered the position of, nor apologised to, Patient A or his family.

78. Ms Rollings submitted that in the circumstances, given the past fitness to practise history, lack of insight and risk of repetition, Dr Kenyon's behaviour was not remediable, and the only appropriate sanction was one of erasure. She submitted that erasure was the only means of protecting the public and it was necessary to maintain public confidence in the medical profession. She submitted that if a member of the public was aware of the details of this case, they would be concerned and confidence in the profession would be undermined, if Dr Kenyon was allowed to continue to practise.

The Tribunal's Determination

79. The Tribunal had regard to the submissions made by Ms Rollings, but was not bound by them. The decision as to the appropriate sanction, if any, is a matter for the Tribunal's own independent judgment, having regard to the SG.

80. The purpose of sanctions is not to punish the doctor, but to protect patients and maintain public confidence, although the sanction that is considered appropriate by the Tribunal may have a punitive effect on him. The Tribunal was mindful that in making its determination it should consider the least restrictive sanction first, before moving on to consider the other available sanctions in ascending order of severity. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Kenyon's interests with the public interest.

81. The objective for the Tribunal in imposing sanctions is to meet the overarching objective. The Tribunal should consider the overarching objective as a whole, not giving excessive weight to any one limb.

82. Before deciding what action, if any, to take in respect of Dr Kenyon's registration, the Tribunal considered the aggravating and mitigating factors present in this case.

Aggravating factors

83. The Tribunal identified the following aggravating factors in this case. Dr Kenyon had a complete lack of insight; had not reflected nor taken any steps to remediate; there were no

expressions of regret or remorse. In addition, he had relevant previous fitness to practise history from 2013 and notably of very similar conduct in the proceedings from 2014. Whilst Dr Kenyon had shown insight and provided remediation at the review hearing in 2015, he subsequently repeated the similar misconduct again in 2022. The Tribunal was of the view that Dr Kenyon had abused his professional position by misleading Patient A regarding his treatment options who was a vulnerable patient with late stage cancer.

Mitigating factors

84. Having identified the aggravating factors in this case, the Tribunal considered whether there were any mitigating factors. It determined that there were no mitigating factors present. There were no testimonials for the Tribunal to consider.

85. The Tribunal balanced the aggravating and mitigating factors. However, as it was unable to identify any mitigating factors, it concluded that there was nothing to balance against the significant aggravating factors that were present.

No action

86. The Tribunal first considered whether to conclude the case by taking no action. The Tribunal considered that taking no action was inappropriate because of the high risk of repetition and the seriousness of the misconduct. In addition, there were no exceptional circumstances in this case to justify taking no action. The Tribunal concluded it would not be sufficient or proportionate, would not protect the public, and would not be in the public interest to conclude this case by taking no action.

Conditions

87. The Tribunal next considered whether to impose conditions on Dr Kenyon's registration. The Tribunal bore in mind paragraph 82 of SG:

> *'82 Conditions are likely to be workable where:*
>
> *a the doctor has insight*
>
> *b a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings*
>
> *c the tribunal is satisfied the doctor will comply with them*
>
> *d the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.'*

88. The Tribunal was of the view that none of the factor's listed above applied, to indicate that the conditions would be workable. Dr Kenyon had lacked insight into the misconduct and did not consider that he had done anything wrong. There was no evidence before the Tribunal that Dr Kenyon would be willing to retrain and be supervised. It was not satisfied that Dr Kenyon would comply with any conditions imposed. Furthermore, the Tribunal was of the view that bearing in mind Dr Kenyon's lack of engagement in these proceedings and his attitude to the misconduct that he would not respond positively to remediation or supervision.

89. The Tribunal concluded that conditions would not be appropriate, practical or workable in these circumstances. Furthermore, given the seriousness of its findings, conditions would not be sufficient to protect, promote and maintain the health, safety and well-being of the public, promote or maintain either public confidence in the medical profession or proper professional standards and conduct for members of the medical profession. Therefore, the Tribunal determined that imposing a period of conditional registration would not be appropriate in this case.

Suspension

90. The Tribunal then went on to consider whether imposing a period of suspension on Dr Kenyon's registration would be appropriate, proportionate and sufficient to satisfy the overarching objective.

91. The Tribunal considered paragraphs 91, 92, 93, 97 and 130 of the SG. It found the following to be particularly relevant to its consideration of suspension:

> *'92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).*
>
> *93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions…*
>
> *…*
>
> *97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*

a A serious departure from Good medical practice, but where the misconduct is not so difficult to remediate that complete removal from the register is in the public interest. However, the departure is serious enough that a sanction lower than a suspension would not be sufficient to protect the public.

b In cases involving deficient performance where there is a risk to patient safety if the doctor's registration is not suspended and where the doctor demonstrates potential for remediation or retraining.

c In cases that relate to the doctor's health, where the doctor's judgement may be impaired and where there is a risk to patient safety if the doctor were allowed to continue to practise even under conditions, or the doctor has failed to comply with restrictions or requirements.

…

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.

f No evidence of repetition of similar behaviour since incident.

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.

…

130 A particularly important consideration in these cases is whether a doctor has developed, or has the potential to develop, insight into these failures. Where insight is not evident, it is likely that conditions on registration or suspension may not be appropriate or sufficient.'

92. The Tribunal determined that none of factors in favour of suspension outlined in paragraph 97 applied to Dr Kenyon's case. Dr Kenyon's misconduct was a serious departure from GMP and he had not provided any remediation and there was no potential for remediation or retraining, or any evidence before the Tribunal that remediation was likely to be successful. Dr Kenyon lacked insight and had repeated similar misconduct back in 2014. Furthermore, there was a risk to patient safety, as the Tribunal had found a high risk of repitition. There were no signs before the Tribunal that Dr Kenyon had the potential to develop insight; Dr Kenyon had over one month to provide evidence to the Tribunal of this since the hearing adjourned part-heard on 10 April 2024, and no evidence had been put before the Tribunal.

93. The Tribunal concluded that given the significant aggravating factors set out above and lack of mitigating factors, the misconduct was serious and fundamentally incompatible with continued registration. The Tribunal considered that paragraph 130 of the SG was of

particular relevance in this case, which states that where insight is not evident, suspension may not be appropriate or sufficient.

94. The Tribunal bore in mind the public interest in maintaining doctors on the register. However, the Tribunal was satisfied that a sanction of suspension would be inappropriate and insufficient to mark the seriousness of Dr Kenyon's misconduct. The Tribunal was of the view that it was fundamental to public trust in the profession that doctors should not abuse their position of trust and mislead patients, particularly where they are vulnerable. Furthermore the Tribunal was of the view that there was a potential for Dr Kenyon following a period of suspension to repeat the misconduct.

95. For these reasons, the Tribunal concluded that a period of suspension would be insufficient to protect, promote and maintain the health, safety and well-being of the public, promote or maintain either public confidence in the medical profession or proper professional standards and conduct for members of the medical profession.

Erasure

96. Having considered the SG in relation to erasure, the Tribunal was of the view that the following paragraphs were applicable and engaged in this case:

> *'108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.*
>
> *109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*
>
> *a A particularly serious departure from the principles set out in Good medical practice where the behaviour is difficult to remediate.*
>
> *b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.*
>
> *c Doing serious harm to others (patients or otherwise), either deliberately or through incompetence and particularly where there is a continuing risk to patients…*

d Abuse of position/trust (see Good medical practice, paragraph 81: 'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession').

e Violation of a patient's rights/exploiting vulnerable people…
…
i Putting their own interests before those of their patients…

j Persistent lack of insight into the seriousness of their actions or the consequences.'

97. The Tribunal was of the view that most of the factors in the SG indicating that erasure may be the appropriate sanction applied in this case. Dr Kenyon had shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession, and that was incompatible with continued registration as a doctor. Dr Kenyon's behaviour was difficult to remediate because he had not provided any evidence of remediation or that he was willing to remediate. The Tribunal was of the view that Dr Kenyon's behaviour was a reckless disregard of the principles set out in GMP. Patient A and his family were distressed by the interaction they had had with Dr Kenyon. There was a high risk of repetition.

98. Dr Kenyon had abused his position of trust; the Tribunal was of the view that the literature Dr Kenyon sent to Patient A could have had the effect of 'bamboozling' Patient A into agreeing to have the treatment. Dr Kenyon's recommendation to Patient A was found to be an inappropriate treatment plan, which was not an effective treatment based on the best available evidence. He had provided misleading and inaccurate information to Patient A.

99. The Tribunal was of the view that Dr Kenyon had exploited Patient A, who was vulnerable given his prognosis. Dr Kenyon had informed Patient A that he had around six to nine months to live and advised Patient A that he should start his private treatment (at considerable expense) sooner rather than later, as he did not have much time. He did not inform Patient A of the other treatment options that he could have on the NHS. Dr Kenyon had put his own interests and those of his clinic above Patient A and there had been a persistent lack of insight.

100. The Tribunal also found the following paragraphs of SG relevant:

'129 Cases in this category are those where a doctor has not acted in a patient's best interests and has failed to provide an adequate level of care, falling well below expected professional standards. This is particularly where there is a deliberate or reckless disregard for patient safety or a breach of the fundamental duty of doctors to 'Make the care of [your] patients [your] first concern'…

130 A particularly important consideration in these cases is whether a doctor has developed, or has the potential to develop, insight into these failures. Where insight is not evident, it is likely that conditions on registration or suspension may not be appropriate or sufficient.

…

132 However, there are some cases where a doctor's failings are difficult to remediate. This is because they are so serious that, despite steps subsequently taken, action is needed to maintain public confidence. This might include where a doctor knew, or ought to have known, they were causing harm to patients, and should have taken steps earlier to prevent this.'

101. The Tribunal concluded that given the aggravating factors present, including complete lack of insight, remediation (and no willingness to remediate) and high risk of repetition, Dr Kenyon's behaviour was fundamentally incompatible with being a doctor. Dr Kenyon actions undermined and breached the trust and confidence of patients and the public in the medical profession. The Tribunal considered that members of the public would find his actions to be wholly unacceptable, morally culpable and disgraceful conduct.

102. The Tribunal determined the only appropriate and proportionate sanction in this case was one of erasure. Erasure was the only sanction sufficient to protect, promote and maintain the health, safety and well-being of the public, promote or maintain either public confidence in the medical profession or proper professional standards and conduct for members of the medical profession.

103. The Tribunal therefore directed that Dr Kenyon's name be erased from the Medical Register.

104. Unless Dr Kenyon exercises his right of appeal, his name will be erased from the Medical Register 28 days from the date on which written notice of this decision is deemed to have been served upon him. A note explaining his right of appeal will be sent to him.

Determination on Immediate Order - 16/05/2024

1. Having determined to erase Dr Kenyon's name from the Medical Register the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Kenyon's registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Ms Rollings submitted that an immediate order was necessary for protection of members of the public. She submitted that there was no current interim order which needed to be revoked.

The Tribunal's Determination

3. The Tribunal had careful regard to the submissions made by Ms Rollings and to the guidance in the SG including paragraphs 173 and 178 which stated that:

> *'173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*
> ….
> *178 Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.'*

4. Having considered the submissions, and in light of all the circumstances of the case and in particular having regard to the seriousness of the misconduct, the Tribunal determined that it was necessary to impose an immediate order on Dr Kenyon's registration on the basis that it was for public protection, because of the high risk of repetition, lack of insight and no evidence of remediation. In addition, whilst Dr Kenyon did not have a licence to practise, if he was to appeal the Tribunal decision, then there would be no protection in place for the public. The Tribunal also found that it was in the public interest, because the public would be concerned if no order was made. The Tribunal determined that immediate action must be taken to protect public confidence in the medical profession. The Tribunal was satisfied that the necessity for the immediate order outweighed the interest of Dr Kenyon in this case.

5. This means that Dr Kenyon's registration will be suspended from the date on which notification of this decision is deemed to have been served upon him. The substantive direction, as already announced, will take effect 28 days from that date, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

6. That concludes the case.

ANNEX A – 08/04/2024

Rule 34(1) Application - Admission of Evidence as hearsay

1. On 2 April 2024 (Day 1), prior to the case opening, Ms Amy Rollings, Counsel for the GMC, made an application under Rule 34(1) of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004, as amended ('the Rules'), to have admitted into evidence as hearsay the witness statements of Patient A, Mrs B (Patient A's wife) and Miss C (Patient A's daughter).

Submissions

The GMC

2. The Tribunal was provided with the GMC's skeleton argument. In that written argument, Ms Rollings submitted that to admit into evidence the witness statement of Patient A, who had sadly died on 8 May 2023, was important because in his statement, Patient A set out details of his consultation with Dr Kenyon. Ms Rollings said that, at the time of preparing the skeleton argument, Dr Kenyon was not engaging with these proceedings and therefore the GMC had not warned Mrs B and Miss C to attend.

3. However, given that Dr Kenyon is in attendance, Ms Rollings confirmed that the GMC's application is for all three witness statements (Patient A, Mrs B and Miss C) to be admitted into evidence as hearsay. Ms Rollings set out the legal position as regards the admissibility of hearsay evidence, including reference to the Criminal Justice Act 2003, which applies in criminal proceedings and she outlined the principles arising from the case of *Thorneycroft v NMC* [2014] EWHC 1565 (Admin).

4. Ms Rollings submitted that the witness statements should be admitted under Rule 34(1) as they provided corroborative evidence of the purpose of, and what took place at, Patient A's consultation with Dr Kenyon. In addition, it was not the sole and decisive evidence as the witness evidence taken as a whole corroborated each other's account. Furthermore, it was corroborated by the email sent by Dr Kenyon to Patient A on 31 May 2022, following the consultation. Ms Rollings submitted that there was no evidence to suggest that any of the witnesses had fabricated their accounts.

5. Ms Rollings reminded the Tribunal that it was a matter for it what weight it attached to the hearsay evidence in due course. She invited the Tribunal to find that it was fair and in the interests of justice to admit the witness statements into evidence as hearsay.

Dr Kenyon

6. Dr Kenyon did not oppose the application to admit into evidence as hearsay the witness statements of Patient A, Mrs B and Miss C. Dr Kenyon confirmed that although he did not agree with everything that was included in the witness statements, for example what was

said about the cost of the treatment, he was not seeking that Mrs B and Miss C attend in order to be questioned by him about these matters.

The Relevant Legal Principles

7. The Tribunal accepted the Legally Qualified Chair's legal advice. It had regard to Rule 34(1) which states that:

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

8. The Tribunal accepted the advice of the Legally Qualified Chair that Rule 34(1) of the Rules gives it a wide discretion to admit evidence if it is fair and relevant to do so. It accepted that it must consider fairness from all perspectives and consider the over-arching objective.

9. The Tribunal had regard to the principles set out in *R (Bonhoeffer) v GMC* [2011] EWHC 1585 (Admin) and *Thorneycroft v NMC* [2014] EWHC 1565 (Admin).

Tribunal's Decision

10. The Tribunal considered the submissions made by the GMC. It was mindful that Dr Kenyon was unrepresented at these proceedings. It noted Dr Kenyon's position that whilst he did not agree the evidence subject of the hearsay application, he did not object to the GMC's application.

11. The Tribunal was mindful that if it admitted the evidence, then it will in due course consider what weight to give it when it makes its determination at the end of the facts stage. The Tribunal was conscious that it was important to consider not only any prejudice to Dr Kenyon by the admission of the evidence but also to the GMC, and to the public interest, and balance this with fairness to Dr Kenyon when reaching its decision. It must bear in mind all limbs of the overarching objective.

12. The Tribunal noted that the evidence subject of the application was in two categories, firstly the evidence of Patient A who could not attend the hearing due to sadly having died in May 2023. The second category was in relation to Mrs B and Miss C, who had indicated in their witness statements that they were willing to attend the hearing to give evidence, if required. Therefore, it may be possible for them to attend if considered necessary. However, they had not been warned by the GMC given that Dr Kenyon had previously indicated that he would not be attending the hearing.

13. The Tribunal considered that Patient A's witness statement was directly relevant to the alleged facts in this case, as his consultation with Dr Kenyon was the subject of the allegation. It then considered whether it was fair to admit Patient A's witness statement into evidence as hearsay. The Tribunal noted, in the circumstances, that Patient A's witness

statement was the only evidence available directly from Patient A of what took place at the consultation with Dr Kenyon on 31 May 2022, although this was corroborated to an extent by the witness statements of Mrs B and Miss C. The Tribunal noted that there was no suggestion of fabrication in respect of this evidence. There were some areas of Patient A's evidence not accepted by Dr Kenyon, which he would not be able to challenge if the evidence was admitted as hearsay. However, the Tribunal was of the view that this could be taken into account in due course when considering what weight to attach to the untested hearsay evidence. It therefore considered that, given the circumstances, it was fair to admit it.

14. The Tribunal then considered whether it was relevant and fair to admit the witness statements of Mrs B and Miss C into evidence as hearsay. It noted that Mrs B was present at the consultation with Patient A, but Miss C was not. Miss C had a more peripheral role in submitting the complaint to the GMC after being told details of the consultation by Patient A. The Tribunal considered that the statements of Mrs B and Miss C provided useful corroborative evidence and/or background to the consultation. It therefore determined that both their witness statements were relevant to alleged facts in this case.

15. The Tribunal then went on to consider the fairness of admitting the statements of Mrs B and Miss C as hearsay, having regard to any unfairness arising from the consequence that their evidence would not be tested. As with Patient A, the Tribunal was mindful that the fact the witnesses' evidence had not been tested could be addressed in due course when considering what weight should be attributed to it. The Tribunal had regard to the fact that the evidence of Mrs B and Miss C was not the sole or decisive evidence in the case. The Tribunal noted that the allegation was focused upon the expert evidence of Dr E, who would be giving evidence to the Tribunal. Furthermore, Dr Kenyon's position was that whilst he did not agree with all the evidence of Mrs B and Miss C, he did not seek to have them attend and was not objecting to the admissibility of their witness statements. There was no suggestion that the evidence had been fabricated. In the circumstances, the Tribunal determined that it was fair to admit the statements of Mrs B and Miss C into evidence as hearsay.

16. In the circumstances, the Tribunal determined that it was fair and relevant to admit into evidence as hearsay the statements of Patient A, Mrs B and Miss C and therefore determined to grant Ms Rollings' application using its powers under Rule 34(1) of the Rules.

ANNEX B – 08/04/2024

Rule 34(11) Application – Signed witness statement and receiving evidence

1. On 4 April 2024 (Day 3), Dr Kenyon made an application, under Rule 34(11) of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004, as amended ('the Rules'), to give his evidence by way of oral evidence-in-chief.

Background and submissions

2. In the afternoon of 3 April 2024 (Day 2), after Ms Rollings had closed the case for the GMC, she informed the Tribunal that Dr Kenyon had not provided a witness statement, signed with a statement of truth, despite being directed by MPTS Case Management that he needed to do so by the deadline given.

3. The Tribunal explained to Dr Kenyon that the hearing had reached the stage where he would have the opportunity to present his case to the Tribunal. It advised him that the usual procedure was for his evidence-in-chief to have been provided in a witness statement in advance of giving oral evidence before the Tribunal, so that the GMC had some idea of the basis of his case.

4. Dr Kenyon informed the Tribunal that he did not know how to do this. He added that he only wished to state in his evidence what took place at the consultation with Patient A on 31 May 2022. The Tribunal reiterated that this was not standard procedure, and the procedure for proving a witness statement was reiterated to him.

5. The Tribunal informed Dr Kenyon that he needed to provide notice of his planned evidence in a written statement and determined to adjourn the hearing until 09:30 the next day, to allow Dr Kenyon time to prepare his written evidence and to send it to the Tribunal. It was also explained to him that the written statement should be signed with a 'statement of truth'. To assist him, the Tribunal referred Dr Kenyon to MPTS guidance documents for unrepresented doctors, which were available on the MPTS website. In particular, the MPTS Guidance Document entitled 'New MPT hearings guide for more information' and also the 'Witness statement template'. The Tribunal asked the Tribunal Assistant to forward these documents to Dr Kenyon in an email. It noted that these were sent to Dr Kenyon at 12:46 the same day.

6. In an email dated 3 April 2024 and timed at 12:49, Dr Kenyon reiterated that all he wished for was:

> *'…to be given the time to give my memory of the consultation.*
> *I would emphasise that this patient was already under standard care but was resolute that he didn't want any further standard treatment and had already discussed all that further standard approaches could offer.'*

7. The hearing resumed at 09:40 on 4 April 2024 (Day 3). The Tribunal informed the GMC that all it had received was the email from Dr Kenyon, as set out above, and that the email had not been signed off with a 'Statement of Truth'. Dr Kenyon confirmed to the Tribunal that he wished to give oral evidence in chief and made his application under Rule 34(11).

8. Ms Rollings requested time to take instructions. The Tribunal granted the request and the hearing adjourned until 11:10 to allow Ms Rollings time to seek instructions in relation to

Dr Kenyon's application. The hearing resumed at 10:46. Ms Rollings informed the Tribunal that the GMC opposed Dr Kenyon's application. She submitted that during the case management process, Dr Kenyon was directed by an MPTS Case Manager to submit a witness statement, but Dr Kenyon had failed to comply with that direction. She referred the Tribunal to Rule 16A of the Rules, and to paragraphs 27, 28, 29 and 35 of the relevant guidance dealing with non-compliance with case management directions. She highlighted that the Tribunal had the option of excluding the evidence and stated that the Tribunal needed to ensure fairness to the GMC as well as the practitioner. Ms Rollings added that it was known what Dr Kenyon might say in his oral evidence, however he could raise new matters, which would not be fair to the GMC. She acknowledged that the Tribunal could permit oral evidence-in-chief under Rule 34(11) but submitted that if the GMC was, in essence, 'ambushed' by the introduction of new evidence, it would not have had an opportunity to consider it in advance and consider its position.

The Relevant Legal Principles

9. The Tribunal accepted the Legally Qualified Chair's legal advice. It had regard to Rule 34(11) which states that:

> *'(11) A Committee or Tribunal must receive into evidence a signed witness statement containing a statement of truth as the evidence-in-chief of the witness concerned, unless—*
>
> *(a) the parties have agreed;*
>
> *(b) a Case Manager has directed; or*
>
> *(c) the Committee or Tribunal decides, upon the application of a party or of its own motion, that the witness concerned, including the practitioner, is to give evidence-in-chief by way of oral evidence;'*

10. The Tribunal was mindful that decision is a matter for its own discretion, guided by this rule.

Tribunal's Decision

11. The Tribunal considered the submissions made by the GMC and Dr Kenyon, as well as the MPTS 'Guidance for Medical Practitioners Tribunals on case management and exercising powers under Rule 16A'.

12. The Tribunal was mindful that if Dr Kenyon were to be permitted to give his evidence-in-chief by way of oral evidence, this would only be allowed if it was fair to both parties and in the interests of justice to allow it. The Tribunal accepted Ms Rollings submission that the GMC would not have had an opportunity to consider any new evidence which Dr Kenyon may potentially introduce given that he had not provided a written statement as he had been

directed to do by the MPTS case manager. Therefore, if the Tribunal were to allow Dr Kenyon's application, the Tribunal was mindful that it would need to allow the GMC ample time to consider any new evidence submitted by Dr Kenyon, and to take instructions, if required.

13. The Tribunal took into account that Dr Kenyon did not engage in any meaningful way prior to these proceedings commencing. He did not comply with the MPTS case manager's directions as set out in the minutes arising from the pre-hearing meetings. Further, on 3 April 2024, the Tribunal made it very clear to Dr Kenyon what he needed to do by way of providing a witness statement and provided him with the relevant MPTS guidance documents to assist him.

14. The Tribunal was mindful that Dr Kenyon is unrepresented and he now wished to be able to give evidence in response to the Allegation. It was of the view that if Dr Kenyon's application were granted, it would be so on the basis that his evidence was focused on the matters which are the subject of the Allegation against him. Any new evidence introduced by Dr Kenyon would need to be considered by the GMC and they would need the opportunity to respond to it, to ensure procedural fairness.

15. The Tribunal noted that Dr Kenyon's email of 3 April 2024 was extremely brief and not signed off with a 'statement of truth'. It did not in any way accord with the requirements of a witness statement. However, it noted that there was provision within Rule 34(11)(c) to permit evidence-in-chief to be given orally, in lieu of a formal witness statement, in an appropriate case. The Tribunal further noted that the Guidance on non-compliance stated that before excluding evidence, it should consider if measures could be put in place to ensure a fair hearing. The Tribunal considered that whilst Dr Kenyon had not provided a formal statement with a statement of truth, he would be giving evidence under oath or affirmation, which would in essence have the same effect as a statement of truth. Furthermore, the Tribunal was of the view that measures could be taken, such as ensuring that a clear note was taken of the evidence and affording the GMC adequate time to reflect and respond, if required, which would ensure that the hearing was procedurally fair.

16. Having considered all the circumstances, the Tribunal determined that it would be fair and in the interests of justice to allow Dr Kenyon's application to give his evidence by way of oral evidence-in-chief. The application was therefore granted.

ANNEX C – 08/04/2024

Rule 34(1) Application – Admissibility of Evidence

1. On 4 April 2024 (Day 3), Ms Rollings made an application under Rule 34(1) of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004, as amended ('the Rules'), to admit into evidence Patient A's GP records, the records of Patient A's consultation with Dr Kenyon on 31 May 2022 at the Dove Clinic, and to call Miss C as a witness.

Submissions

The GMC

2. In the afternoon of 3 April 2024, after Dr Kenyon's oral evidence had concluded, Ms Rollings informed the Tribunal that, in light of Dr Kenyon's evidence, the GMC sought to admit further evidence. This was:

- Patient A's GP records;
- Records from the Dove Clinic of Patient A's consultation with Dr Kenyon on 31 May 2022.

3. Ms Rollings submitted that the medical records were relevant to issues that had been raised in Dr Kenyon's evidence, namely Patient A's conventional medications and whether he had suffered any side effects.

4. In addition, Ms Rollings submitted that the GMC wished to call Miss C. Ms Rollings said that whilst Miss C's witness statement had already been admitted as hearsay evidence, it was now necessary to hear from her as she would be able to provide evidence in relation to her father's preferences for conventional and/or non-conventional treatment. Ms Rollings submitted that Miss C had discussions with her father prior to and following his consultation with Dr Kenyon and her evidence would provide clarity in this regard.

Dr Kenyon

5. Dr Kenyon did not oppose either the application to admit Patient A's medical records, nor did he oppose the application to call Miss C.

The Relevant Legal Principles

6. The Tribunal accepted the Legally Qualified Chair's legal advice. It had regard to Rule 34(1) which states that:

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

7. The Tribunal accepted the advice of the Legally Qualified Chair that Rule 34(1) of the Rules gives it a wide discretion to admit evidence if it is fair and relevant to do so. It accepted that it must consider fairness from all perspectives and consider the overarching objective.

Tribunal's Decision

8. The Tribunal considered the submissions made by the GMC. It was mindful that Dr Kenyon was unrepresented at these proceedings. It noted Dr Kenyon's position that he did not object to the GMC's application.

9. The Tribunal was mindful that if it admitted the evidence, then it will in due course consider what weight to give it when it makes its determination at the end of the facts stage. The Tribunal was conscious that it was important to consider not only any prejudice to Dr Kenyon by the admission of the evidence but also the GMC if the evidence was not admitted. In addition, it was necessary to have regard to the public interest and must bear in mind all limbs of the overarching objective.

10. The Tribunal first considered the application to admit further evidence. It was mindful that in his oral evidence, Dr Kenyon had given evidence regarding his consultation with Patient A and had referred to having made a note of the consultation. He stated that Patient A had informed him that he did not wish to continue with conventional treatment and that he was wanting to explore alternative non-conventional treatment instead.

11. The Tribunal considered that the further evidence which the GMC sought to admit, namely Patient A's medical records, was directly relevant to the alleged facts and would provide assistance to the Tribunal when it retired to consider the facts alleged, as these included contemporaneous notes of the consultation. It then considered whether it was fair to admit Patient A's medical records. Dr Kenyon's case is that Patient A had told him he had stopped or wanted to stop using Enzalutamide and that he wished to explore non-conventional treatment. The GMC seek to demonstrate to the contrary. In light of this, the Tribunal considered it was fair to admit the evidence as it could provide some clarity as to what Patient A had or might have intended in relation to his use of Enzalutamide. The Tribunal also noted that the medical records had been reviewed by the expert witness, Dr E, who had also referred to them in his evidence.

12. In the circumstances, the Tribunal determined that it was fair and relevant to admit into evidence Patient A's GP records and the record of Patient A's consultation with Dr Kenyon on 31 May 2022 at the Dove Clinic and granted the application.

13. The Tribunal then considered the application to call Miss C. It noted that usual practice was for all of the GMC's witnesses to have given evidence prior to hearing from the practitioner. However, given the application was made only after the GMC had heard Dr Kenyon's evidence, in the absence of any witness statement in advance of the hearing commencing, the Tribunal determined that it was fair to allow Ms Rollings' application to call Miss C for the reasons stated by Ms Rollings. The Tribunal therefore granted the application.

ANNEX D – 10/04/2024

Rule 31 Application – Proceed in Absence of the Practitioner

1. On 9 April 2024 (Day 6), Ms Rollings made an application under Rule 31 of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004, as amended ('the Rules'), to proceed in the absence of Dr Kenyon.

Background

2. In the afternoon of 5 April 2024, just before the Tribunal retired to go in camera to consider the facts, Dr Kenyon advised that he would not be re-joining the hearing when it reconvened. Dr Kenyon added that he did not consider he would get a fair hearing or words to that effect, and then left the hearing.

3. Before Dr Kenyon left the hearing, the Legally Qualified Chair had explained to him that it was important that he continued to engage with the proceedings and if he did not return it could proceed in his absence. The Chair also requested that Dr Kenyon confirm in an email if he was intending not to attend, as it could be assumed that he was having technical issues.

4. The Tribunal then retired in camera to consider the facts.

5. On the same afternoon, timed at 15:13, Dr Kenyon sent an email to the Tribunal Assistant in which he stated:

> *'I'm not turning up on Monday. The hearing is /was a hangar court, so I won't get a fair judgement.*
> *I expect I will be emailed re their judgement.'*

6. When the hearing resumed in the afternoon of 8 April 2024, Dr Kenyon was not present. The Tribunal announced and handed down its determination on the facts. The hearing then adjourned until 09:30 the next day to allow parties time to read the facts determination and to take any instructions.

7. The Tribunal Clerk sent a copy of the Tribunal's determination on the facts via email to Dr Kenyon and to the GMC Counsel. At the request of the Tribunal, the Tribunal Clerk also sent Dr Kenyon's email of 5 April 2024 (timed at 15:13) to the GMC.

8. In the email to Dr Kenyon to which the Tribunal's determination on the facts was attached (timed at 15:07), the Tribunal Clerk also advised him:

> *'The hearing has now adjourned until 09:30am tomorrow morning when it will hear submissions from the GMC Counsel on the matter of Impairment (Stage 2 of the hearing).'*

9. On the same day a read receipt was received from Dr Kenyon's email address timed at 15:19.

10. The hearing resumed on 9 April 2024. Dr Kenyon was not present.

Submissions

The GMC

11. Ms Rollings, for the GMC, submitted that it was fair to proceed in Dr Kenyon's absence. She said that this was not a case where there was doubt over whether the doctor had received notice of the hearing. She said that Dr Kenyon had participated in the hearing up to this point and reminded the Tribunal that prior to the Tribunal going in camera on the facts, Dr Kenyon stated that he would not participate further in these proceedings. Ms Rolling submitted that Dr Kenyon had chosen to voluntarily absent himself. However, Ms Rollings expressed some concern that in his email of 5 April 2024, Dr Kenyon referred to these proceedings as *'hangar court'*. She said that in considering proceeding in Dr Kenyon's absence, the Tribunal should carefully consider any suggestion by Dr Kenyon of 'Abuse of Process'.

The Relevant Legal Principles

12. The Tribunal accepted the Legally Qualified Chair's legal advice. It had regard to Rule 31 which states that:

> *'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.'*

Tribunal's Decision

13. The Tribunal was mindful that the hearing was listed for seven days to conclude on 10 April 2024. This was day six of the hearing.

14. It took into account that Dr Kenyon was present in these proceedings up to and including 5 April 2024 (Day 4). For this reason, it was not necessary for it to consider the question of the 'service of notice of hearing' aspect under Rule 31, given Dr Kenyon's previous attendance. Instead, the Tribunal needed to consider whether Dr Kenyon was aware that the hearing had reconvened, whether he had voluntarily absented himself and whether it would be in the interests of justice to proceed in Dr Kenyon's absence.

15. The Tribunal took into account that Dr Kenyon advised the Tribunal on 5 April 2024 that he would not engage further with the proceedings. It had regard to the 'read receipt' received from Dr Kenyon's email address at 15:17 on 8 April 2024 as an automated response

to the email sent to him by the Tribunal Clerk attaching the Tribunal's determination on the facts.

16. Having considered all the information before it, the Tribunal was satisfied that Dr Kenyon had voluntarily absented himself. It considered that an adjournment would not likely result in his participation in the circumstances. The Tribunal concluded that it was fair and in the public interest, as well as in the interests of justice, to proceed with the hearing in Dr Kenyon's absence. It concluded that the wider public interest in the case proceeding expeditiously outweighed Dr Kenyon's own interests in adjourning, particularly when no application had been made to adjourn and no useful purpose would be served by adjourning to a later date.

17. In accordance with Rule 31, the Tribunal therefore determined to continue with the proceedings in Dr Kenyon's absence. The Tribunal draws no adverse inference from Dr Kenyon's non-attendance.

18. The Tribunal noted Ms Rollings submission in relation to the comments made by Dr Kenyon in his email of 5 April 2024 where he stated it had been a *'hangar court'* and that he had not had a fair hearing. Ms Rollings had highlighted, out of completeness, that this comment by Dr Kenyon could indicate that he was suggesting that there might be an 'Abuse of Process'.

19. The Tribunal considered carefully whether it was necessary for it to make a determination in respect of this. It noted that Dr Kenyon states:

> '*The hearing is /was a hangar court, so I won't get a fair judgement.'*

20. Beyond this, the Tribunal has not received any detailed information or argument from Dr Kenyon as to how the hearing was unfair and it was not clear upon what basis he was making these comments. The Tribunal was mindful that even though Dr Kenyon was unrepresented, if a party wished to raise an abuse of process argument, it ought to be properly set out, in order for the opposing party and the Tribunal to consider it. In the absence of any further information from Dr Kenyon, beyond what was before it, the Tribunal came to the conclusion that this was not an abuse of process application and it was not necessary for it to make a determination in this regard. Dr Kenyon's comments are noted.

ANNEX E – 10/04/2024

Rule 29 - Application to adjourn the hearing

1. Dr Kenyon was not present at this stage of the hearing.

2. On 10 April 2024 (Day 7), Ms Rollings made an application under Rule 29 of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004, as amended ('the Rules'), to adjourn the hearing.

Submissions

3. Ms Rollings submitted that, in light of the Tribunal's finding that Dr Kenyon posed a high risk of repeating his misconduct, the GMC sought an adjournment of the hearing to allow them time to put together a bundle of documents to serve upon Dr Kenyon. Ms Rollings told the Tribunal that the bundle of documents related to a previous MPT Tribunal findings around December 2014, details of the previous conditions and of the Dove Clinic's website which was still live. She said that Dr Kenyon's registration was made subject to conditions, one of which was that he should inform the GMC of any sonodynamic or photodynamic treatment he recommended to any patient, and that where he did so, this should only be following a referral by the patient's GP.

4. Ms Rollings said that Dr Kenyon is unaware of the GMC's application and of its intention to seek a 'bad character' argument against him. She said that the GMC sought the adjournment to allow it time to serve the papers on him. She added that the GMC sought a direction from the Tribunal requiring it to serve the documentation on Dr Kenyon by 19 April 2024.

5. Ms Rollings submitted that the information was highly pertinent because the previous Tribunal's allegations which were found proved stated, for example, that in an email to a patient, Dr Kenyon proposed treatment which involved the use of sonodynamic or photodynamic therapy. Further, she said that the previous Tribunal had found that Dr Kenyon had stated to another patient that SPDT is able to achieve tumour cell death and 80% of cases involving deep seated tumours, and that there was a slightly less than 10% complete response rate in cancer patients with SPDT or words to that effect. Furthermore, that there was a strong possibility that he would be able to increase the patient's survival time.

6. She submitted that the matters concerned in 2014 and 2015 are similar to matters before this Tribunal and it was for this reason the GMC sought to place the entirety of the previous Tribunal's determinations before the Tribunal.

Tribunal's Decision

7. The Tribunal considered the submissions made by the GMC. It was mindful that Dr Kenyon was unrepresented at these proceedings.

8. The Tribunal noted that the matters which the GMC seeks to have admitted into evidence and which it wished to serve upon Dr Kenyon are similar to those before the Tribunal in this hearing. It was of the view that the information was relevant and should therefore be placed before it. The Tribunal considered that it would be assisted by the

admission of the documentation referred to by the GMC when considering what sanction, if any, to impose on Dr Kenyon's registration.

9. For these reasons the Tribunal determined that it was in the public interest to allow the application and it therefore directed:

> That the GMC serve upon Dr Kenyon any relevant documentation regarding the previous MPT Tribunal decisions and any websites used by Dr Kenyon to promote his services, including but not limited to the Dove Clinic's website, by 19 April 2024.

10. The hearing is now adjourned.

ANNEX F – 15/05/2024

Service and Proceeding in Dr Kenyon's Absence

1. Dr Kenyon is neither present nor represented at day 8 of this Medical Practitioners Tribunal ('MPT') hearing. The Tribunal therefore considered whether the relevant documents had been served in accordance with General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), and paragraph 8 of the fourth Schedule to the Medical Act 1983. In so doing, the Tribunal has taken into account all the information placed before it, together with the submissions made on behalf of the General Medical Council (GMC).

2. The Tribunal was provided with a copy of a Service bundle from the GMC. This included a screenshot of Dr Kenyon's postal address and email address.

3. The Tribunal received: email correspondence between the GMC and Dr Kenyon dated 19 April 2024 regarding the stage three bundle; letter to Dr Kenyon dated 22 April 2024 attaching a hard copy of the stage three bundle; correspondence from Royal Mail confirming that the letter was returned back to the sender; email dated 24 April 2024 from Dr Kenyon to GMC, which stated that he had received the hard copy bundle and referred to his attendance at the hearing. The MPTS sent Dr Kenyon an email dated 14 May 2024 with the hearing link to join the hearing. He responded to this email on the same date and confirmed that he would not be attending the hearing.

Service

4. Ms Rollings on behalf of the GMC went through the evidence put before the Tribunal. She submitted that Dr Kenyon had confirmed in his email dated 24 April 2024 that he would only be attending this hearing if he can question Ms Rollings and that he was seeking an adjournment to instruct his chosen counsel.

5. Ms Rollings submitted that Dr Kenyon formally sought an adjournment prior to today, and that application was not granted. Ms Rollings submitted that she thought Dr Kenyon would be attending today to seek a formal adjournment from the Tribunal. However, he had since emailed to confirm (his email of yesterday) that he would not be attending the hearing. She submitted that Dr Kenyon was clearly aware that the hearing was taking place today and had chosen not to attend.

6. The Tribunal had regard to the evidence before it, as well as the submissions made by Ms Rollings. The Tribunal considered that Dr Kenyon had confirmed in his email dated 24 April 2024 that he would be attending the hearing and was looking to appoint counsel. However, in his subsequent email dated 14 May 2024 following receipt of the MPTS hearing link, he confirmed that he would not be attending the hearing. The Tribunal was satisfied that Dr Kenyon was aware from his attendance at the previous remote hearing that if he wished to join the hearing he could join using the hearing link provided to him.

7. In the circumstances, the Tribunal was satisfied that all reasonable steps had been taken to give Dr Kenyon notice of this hearing in accordance with the Rules and that Dr Kenyon was aware of the hearing taking place remotely today.

Proceeding in absence

8. The Tribunal then went on to consider whether it would be appropriate to proceed with this hearing in Dr Kenyon's absence pursuant to Rule 31 of the Rules. The Tribunal bore in mind that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.

9. The Legal Chair highlighted the case of *GMC v Adeogba [2016] EWCA Civ 163* and *General Medical Council v Visvardis [2016] EWCA Civ 162*. The Court of Appeal provided guidance for situations where a practitioner does not attend a tribunal hearing:

- A regulated practitioner has a duty to engage with their regulator, including updating and maintaining the contact details they provide;
- When deciding whether to proceed in a practitioner's absence, fairness to the practitioner is a prime consideration but is not determinative. Fairness to the GMC and the public interest must also be taken into account;
- A culture of adjournments is to be deprecated and would be contrary to the efficient delivery of regulation.

10. In addititon, the Legal Chair referred to the case of *Nabili v GMC [2018] EWHC 3331 (Admin)*, where the High Court addressed how to approach scenarios where a practitioner sought an adjournment to obtain legal representation:

- Tribunals must strike a proper balance between fairness to the practitioner and the public interest in the fair and efficient disposal of proceedings, including having regard to the history of the proceedings;
- It will also be relevant to consider how long the practitioner has had to arrange representation; the adequacy of any explanation given for the lateness in arranging representation; whether there is evidence that the lack of representation has arisen through no fault of the practitioner; and
- Whether the tribunal has confidence that an adjournment would result in the practitioner being represented and/or attending and participating in the hearing.

11. The The Tribunal reminded itself that there was a public interest in ensuring the expeditious hearing of cases.

12. The Tribunal was satisfied that Dr Kenyon was aware of the hearing, because Dr Kenyon had initially emailed on 24 April 2024 to confirm that he was seeking an adjournment to obtain representation. He confirmed that his counsel's availability was booked until the end of the year. He had sought an adjournment prior to the commencement of the reconvened hearing and an MPTS case manager had refused Dr Kenyon's adjournment application. In addition Dr Kenyon had stated in his email dated 14 May 2024 that he would not be attending. His email read, '*Forget it , I won't be turning up to this kangaroo court. It's a complete waste of time and effort.*'

13. The Tribunal was of the view that Dr Kenyon had adequate time to obtain alternative counsel, if his chosen counsel was not available today. The previous hearing adjourned on 10 April 2024, therefore he had over a month to obtain legal representation if he wished to do so. It was not clear what steps he had taken to seek legal representation. The allegations which have been found proven are serious and were now at the sanction stage. Furthermore, Dr Kenyon had not formally asked for an adjournment at today's hearing and his reference to seeking an adjournment appeared to be superceded by his more recent email, which suggested that he no longer wished to attend. Based on his correspondence dated 14 May 2024, the Tribunal had no confidence that Dr Kenyon would attend if an adjourmeant was granted.

14. In the circumstances, the Tribunal was satisfied that Dr Kenyon had voluntarily absented himself from these proceedings. The Tribunal was also mindful that it was in the public interest for MPTS hearings to be concluded expeditiously.

15. The Tribunal concluded that it was fair, in the public interest and in the interests of justice to proceed with this hearing in the absence of Dr Kenyon. It therefore determined to proceed in Dr Kenyon's absence in accordance with Rule 31.

SCHEDULE 1

Therapy, comprising of cannabidiol, claricell, similase.
Sonodynamic/photodynamic therapy

SCHEDULE 2

"In Cancer Immunotherapies where the Cancer [has] spread, 10% get a complete response, no tumour. 40% get increased survival, 50% get no response. It is completely without side effects,…"