

## ANNEX 2

### CHARGES

#### AS AMENDED DURING THE HEARING AND WITH FINDINGS

The Panel will inquire into the following allegation against Mr Chatenya Chauhan, MB ChB 1989 University of Dundee.

"That being registered under the Medical Act 1983

1. At the material times you were a registered medical practitioner specialising in trauma and orthopaedic surgery; **Admitted and Found Proved**
2. a. On 15 July 2002 you applied for the post of Consultant in trauma and orthopaedic surgery at the Southend University Hospital NHS Trust, **Admitted and Found Proved**
  - b. During the application and interview process you stated ~~implied~~ that you had broad experience in revision surgery and hip resurfacings; **Admitted and Found Proved**
3. Your actions as set out in 2(b) above were
  - a. misleading, **Found Proved**
  - b. dishonest; **Found Proved**
4. Once appointed, you expressed an interest in undertaking the procedure of Birmingham hip resurfacing and implied that you had sufficient experience to undertake that technique yourself; **Admitted and Found Proved**
5. Your actions as set out at 4 above were
  - a. misleading, **Found Proved**
  - b. dishonest; **Found Proved**
6. a. In 2003 you began performance of the technique of Birmingham hip resurfacing at Southend University Hospital NHS Trust, **Admitted and Found Proved**
  - b. You had insufficient experience to carry out Birmingham hip resurfacing as sole or lead surgeon; **Found Proved**
7. In 2005 you were interviewed by the Rapid Response Review Team on behalf of the Royal College of Surgeons who were carrying out investigations on behalf of the Trust, during the interviews

- a. you were asked for your operative log book in order to evaluate your operative experience which you were unable to produce, **Admitted and Found Proved**
- b. when asked about your experience of Birmingham hip resurfacing you admitted that prior to your appointment at Southend NHS Trust you had personally taken part in only six operations yourself and had not performed the entire procedure as sole or principal surgeon; **Admitted and Found Proved**
8. **In 2002 and in 2003** you expressed an interest in performing Autologous Cartilage Transplantation (ACT) at the Southend University Hospital NHS Trust,
- a. You informed Mr Packer (Clinical Director Orthopaedics) that such surgery did not have to be part of a clinical trial, **Admitted and Found Proved**
- b. You were aware or ought to have been aware that such surgery did have to be a part of a clinical trial under NICE guidelines, **Found Proved**
- c. You were made aware that Southend University Hospital NHS Trust did not have funding to perform ACT operations, **Admitted and Found Proved**
- d. On 26 November 2004 you conducted an arthroscopy on **Patient A Ashley MacIntyre** who presented with a osteochondral defect of the femoral condyle of the knee, **Admitted and Found Proved**
- e. You made no adequate record pre-operatively of a treatment plan, **Found Proved**
- ~~f. During the procedure you took a biopsy from the knee (the sample) for tissue culture,~~
- f. (i) During the procedure you took a loose fragment from the knee (the sample), Found Proved
- (ii) During the procedure you excised a biopsy from the knee (the sample) for tissue culture, Not Found Proved
- g. Following the procedure you sent a the sample to a private company, Verigen, for tissue culture, and for the purposes of ACT, **Admitted and Found Proved**
- h. You did not obtain patient consent
- i. for the removal of the sample for tissue culture, **Found Proved**
- ii. to send the sample to a private company, **Found Proved**

i. You made no adequate record of the excision of the biopsy ~~the removal of the sample.~~ **The Panel made no finding in relation to this paragraph as it did not find that you excised a biopsy**

j. You made no adequate record of the sample being sent to Verigen, **Found Proved**

k. You did not follow trial protocols established for taking and submitting a sample for ACT ~~such a procedure~~, **Found Proved**

~~l. You performed that procedure aware that the Trust by which you were employed had not agreed funding for it;~~

**l. In removing the sample and treating it as a sample for use in ACT you were aware that the Trust by which you were employed had not agreed to funding for the ACT, Found Proved**

~~m. You performed the procedure despite the fact that you were aware that it was not part of a clinical trial;~~

**m. You submitted the sample for ACT despite the fact that you were aware that it was not part of a clinical trial; Found Proved**

9. Your actions as set out in paragraphs 8(a) and 8(e) to (m) were

a. inappropriate, **Found Proved in relation to paragraphs 8(a), (e), (g), (h)(i), (h)(ii), (j), (k) and (m) only**

b. unprofessional; **Found Proved in relation to paragraphs 8(a), (e), (g), (h)(i), (h)(ii), (j), (k) and (m) only**

10. On 11 June 2005 Patient B Clive Locker was admitted to Accident and Emergency at Southend Hospital following a road traffic accident involving severe trauma to his lower legs

a. On 11 June 2005 you stabilised the left leg using a plate and screws and then sought advice from the on-call plastic surgeon who advised you that, unless you could safely close the wound, you should leave the wound open and transfer the patient to the local plastic surgical unit, **Admitted and Found Proved**

b. ~~Contrary to the advice you had received from the plastic surgeon, you swung the medial gastronemius flap to cover the fracture site and closed the skin with deep tension sutures,~~ **Found Proved**

c. You made an inadequate note in relation to the post operative plan of management, **Admitted and Found Proved**

d. The following day, 12 June, Mr Jakeways Consultant Vascular and General Surgeon reviewed the wound in theatre, he debrided the wound, removed the

deeper stitches and washed out the wound, after which the wound was left open and bandaged, **Admitted and Found Proved**

e. On 13 June Mr Jakeways undertook a wound review and debridement at which you were present, **Admitted and Found Proved**

f. You were advised by Mr Jakeways not to close the wound ~~as closing it could affect the circulation and increase the likelihood of infection~~, **Admitted and Found Proved**

g. Once Mr Jakeways had left the operating theatre you closed the wound with sutures, **Admitted and Found Proved**

h. Thereafter gas gangrene was diagnosed and on 15 June the limb was amputated above the knee; **Admitted and Found Proved**

11. In relation to paragraph 10 above your decision to close the wound on 11 June was

a. contrary to basic surgical principles relating to the treatment of a severe crush injury, **Admitted and Found Proved**

b. contrary to the advice you had received from the plastic surgeon, **Found Proved**

c. likely to increase the risk of infection, **Admitted and Found Proved**

d. not in the best interests of the patient; **Admitted and Found Proved**

12. Your decision to close the wound on 13 June was

a. contrary to basic surgical principles relating to the treatment of a severe crushing injury, **Admitted and Found Proved**

b. contrary to the advice received from your consultant colleague Mr Jakeways, **Admitted and Found Proved**

c. likely to increase the risk of infection, **Admitted and Found Proved**

d. ~~not in the~~ best interests of the patient; **Admitted and Found Proved**

13. Subsequent to the events described above, on 15 June 2005 your practice was restricted by the Trust to day cases and outpatient work; **Admitted and Found Proved**

14. The Trust agreed to assist you in obtaining retraining with a view to rehabilitating your practising rights. In pursuance of this object the Trust provided you with a framework agreement which you did not sign; **Admitted and Found Proved**

15. On 22 August 2006 the General Medical Council Interim Orders Panel imposed conditions on your registration, one of which was that you should restrict your practice to outpatient work and day case surgery patients and, that any major orthopaedic surgery work should only be undertaken under close supervision and as part of a retraining programme under a named supervisor of consultant grade agreed with the Southend University Hospital Trust; **Admitted and Found Proved**

16. On 29 November 2002 you had been awarded practising privileges at the BUPA Wellesley Hospital,

a. On 28 September 2006 your practising privileges at the BUPA Wellesley Hospital were suspended, **Admitted and Found Proved**

b. Despite the restrictions on your practice imposed by the GMC and your suspension by the BUPA Wellesley hospital you continued to see patients privately in your home; **Found Proved**

And by reason of the matters alleged your fitness to practise is impaired by reason of your misconduct."

## ANNEX 3

### PANEL DECISION

#### PARAGRAPH NUMBERING ADDED FOR THE PURPOSES OF THE APPEAL

##### Determination on facts

1. Mr Chauhan: The Panel has carefully considered all the evidence adduced in this case including the oral evidence of the witnesses called on behalf of the General Medical Council (GMC) and those called on your behalf. It has taken account of all the documentary evidence placed before it including the witness statements which were read to the Panel. The Panel has also borne in mind the submissions made by Mr Kark, on behalf of the GMC and those made by Mr Sutton, on your behalf.

2. At the outset the following amendments were made to the paragraphs of the allegation:

Paragraph 2(b) was amended to remove the word "implied" and replaced with the word "stated".

Paragraph 6(a) was amended to include the words "at Southend University Hospital NHS Trust".

The stem of paragraph 8 was amended to include the words "In 2002 and".

Paragraph 8(d) was amended to remove the patient's name and replace it with "Patient A".

The stem of paragraph 10 was amended to remove the patient's name and replace it with "Patient B".

3. During the course of these proceedings, the following further amendments were made:

Paragraph 8(f) was removed and replaced with paragraphs 8(f)(i) "During the procedure you took a loose fragment from the knee (the sample)" and 8(f)(ii) "During the procedure you excised a biopsy from the knee (the sample) for tissue culture".

Paragraph 8(i) was amended to remove the words "the removal of the sample" and replaced with the words "the excision of the biopsy".

Paragraph 8(k) was amended to remove the words "such a procedure" and replaced with the words "taking and submitting a sample for ACT" (Autologous Cartilage Transplantation).

Paragraph 8(l) was removed and replaced with "In removing the sample and treating it as a sample for use in ACT you were aware that the Trust by which you were employed had not agreed to funding for ACT".

Paragraph 8(m) was removed and replaced with "You submitted the sample for ACT despite the fact that you were aware that it was not part of a clinical trial".

Paragraph 15 was amended to read, "On 22 August 2006 the General Medical Council Interim Orders Panel imposed conditions on your registration, one of which was that you should restrict your practice to outpatient work and day case surgery and, that any major orthopaedic surgery work should only be undertaken under close supervision and as part of a retraining programme under a named supervisor of consultant grade agreed with the Southend University Hospital Trust"

4. You made admissions in relation to the following paragraphs of the allegation:

Paragraphs 1, 2(a), (b), 4, 6(a), 7(a), (b), 8(a), (c), (d), (g), 10(a), (c), (d), (e), (g), (h), 11(a), (c), (d), 12(a), (b), (c), (d), 13, 14, 15, 16(a).

These were announced as found proved.

5. During closing submissions, Mr Kark applied to amend paragraph 10(f) to remove the words "as closing it could affect the circulation and increase the likelihood of infection". Mr Sutton did not oppose this amendment and on your behalf admitted the paragraph as amended. This was announced as found proved.

6. The Panel accepted the advice of the Legal Assessor who advised the Panel on the following areas:

- Burden and standard of proof.
- Circumstantial evidence.
- Dishonesty.
- Expert evidence.
- Rule 35(6) relating to witnesses of fact and their exclusion from the hearing prior to them giving evidence.

7. In relation to Rule 35(6), on day 12 of the hearing, the Panel heard evidence from Mr E, Consultant Orthopaedic surgeon at the Mid-Yorkshire NHS Trust, who was called as a witness of fact by the defence. It became apparent that Mr E had been sent the transcripts of some of the evidence of witnesses of fact. The Legal Assessor advised that Mr E should not have read this evidence as he was not being called as an expert witness. Rule 35(6) deals with witnesses of fact and their exclusion from the hearing prior to them giving evidence. The Legal Assessor advised that to a certain extent the evidence of Mr E is tainted and the Panel should proceed with caution when considering it. The Legal Assessor set out the factors that the Panel should consider in assessing the extent, if any, to which the situation detracts from the weight to be given to Mr E' evidence.

8. The Panel noted Mr Sutton's comments on the Legal Assessor's advice and the Legal Assessor's comments thereafter.

9. The Panel has considered each of the remaining paragraphs of the allegation separately and has made the following findings on the facts:

**Paragraphs 3(a) and (b) have been found proved.**

**Paragraphs 5(a) and (b) have been found proved.**

**Paragraph 6(b) has been found proved.**

10. You have admitted that, during the application and interview process for the post of Consultant in trauma and orthopaedic surgery at the Southend University Hospital NHS Trust (Southend Hospital), you stated that you had broad experience in revision surgery and hip resurfacings.

11. The Panel has considered all the evidence in relation to your basic training including your placement with Mr E at Pontefract Hospital, following your year of research at Smith and Nephew, and also your Zimmer Knee Fellowship year at the Royal Orthopaedic Hospital in Birmingham.

12. In relation to your basic training, Mr F, Consultant Orthopaedic Surgeon and Training and Programme Director for the Yorkshire Deanery, told the Panel that, at the end of your year 5 training, he was not satisfied either that you had undertaken sufficient total hip and knee replacements or had reached the level expected of a year 5 trainee. The Panel notes that you had spent a year of your training away from clinical practice as you were appointed to a research post with Smith and Nephew. Mr F told the Panel that because of your year out of clinical practice and the low numbers of standard hip and knee replacements in your log, he advised that it would be better for you to be taken back through the basics again. This would also help in increasing the number of these procedures in your log. You were, therefore, placed with Mr E at Pontefract Hospital to afford you this opportunity. However, following your time at Pontefract Hospital, Mr F still felt it necessary to write to all your trainers asking them whether they felt it appropriate for him to sign your Certificate of Completion of Specialist Training (CCST). Mr F told the Panel that this was something that he had never felt the need to do before with any other trainee.

13. As part of the investigation by Southend Hospital into your training, Mr F was asked to review theatre records against your log. Mr F told the Panel that he only reviewed the Harrogate Hospital theatre records because these were the only ones where he could be sure of their accuracy. He said that a comparison between those records and your logs showed that you had undertaken four lower limb arthroplasties as principal surgeon and there were eight other cases in which you had been one of the surgeons. Your log recorded that you had undertaken 17 lower limb arthroplasties. The discrepancies between your logs and theatre records, during your training period at Harrogate Hospital in 2000, indicate an exaggeration by you of your experience. Accurate training logs are an essential part of the trainee assessment process. These logs will have formed the basis of your trainers' impression of your experience.

14. The Panel heard evidence from Mr E, who told the Panel that when you left Pontefract Hospital you were not competent to undertake revision surgery



independently. The Panel heard that you did not undertake any revision surgery on your own (revision surgery being an entire revision on both sides of the joint). However, the Panel considered this evidence alongside that of Mr G, Consultant Orthopaedic Surgeon at the Royal Orthopaedic Hospital in Birmingham. He stated that by the end of your time at the Royal Orthopaedic Hospital he was happy that, together with him, you had done a sufficient number of revisions to be safely doing them.

15. In relation to Birmingham Hip Resurfacing (BHR), the Panel accepts that you had sufficient opportunity to observe and be involved in BHR procedures at the Royal Orthopaedic Hospital, Birmingham. However, the Panel does not accept your evidence that you attended and assisted in between 12 and 24 BHR procedures. This number of procedures had not been referred to prior to your giving evidence. Documentary evidence shows that you assisted in three BHR procedures, although you told the Rapid Response Review Team of the Royal College of Surgeons (the Rapid Response Team) that you had assisted in six BHR procedures. Such discrepancies undermine the reliability of your evidence and indicate again an exaggeration by you of your experience.
16. As to whether you misled your employers, the Panel considers that you exaggerated the extent of your experience by claiming in your Curriculum Vitae (CV), to have "amassed experience in lower limb surgery". You also claimed in your CV to "have a broad surgical ability in lower limb arthroplasty and revision arthroplasty and this extends to hip resurfacing". The Panel has reached the common sense conclusion that this meant, to anyone reading your CV, that you had had experience of performing the procedures as sole or lead surgeon. This led your employers at Southend Hospital to believe that you were more experienced than you were. The Panel accepts the evidence of Dr H, Medical Director of Southend Hospital, that he questioned you about your experience in respect of BHR procedures. You gave Dr H the impression that you had been trained in Mr I's unit at the Royal Orthopaedic Hospital in Birmingham. Mr I was a Consultant Orthopaedic Surgeon, who pioneered the BHR procedure. You implied to Dr H that you had been trained by Mr I himself. This was not true. Dr H asked you about your training logs from the Royal Orthopaedic Hospital. You could not produce them, telling him that you had had a computer problem.
17. The Panel considers that you have known for a significant amount of time that the deficiencies in your training logs have been an issue of concern to the GMC. The logs placed before the Panel in their original form are confusing and unclear. Presented to the Panel in a different format, it became clear that the logs did not support the assertions you have been making concerning your experience in revision surgery and BHR procedures. You have not availed yourself of the substantial opportunity that time has presented to locate any data that could be missing. This casts doubt upon its existence, as do the differing accounts about missing data from your training logs that you gave at various times to formal enquiries by your employer, the Rapid Response Review Team, the GMC and this Panel. This Panel cannot avoid the conclusion that the format in which the logs were presented was no more than an attempt to conceal these deficiencies.

18. The Panel has reminded itself of the advice of the Legal Assessor on the test of dishonesty. He advised that only if it was satisfied that you deliberately misled Southend Hospital, would it be proper and safe to infer dishonesty. To be dishonest an act must be deliberate. The Panel does distinguish between motive and dishonesty. The Panel applied the objective test of the ordinary standards of reasonable and honest people and finds that, by those standards, your actions were dishonest. It went on to consider whether you yourself must have realised that what you did was, by those standards, dishonest. The Panel has had the advantage of seeing and hearing you give evidence. It notes that you have a tendency to use subtle, sophisticated, and sometimes deceptive argument and reasoning to justify your position in a manner tending to mislead.
19. The Panel finds that during the application and interview process, you dishonestly exaggerated your experience and thereby deliberately misled your employers.
20. Once you had been appointed to your post at Southend Hospital, you expressed an interest in undertaking BHR procedures and implied that you had sufficient experience to undertake that technique yourself.
21. The Panel accepts the evidence of Mr C, Consultant Orthopaedic Surgeon and Clinical Director of Orthopaedics at Southend Hospital, who gave evidence that he had a discussion with you regarding your interest in undertaking BHR procedures. Mr C's advice as your Clinical Director was that you should establish yourself within the Orthopaedic Department (the Department) and then it would be discussed again. Despite this advice and without any further discussion with your Clinical Director, you went ahead and started to undertake BHR procedures. The Panel notes that you participated in a peer appraisal on 2 July 2003, with your Clinical Director in attendance. The appraisal record shows a specific question about what clinical issues you would like to address over the next 12 months and you made no mention of your intention to perform BHR procedures that same month.
22. The Panel considered the evidence of Mr J, Consultant Trauma and Orthopaedic Surgeon, the GMC's expert witness, in relation to the sufficiency of your experience to undertake BHR. Mr J told the Panel that he was of the opinion that he would not profoundly object to you performing BHR procedures. However, Mr J's concern was that your Clinical Director had advised you that you should build up a large core of primary standard total joint replacements before you moved into BHR procedures. Mr K, Consultant Orthopaedic Surgeon based at the Royal National Orthopaedic Hospital in Stanmore, the expert witness called on behalf of the defence, indicated that the views of the Clinical Director or Medical Director are relevant before a surgeon decides to undertake specific types of surgery.
23. Whilst the Panel notes the evidence of Mr J and does not disagree with that evidence, it considered it in the context of what was happening at Southend Hospital at the time, and the specific needs of your employer and the Department. You had been clearly advised to become established within the Department and bolster your experience in terms of undertaking total hip replacements before moving on to more complex procedures.

24. The Panel notes that before taking up your Consultant post at Southend Hospital, you had never performed the BHR operation as lead surgeon either supervised or unsupervised. The Panel accepts that newly appointed consultants do undertake procedures which they may not have performed before as lead surgeon. However, the Panel accepts the evidence of your Clinical Director that, had he been aware of this in relation to BHR procedures, arrangements would have been made for you to receive further training. The Panel notes that at that time the Department was sceptical of the BHR procedure and whether it should be undertaken, at all, at Southend Hospital.

25. You knew that had your employer known the truth, you would not have been permitted to undertake those procedures. In cross-examination, you were asked three times whether you had told anyone that, prior to your arrival at Southend Hospital, you had never undertaken a BHR procedure on your own. You evaded this simple question. The Panel considers that this characterises your deliberate attempts to conceal the truth about your lack of experience.

26. Considering all these factors, the Panel has determined that you had insufficient experience to undertake BHR procedures at Southend Hospital. The Panel accepts that your training may have been sufficient for you to undertake BHR procedures in a supportive environment but not at Southend Hospital.

**Paragraph 8(b) has been found proved.**

27. In a letter from you to your Clinical Director dated 14 May 2003, you apologised if you had misled him by saying that ACT did not need to be part of a clinical trial. You stated that it had always been your intention to adhere to National Institute for Clinical Excellence Guidelines on the use of autologous cartilage transplantation for full thickness cartilage defects in knee joints (NICE Guidelines), which at that time had been in place for a couple of years. It is clear from the NICE Guidelines that ACT procedures should not take place unless they are part of a clinical trial and in a clinical trial centre. From your correspondence it is clear that you were aware of these Guidelines.

**Paragraph 8(e) and (f)(i) have been found proved.**

28. You admitted in evidence that during the procedure you took a loose fragment from Patient A's knee on 26 November 2004 and the Panel finds this proved. In relation to whether you made no adequate record pre-operatively of a treatment plan and whether you excised a biopsy from the knee, the Panel has considered the chronology of events prior to the procedure being carried out.

29. The Panel considered the conflicting evidence in relation to the events that occurred on 26 November 2004, and has had to determine who was more likely to be telling the truth. In relation to these events, the Panel accepts the evidence of Mr L, who was then an employee of Verigen, a company which undertook cell culturing for ACT. Mr L was clear in his recollection of events on that day, he was open, he appeared honest and had no apparent motive to be untruthful.

30. You, on the other hand, had every reason to conceal what you were doing. The Panel noted your interpretation of the NICE Guidelines as applied to Patient A. You sought to persuade the Panel that he did not fall within the ambit of the NICE Guidelines at that time. The Panel has heard evidence that ACT involves three stages; harvesting, culturing and then implanting cartilage cells.
31. The Panel heard evidence from Mr M, who was one of the Indian visitors to London and Southend Hospital on 26 November 2004. He was called to give evidence, in particular, about the events of that day. He told the Panel that they were visiting the United Kingdom (UK) for the sole purpose of gathering information in relation to ACT and its potential for development in India.
32. In your response to N, General Manager of Diagnostic Imaging at Southend Hospital, you said that these visitors wanted to see how a trauma list was run in the UK and that they were on a general fact finding mission, with no particular interest. In your evidence, you stated that the Indian visitors, who had been invited to Southend for your hospitality, were free on the afternoon of 26 November 2004. As such, they requested to go with you to Southend Hospital to see how hospitals in England worked. You, therefore, invited them to observe your trauma list. However, in evidence about his visit to Southend Hospital on 26 November 2004, Mr M stated "We were there for that one procedure that Dr Chauhan did and even that whole procedure, once Mr Chauhan performed the procedure, we did not even wait for it to be totally completed, I think we stepped out before that, so there was one procedure that we saw and then we stepped out because we got an idea of the hospital, the infrastructure and we had already seen an ACT procedure in the morning so this was something that came by so we took the opportunity and made the best out of it."
33. The Panel formed the view that Mr M's evidence was tailored to suit your case, in that there were occasions when he disclosed detail not sought by a question. The Panel was not satisfied with his evidence overall, though elements of it, inconsistent with your testimony, disclosed the falsity of aspects of your evidence.
34. The Panel notes from all the evidence adduced, including the live evidence from each of the Orthopaedic Surgeons, that Patient A was a prime candidate for ACT. You had a specific interest in ACT and had received all the relevant training and had also spent a year at Smith and Nephew participating in cartilage research. You had demonstrated the technique in India and according to Mr O, the then Managing Director of Verigen, you were part of a "select" group of clinicians in the UK interested in ACT. Given these factors, the Panel finds it inconceivable that you would not have considered the possibility of ACT for Patient A when you reviewed him in the clinics on 20 October and 24 November 2004, and listed him as the first case on your trauma list which took place on 26 November 2004. The Panel accepts Mr L's evidence that on that day he was asked by Mr O to drive you and the two Indian visitors back to Southend following a meeting at Verigen to discuss the development of ACT in India. Mr L was very specific in his recollection of events, recalling that you, whom he knew, sat in the front seat of his car. He even recalled where he had parked his car that day when he came to

London to collect you and the Indian visitors. You denied that you were at the meeting or in Mr L's car.

35. The Panel has determined that it is significant and not simply a coincidence that the visitors from India were present on 26 November 2004. You had set yourself up as an intermediary between Verigen and the Indian Market. You ensured, by placing Patient A on your trauma list, that you would be undertaking his knee procedure in the presence of the visitors from India. It is significant that Patient A was first on the trauma list, despite his operation not being a medical emergency, and you abandoned the remainder of your list to your junior so that you could deal with the loose body ("the sample"). This lends credence to the fact that the Indian visitors were present only for a pre-planned ACT procedure.
36. You made no note pre-operatively of your planned operation because, had you done so, you would have been prevented from undertaking the ACT procedure, as had occurred previously with another patient. Mr P, Trauma and Orthopaedic Team Leader in Theatres at Southend Hospital, told the Panel that he was alerted by theatre staff because there was a procedure planned in theatre by you that they were unfamiliar with and they wanted to bring that to Mr P' attention. It was clear from what followed that this procedure was harvesting tissue for culture as part of ACT. Given all the factors set out above, the Panel is satisfied that, on the balance of probabilities, your intention from the outset was to commence an ACT procedure.

**Paragraph 8(f)(ii) has been found not proved.**

37. Although the Panel has made the finding that your intention from the outset was to commence an ACT procedure, the Panel heard evidence that "the sample" could have been of sufficient quality for the purpose of harvesting cells. Therefore, the Panel could not say that it was more likely than not that you took an excision biopsy.

**Paragraphs 8(h)(i) and (ii) have been found proved.**

38. The Panel accepts the evidence of Patient A that, prior to the operation, he did not consent to the removal of a sample for tissue culture and for the sample to be sent to a private company. You only had consent for the removal of the loose body. The Panel rejects your assertion of an "on the table" decision in relation to the possibility of ACT for the reasons set out under paragraphs 8(e) and (f)(i) above.
39. In relation to your conversation with Patient A, the Panel does not accept that you obtained a valid consent for the sample to be sent to a private company for tissue culture. You gave Patient A general information about the ACT procedure and asked for his consent to send it for tissue culture whilst he was still under the effects of anaesthesia and analgesia. You told the Panel that the patient's mother was also present and Patient A confirmed this. However, the Panel does not accept that appropriate or informed consent was given at this time. It

considers that the first time that Patient A gave verbal consent was at his out-patient appointment on 1 December 2004.

**The Panel made no finding in relation to paragraph 8(i) as the Panel did not find that you excised a biopsy.**

**Paragraphs 8(j), (k), (l) and (m) have been found proved.**

40. The Panel considered whether you made no adequate record of the sample being sent to Verigen. The Panel has heard evidence about your computerised record keeping and the way in which you contemporaneously completed your operation notes. You made no note either on Patient A's operation notes or his patient record that you had or were planning to send "the sample" to Verigen for tissue culture. The Panel has also heard evidence about the three carbon copy forms completed when biopsies are sent for tissue culture to Verigen. However, the Panel finds that it would be highly unlikely that all the copies would be missing. The Panel has concluded that it is more likely that you did not record the sample being sent to Verigen as an additional attempt to conceal what you were actually doing.
41. In evidence you indicated that the removing of "the sample" and sending it for tissue culture with a view to future transplantation, was not part of a clinical trial at that point in time. Therefore, you did not follow trial consent protocols for taking and submitting a sample for the purpose of ACT.
42. In relation to the funding for ACT, the Panel has borne in mind the evidence of Mr C and Dr H who were very clear that Southend Hospital did not have funding for ACT. The Panel accepts that the issues surrounding funding were discussed at Research and Development meetings and approval was given subject to funding being agreed. Mr K, during his evidence, agreed that there are three necessary elements in order for ACT to take place at Southend Hospital, namely:
- Research and Development approval;  
Ethics Committee approval; and  
Funding approval by Southend Hospital.
43. The first two of these had been granted, conditional upon the funding being available, which it was not. You were not permitted, therefore, to undertake ACT at Southend Hospital. Despite this, on 26 November 2004, you submitted "the sample" removed from Patient A's knee for the purpose of ACT.

**Paragraphs 9(a) and (b) have been found proved in relation to paragraphs 8(a), (e), (g), (h)(i), (h)(ii), (j), (k) and (m).**

44. In relation to paragraph 8(a), you knew that ACT had to be part of a clinical trial. You had a significant amount of knowledge and training in ACT and you were well aware of the NICE Guidelines. Despite this, you initially misled your Clinical Director by saying that ACT did not need to be part of a clinical trial. The Panel finds this inappropriate and unprofessional.

45. In relation to paragraph 8(e), the Panel finds that you pre-planned the initial stage of the ACT procedure on Patient A without telling any of your colleagues or the patient. You made no adequate record pre-operatively of a treatment plan in this regard because you knew that, had you done so, you would not have been permitted to undertake the procedure. The Panel finds this inappropriate and unprofessional.
46. In relation to paragraphs 8(g), (j), (k) and (m), the Panel finds that you acted inappropriately and unprofessionally by sending "the sample" when you did not have informed consent. There was no record of the sample being sent and you failed to adhere to trial protocols for ACT. Southend Hospital had not agreed to funding for ACT, it was not a trial centre or a trial collaboration centre and, therefore, you were not permitted to undertake ACT procedures. Furthermore, you sent "the sample" for tissue culturing despite knowing that it was not part of a clinical trial nor from a trial centre as required by the NICE Guidelines. Your actions in all these respects were inappropriate and unprofessional.
47. In relation to paragraphs 8(h)(i) and (ii), you breached guidance contained within the GMC's publication "Good Medical Practice", Paragraph 17, May 2001 edition, applicable at the time, in relation to obtaining consent. You also breached many of the guiding principles contained within the GMC's publication "Seeking patients' consent: the ethical considerations", November 1998. In breaching the guidance published by the GMC, and acting in the way you did, your actions were inappropriate and unprofessional.

**Paragraphs 9(a) and (b) have been found not proved in relation to paragraphs 8(f)(i) and 8(l).**

48. In relation to paragraph 8(f)(i), the Panel found it entirely appropriate and professional for you to have removed a loose fragment from Patient A's knee. Patient A had a long-standing mechanical problem with his knee and the removal of a loose body may have resolved this problem.
49. In relation to paragraph 8(l), the Panel has borne in mind that sending "the sample" to Verigen would not have incurred any cost for Southend Hospital. The Panel heard evidence that if the cells could not be cultured, the cost would have been borne by Verigen. However, if the cells could be cultured then the Panel accepts that the cost would have been borne by Stanmore Hospital, the hospital to which Patient A was eventually referred.

**Paragraphs 10(b) and 11(b) have been found proved.**

50. During the course of your evidence you accepted that, contrary to the advice you had received from Mr Q, Consultant Plastic and Craniofacial Surgeon and on call Plastic Surgeon, on 11 June 2005, you swung the medial gastrocnemius flap to cover the fracture site and closed the skin with deep tension sutures. You qualified this admission by saying that it had been a judgement on your part, although you accepted that it was the wrong decision.



Paragraph 16(b) has been found proved.

51. The Panel considers that the conditions imposed by the Interim Orders Panel on 22 August 2006 could have been misinterpreted and in that regard the Panel makes no culpable finding against you in this respect.
52. Having reached these findings, the Panel invites Mr Kark to adduce further evidence and make any further submissions as to whether, on the basis of the facts found proved, your fitness to practise is impaired. Following Mr Kark's submission, Mr Sutton, on your behalf will be given the opportunity to respond and call any evidence if he wishes to do so.

#### **Determination on impaired fitness to practise**

Mr Chauhan

The facts found proved by the Panel are as follows:

53. At the material times you were a registered medical practitioner specialising in trauma and orthopaedic surgery. On 15 July 2002, you applied for the post of Consultant in Trauma and Orthopaedic Surgery at the Southend University Hospital NHS Trust (Southend Hospital). During the application and interview process you stated that you had broad experience in revision surgery and hip resurfacings. The Panel has found that these claims were misleading and dishonest.
54. Once appointed, you expressed an interest in undertaking the procedure of Birmingham hip resurfacing (BHR) and implied that you had sufficient experience to undertake that technique yourself. The Panel has found that this was misleading and dishonest.
55. In 2003, you began performance of the technique of BHR at Southend Hospital. The Panel has found that you had insufficient experience to carry out BHR procedures as sole or lead surgeon at Southend Hospital.
56. In 2005, you were interviewed by the Rapid Response Review Team on behalf of the Royal College of Surgeons who were carrying out investigations on behalf of the Southend Hospital. During the interviews you were asked for your operative log book in order to evaluate your operative experience, which you were unable to produce. When asked about your experience of BHR procedures you admitted that prior to your appointment at Southend Hospital you had personally taken part in six operations and had not performed the entire procedure as sole or principal surgeon.
57. In 2002 and 2003, you expressed an interest in performing Autologous Cartilage Transplantation (ACT) at Southend Hospital. You informed Mr C, Clinical Director of Orthopaedics, that such surgery did not have to be part of a clinical trial. You were aware or ought to have been aware that it was a requirement that



such surgery had to be a part of a clinical trial under the National Institute for Clinical Excellence (NICE) guidelines. You were made aware that Southend Hospital did not have funding to perform ACT operations. On 26 November 2004, you conducted an arthroscopy on Patient A who presented with an osteochondral defect of the femoral condyle of the knee. You made no adequate record pre-operatively of a treatment plan.

58. The Panel has found that during the procedure you took a loose fragment from the knee (the sample). Following the procedure you sent a sample to a private company, Verigen, for tissue culture for the purposes of ACT. You did not obtain patient consent for the removal of the sample for tissue culture, or for it to be sent to a private company. You made no adequate record of the sample being sent to Verigen. You did not follow trial protocols established for the taking and submitting of a sample for ACT. The Panel has found that in removing the sample and treating it as a sample for use in ACT you were aware that funding had not been agreed by Southend Hospital. You submitted the sample for ACT despite the fact that you were aware that it was not part of a clinical trial.
59. The Panel has found that your actions, in relation to your conversation with Mr C that ACT did not have to be part of a clinical trial and your subsequent actions were inappropriate and unprofessional.
60. On 11 June 2005, Patient B was admitted to Accident and Emergency at Southend Hospital following a road traffic accident resulting in severe trauma to his lower legs. On 11 June 2005, you stabilised his left leg using a plate and screws and then sought advice from the on-call plastic surgeon who advised you that, unless you could safely close the wound, you should leave the wound open and transfer the patient to the local plastic surgical unit. Contrary to the advice you had received from the plastic surgeon, you swung the gastrocnemius flap to cover the fracture site and closed the skin with deep tension sutures. You made an inadequate note in relation to the post operative plan of management.
61. The following day, 12 June 2005, Mr D, Consultant Vascular and General Surgeon reviewed the wound in theatre, he debrided it, removed the deeper stitches and washed out the wound, after which the wound was left open and bandaged. On 13 June 2005, Mr D undertook a wound review and debridement at which you were present. You were advised by Mr D not to close the wound. Once Mr D had left the operating theatre you closed the wound with sutures. Thereafter, gas gangrene was diagnosed and on 15 June 2005, the patient's limb was amputated above the knee.
62. The Panel has found that your decision to close the wound on 11 June 2005, was contrary to basic surgical principles relating to the treatment of a severe crush injury, contrary to the advice you had received from the plastic surgeon, likely to increase the risk of infection and not in the best interests of the patient.
63. The Panel has found that your decision to close the wound on 13 June 2005, was contrary to basic surgical principles relating to the treatment of a severe crushing injury, contrary to the advice received from your consultant colleague Mr D, was

likely to increase the risk of infection and was not in the best interests of the patient.

64. Subsequent to these events, on 15 June 2005, your practice was restricted by Southend Hospital to day cases and outpatient work. Southend Hospital agreed to assist you in obtaining retraining with a view to rehabilitating your practising rights. In pursuance of this objective Southend Hospital provided you with a framework agreement which you did not sign.
65. On 22 August 2006, the General Medical Council Interim Orders Panel imposed conditions on your registration, one of which was that you should restrict your practice to outpatient work and day case surgery, and that any major orthopaedic surgery work should only be undertaken under close supervision and as part of a retraining programme under a named supervisor of consultant grade agreed with the Southend Hospital.
66. On 29 November 2002 you had been awarded practising privileges at the BUPA Wellesley Hospital. On 28 September 2006, your practising privileges at the BUPA Wellesley Hospital were suspended. Despite the restrictions on your practice imposed by the GMC and your suspension by the BUPA Wellesley Hospital you continued to see patients privately in your home. However, the Panel has already determined that the conditions placed on your registration by the Interim Orders Panel could have been misinterpreted. Therefore, the Panel made no culpable finding against you in this regard.
67. On the basis of the facts found proved, the Panel must now determine whether your fitness to practise is impaired by reason of your misconduct.
68. Mr Kark, on behalf of the General Medical Council (GMC) disclosed that there have been no previous findings against you by a Fitness to Practise Panel. He went on to remind the Panel of various aspects of its determination on the facts that, in the GMC's submission, are significant in relation to the issue of impairment of your fitness to practise. As well as the clinical matters in this case, Mr Kark invited the Panel to consider whether there are fundamental issues in relation to your character and practice which lead to a finding that your fitness to practise is impaired. Mr Kark referred the Panel to the following authorities:
- Zygmunt v GMC [2008] EWHC 2643 (Admin); and  
Azzam v GMC [2008] EWHC 2711 (Admin).
69. Mr Kark also referred the Panel to a paragraph of the GMC's Indicative Sanctions Guidance (April 2009) relating to insight which, he submitted, is relevant to impairment. Furthermore, as well as referring to the GMC's publication "Good Medical Practice" (May 2001 edition, approved in September 2001), he reminded the Panel of the guidance contained within its exhibit C9 entitled "Good Surgical Practice" (September 2002) and that contained within exhibit C7 entitled "The Management of Open Tibial Fractures" published by the British Orthopaedic Association and British Association of Plastic Surgeons, dated September 1997.

70. Mr Kark submitted that you have breached a number of basic tenets of "Good Medical Practice" and have also demonstrated a willingness to act dishonestly.
71. Mr Sutton, on your behalf, agreed with the relevance of the authorities referred to by Mr Kark. However, he invited the Panel to consider the evidence of Mr R, Medical Director at the Royal National Orthopaedic Hospital (Stanmore Hospital). Mr R gave evidence to the Panel about your progress during your period of supervised retraining at Stanmore Hospital in 2006 / 2007. Mr Sutton also invited the Panel to consider the evidence adduced earlier in these proceedings in relation to your retraining.
72. Mr Sutton invited the Panel to have regard to Rule 17(2)(j) of the GMC (Fitness to Practise) Rules, Order of Council 2004.
73. Whilst the Panel has borne in mind the submissions of both Counsel, the matter of impairment is one for it to determine exercising its own judgement, having considered the evidence adduced.
74. The Panel has accepted the advice of the Legal Assessor who advised it to engage in a two-step process, deciding first whether your alleged misconduct has been proved and if so whether, as a result, your fitness to practise is impaired.
75. The Legal Assessor advised the Panel as to the meaning of misconduct. He referred the Panel to the case of *Calhaem v GMC* [2007] EWHC 2606 (Admin). In relation to impairment, he referred the Panel to the case of *Meadow v GMC* [2006] EWCA Civ 1390; [2007] 1 QB 462.
76. The Panel has carefully considered the principles and standards contained within the GMC's publication "Good Medical Practice" (May 2001 edition, approved in September 2001). In considering these, the Panel has found that some are applicable across the range of the findings of fact. The Panel has set out below those principles and standards that you have breached:

"Patients must be able to trust doctor's with their lives and well being. To justify that trust, we as a profession have a duty to maintain a good standard of practice and care and to show respect for human life. In particular, as a doctor you must

- make the care of your patient your first concern;
- respect the rights of patients to be fully informed in decisions about their care;
- keep your professional knowledge and skills up to date;
- recognise the limits of your professional competence;
- be honest and trustworthy;
- work with colleagues in the ways that best serve patients' interests."

Under the heading of "Good Medical Practice", it states:

"All patients are entitled to good standards of practice and care from their doctors. Essential elements of this are professional competence; good relationships with patients and colleagues; and observance of professional ethical obligations."

Under the heading of "Good clinical care" it states:

"Good clinical care must include:

- an adequate assessment of the patient's conditions, based on the history and symptoms and, if necessary, an appropriate examination...
- referring the patient to another practitioner when necessary,"

"Good Medical Practice" goes on to state:

"In providing care you must:

- recognise and work within the limits of your professional competence;
- be willing to consult colleagues;
- be competent when making diagnoses and when giving or arranging treatment;
- keep clear, accurate, legible and contemporaneous patient records which report the relevant clinical findings, the decisions made, the information given to patients and any drugs or other treatment prescribed..."

**77.** The Panel first considered whether your behaviour amounted to misconduct. You have breached a significant number of the principles and standards of "Good Medical Practice". The findings of fact against you are wide-ranging and serious. The Panel is in no doubt that these findings amount to misconduct.

**78.** The Panel next considered whether your fitness to practise is impaired. In doing so it has considered the relevant authorities.

**79.** In the case of *Zygmunt v GMC*, Mitting J stated:

"Smith LJ helpfully identified recurrent features of cases in which impairment of fitness to practise has been found to exist at paragraph 25.50 of her report:

"25.50. I think it will be helpful, in the resolution of the problems that I am about to outline, if I analyse the reasons why a decision-maker might conclude that a doctor is unfit to practise or that his/her fitness to practise is impaired. In the examples I discussed above, four reasons for unfitness recurred. They were (a) that the doctor presented a risk to patients, (b) that the doctor had brought the profession into disrepute, (c) that the doctor

had breached one of the fundamental tenets of the profession and (d) that the doctor's integrity could not be relied upon."

80. In the case of *Azzam v GMC*, McCombe J stated:

"...it must behove a FTP panel to consider facts material to the practitioner's fitness to practise looking forward and for that purpose to take into account evidence as to his present skills or lack of them and any steps taken, since the conduct criticised, to remedy any defects in skill..."

81. The Panel has taken into account the evidence of Mr R. Mr R gave evidence about the steps you have taken since your conduct was criticised. He told the Panel that in 2006 he organised a period of retraining for you at Stanmore Hospital and also acted as your mentor. The retraining programme ran between 4 December 2006 and 8 June 2007 and concentrated on lower limb orthopaedics. It also allowed you to refresh your general competencies in orthopaedic surgery. He told the Panel that following your retraining at Stanmore Hospital, you were to undergo a period of retraining in trauma surgery at another hospital. However, this aspect of your retraining could not be organised and so has not been undertaken. Mr R informed the Panel that by the end of the period of your retraining at Stanmore Hospital he considered that you were competent to work as a Consultant in a District General Hospital undertaking elective orthopaedic surgery.

82. Mr R also told the Panel about discussions that he had with you concerning working within a multi-disciplinary team and the issues that had been raised in relation to your attitude. He informed the Panel that there had been a "sea change" in your attitude and that at the end of your retraining programme at Stanmore Hospital you had had time to reflect and were aware of team working and of the need to be aware of other people's opinions.

83. In evidence to the Panel, when questioned about Patient B, you stated, "I have had a lot of time to reflect on this case, and I have spoken to many people since, shortly after this case, and even up until lately. It was the wrong thing to do then, and I acknowledge that, and I understand that, having had the benefit of speaking to trauma surgeons up and down the country and managing cases after this - trauma cases - that my management is not as it was then." However, under cross-examination you gave the clear impression that you were justifying the clinical judgements you made on 11 and 13 June 2005. This was despite the benefit of hindsight. Therefore, the Panel is concerned that your evidence does not reflect what it has heard from Mr R about your change in attitude.

84. The Panel has found that you have been dishonest in two respects. First, that during the application and interview process you dishonestly exaggerated your experience and thereby deliberately misled your employers. Second, that once you had been appointed, you dishonestly implied that you had sufficient experience to undertake BHR procedures yourself at Southend Hospital.

85. In respect of your conduct in undertaking an ACT procedure on Patient A, the Panel found that your actions in many respects were inappropriate and unprofessional. In relation to Patient B, the Panel found that your actions were contrary to basic surgical principles, contrary to advice, likely to increase the risk of infection and not in the best interests of the patient.
86. The Panel's finding of misconduct taken together with the breaches of the principles and standards of "Good Medical Practice" and other guidance demonstrates that your behaviour has fallen far below the standards to be expected of a registered medical practitioner. These breaches have been serious and persistent and your integrity cannot be relied upon. Your misconduct undoubtedly compromises the standing of the profession and the regard in which it and its practitioners are held.
87. The Panel, therefore, finds that your fitness to practise is impaired by reason of your misconduct.
88. Having reached this finding, the Panel will now invite submissions from both Counsel as to what sanction, if any, to impose on your registration.

#### **Determination on sanction**

89. Mr Chauhan: The Panel has determined and announced that your fitness to practise is impaired by reason of your misconduct. It must now consider what action, if any, it should take in relation to your registration.
90. Mr Kark, on behalf of the General Medical Council (GMC), submitted that the appropriate sanction in this case is the erasure of your name from the Medical Register. Mr Kark reminded the Panel of its findings in relation to Birmingham Hip Resurfacing (BHR), the Autologous Cartilage Transplantation (ACT) procedure relating to Patient A and the trauma issues surrounding Patient B. He drew to the Panel's attention the aggravating features of the case which include dishonesty, your failure to refer patients to colleagues, your failure to listen to advice and an unwillingness to heed guidance from senior colleagues all of which, he submitted, demonstrated a lack of insight. Mr Kark also referred the Panel to the relevant sections of the GMC's Indicative Sanctions Guidance (April 2009) and the authorities referred to therein.
91. On your behalf, Mr Sutton's primary submission invited the Panel to take what he characterised as an exceptional but justified course, of imposing conditions on your registration. He indicated that a further submission would be to invite the Panel to consider the option of suspension. Mr Sutton also referred the Panel to the Indicative Sanctions Guidance. Dealing with the issue of suspension, he submitted that this would have a punitive effect upon you and would effectively "terminate [your] reasonable expectation of being able to resume [your] medical career". Mr Sutton told the Panel that you have been confronting the consequences of the issues on which this Panel has adjudicated for a period of over three years. He submitted that throughout this time you have suffered

personal and professional hardship. He acknowledged that this lapse of time has resulted in a degree of de-skilling. Mr Sutton told the Panel that at the time of these events you were at the threshold of your Consultant career. He asked the Panel to consider the progress you had made and how you had been assessed by your peers both before you commenced at Southend Hospital and since.

92. Mr Sutton drew the Panel's attention to the evidence of Mr R, Medical Director at the Royal National Orthopaedic Hospital (Stanmore Hospital). Mr Sutton submitted that the Panel may find it striking that the Medical Director of one of the two foremost centres of orthopaedic practice in the country has been willing to stake his own reputation in supporting you.
93. Mr Sutton also made submissions to the Panel in relation to BHR, ACT in relation to Patient A and the trauma issues surrounding Patient B. He put in evidence the report of a Panel of Inquiry under a Health Circular (HC(90)9) appointed to inquire into your surgical experience and allegations in relation to BHR made against you by your employer, Southend Hospital. Mr Sutton asked the Panel to consider the report, at this stage of the proceedings, by way of mitigation. Following a submission by Mr Kark and after having heard the advice of the Legal Assessor, the Panel determined to do so. Mr Sutton also asked that the Panel take account of your experience at the point at which you took up your post at Southend Hospital. He submitted that this is relevant in weighing how seriously your conduct should be viewed and how profound the implications of that conduct would be in terms of your future career opportunities.
94. Mr Sutton invited the Panel to consider all the evidence, in a fair and rounded context, in relation to BHR, ACT in relation to Patient A and the trauma issues surrounding Patient B. Whilst Mr Sutton did not seek to go behind the Panel's findings, he invited it to place the conduct at its correct point on the spectrum of such conduct that comes before a Panel in gauging fairly how seriously it should be viewed. Mr Sutton also invited the Panel to place real emphasis on the issue of proportionality which "lies at the heart of a just disposal".
95. Whilst the Panel notes the submissions made, the matter of sanction is one for it to determine exercising its own judgement.
96. In considering the issue of sanction, the Panel has taken account of the GMC's Indicative Sanctions Guidance (April 2009). The purpose of sanctions is not to be punitive but to protect patients and the wider public interest, although they may have a punitive effect. This was confirmed in the judgment of Laws LJ in the case of *Raschid and Fatnani v the GMC* [2007] 1 WLR 1460, in which he stated:
- "The Panel then is centrally concerned with the reputation or standing of the profession rather than the punishment of the doctor."
97. He referred to the earlier Privy Council decision in *Gupta v the GMC* [2002] 1 WLR 1691, which stated:

"It has frequently been observed that, where professional discipline is at stake, the relevant committee is not concerned exclusively, or even primarily, with the punishment of the practitioner concerned. Their Lordships refer, for example, to the judgment of Sir Thomas Bingham MR in *Bolton v Law Society* [1994] 1 WLR 512, 517-519 where his Lordship set out the general approach that has to be adopted. In particular he pointed out that, since the professional body is not primarily concerned with matters of punishment, considerations which would normally weigh in mitigation of punishment have less effect on the exercise of this kind of jurisdiction. And he observed that it can never be an objection to an order for suspension that the practitioner may be unable to re-establish his practice when the period has passed."

98. The Panel has borne in mind the public interest which includes the protection of patients, maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour. The Panel has also borne in mind the principle of proportionality, weighing the interests of the public with your own interests.
99. In reaching its decision, the Panel has considered all the evidence adduced in mitigation including the favourable testimonials placed before it from colleagues, patients and friends.
100. In relation to retraining, Mr R gave evidence that when you underwent your retraining period with him you made demonstrable progress and there were no issues identified in relation to your probity. He was satisfied that you would be able to return to independent consultant practice dealing with a full range of orthopaedic problems but with the suggestion that you refer complex procedures to colleagues. The Panel notes that Mr R would be willing to act as your mentor should such a direction be given by this Panel. The Panel has also borne in mind the statement of Mr S, Consultant Orthopaedic and Trauma Surgeon and Group Clinical Director for Orthopaedics, ENT and Oral Surgery at Salford Royal NHS Foundation Trust. In that statement Mr S states that your level of competence was adequate for your level of training. He also stated that you require a period of supervised retraining in trauma management. The Panel accepts, from the evidence, especially that of Mr R, that you are willing and able to retrain in surgical practice. However, being a registered medical practitioner requires much more than surgical competence, it requires practitioners to meet the standards and principles of Good Medical Practice.
101. The Panel has taken account of the HC(90)9 Inquiry and notes the recommendations contained therein. The Panel referred first to the Inquiry's Terms of Reference and noted the names of the witnesses who gave evidence before the Inquiry. The Panel compared that list of witnesses with the witnesses called during these proceedings. From that comparison it is clear that not only did the Inquiry receive different evidence, but it was restricted to its Terms of Reference. Furthermore, the procedures of an Inquiry under HC(90)9, differ significantly from the procedures of a Fitness to Practise (FTP) Panel. The Panel makes the following observations in relation to the HC(90)9 Inquiry:



1. It related to your surgical experience prior to your appointment at Southend Hospital and to your undertaking BHR procedures at Southend Hospital. The Inquiry by this Panel goes far wider and includes separate matters;
2. it accepted your version of events particularly in relation to your training log. This Panel did not;
3. it felt it was not safe to rely on the account given by Mr F, Consultant Orthopaedic Surgeon and Training and Programme Director for the Yorkshire Deanery, when it had not been tested in cross-examination. Neither did it hear the evidence of Mr T, Consultant Orthopaedic Surgeon at the Norfolk and Norwich University Hospital. This FTP Panel heard the evidence of Mr F being tested and it also heard evidence from Mr T, both of whom this Panel found to be credible and reliable witnesses. Their evidence, during the course of this hearing, uncovered matters relating to your training logs and the question of missing data.

**102.** Having thoroughly considered the report of the HC(90)9 Inquiry, the Panel finds that it provides no help in terms of mitigation.

**103.** The Panel first considered whether to conclude your case by taking no action against your registration. The Panel has rejected this. You have breached many of the fundamental principles and standards of "Good Medical Practice" and also other guidance. These standards and principles are set in the expectation that they will be adhered to by all registered medical practitioners. The findings against you, which include instances of dishonesty, are so serious that to take no action would be wholly insufficient and would not be in the public interest.

**104.** The Panel next considered whether it would be sufficient to conclude your case by placing conditions on your registration. In considering conditions, the Panel has borne in mind that any conditions must be appropriate, proportionate, workable and measurable. The Panel has taken account of paragraphs 49, 50 and 51 of the GMC's Indicative Sanctions Guidance (April 2009), which states:

"...Conditions are likely to be appropriate where the concerns about the doctor's practice are such that a period of retraining and/or supervision is likely to be the most appropriate way of addressing them..."

.. Panels will need to be satisfied that the doctor has displayed insight into his/her problems, and that there is potential for the doctor to respond positively to remediation/retraining and to supervision of his/her work..."

...The purpose of conditions is to enable the doctor to...remedy any deficiencies in his/her practice whilst in the meantime protecting patients from harm..."

**105.** The Panel accepts that you have undergone a period of retraining with Mr R and the evidence suggests that you responded positively to this. It also accepts that there are identifiable areas of your practice in which you could undergo

retraining and the Panel is satisfied that you would be willing to do this. Therefore, in that sense the Panel could be satisfied that following a further period of retraining and assessment you could return to surgical practice.

106. However, this case is not concerned solely with your technical skills to undertake surgery. It is concerned with dishonesty, unprofessional and inappropriate behaviour in relation to Patient A and, in relation to Patient B, acting contrary to basic surgical principles and advice and not acting in his best interests.

107. The Panel found that you were misleading and dishonest on two occasions. First, you were dishonest during the application and interview process when you stated that you had broad experience in revision surgery and hip resurfacings. Second, once appointed at Southend Hospital you implied that you had sufficient experience to undertake the BHR procedure yourself. Mr Sutton suggested that your dishonesty was at the lower end of the spectrum but the Panel considers that dishonesty of this nature has the potential for far reaching consequences in terms of patient safety.

108. Apart from the specific findings of dishonesty in this case, issues of your probity have been raised throughout the hearing and the Panel did not find you a credible witness. Your evidence lacked consistency and at times was wholly unbelievable.

109. In relation to the matters surrounding BHR, examples include:

- The discrepancies between your operative training logs and theatre records. In particular, the discrepancies identified by Mr F during your training period at Harrogate;
- the differing explanations that you gave to specific inquiries and to this Panel about the reason for missing data from your operative training logs;
- the presentation of your confusing and unclear operative training logs to this Panel which it considered was an attempt to conceal the true record of your surgical training;
- the various explanations you gave in relation to the number of BHR procedures you had been involved in. The documentary evidence shows that you assisted in three BHR procedures. You told the Rapid Response Review Team of the Royal College of Surgeons that you had assisted in six such procedures. Whilst the Panel accepts that you could have been present in theatre without your name being recorded in the theatre logs, it was concerned that in evidence you told the Panel that you had attended and assisted in between 12 and 24 BHR procedures. This number had never been mentioned before to any other inquiry about your training.

110. In relation to Patient A and the ACT procedure, examples include:

- Misleading your Clinical Director in relation to the National Institute for Clinical Excellence (NICE) guidelines published about undertaking ACT procedures;

- seeking to persuade the Panel that Patient A's case did not fall within the ambit of the NICE guidelines;
- denying that you had attended a meeting with Verigen and the Indian visitors on the same day that you carried out the procedure on Patient A and denying being in Mr L's car on that day. The Panel has accepted the evidence of Mr L on this matter;
- giving different accounts as to why the Indian visitors were at Southend Hospital on that day to Mrs N, general manager of diagnostic imaging at Southend Hospital, and to this Panel;
- making no record pre or post-operatively of the ACT procedure in an attempt to conceal your actions.

111. In relation to Patient B, Mr Sutton during submissions, stated that there is a difference between providing a rationale or explanation for why you did what you did and justifying or excusing it. Mr Sutton submitted that you provided the Panel with a rationale for your treatment of Patient B, not an excuse. The Panel does not accept this and considers that your evidence concerning the wound closure on two separate occasions, contrary to the advice of Consultant colleagues, did not address the fundamental point concerning why you did not heed the advice given or work within the guidance entitled "Good Surgical Practice" and "The Management of Open Tibial Fractures". Closing the wound on the first occasion could possibly be made out to be an error of judgment but you compounded the situation by closing the wound on a second occasion. This was separated in time by only two days, having observed the consequences of your wound closure on the first occasion and after having been told specifically not to close the wound by a senior Consultant.

112. The Panel does not regard the episode in relation to the treatment of Patient B as an isolated incident separate and distinct from the other findings in this case relating to BHR and ACT. Taken as a whole, the evidence reveals a pattern of behaviour whereby you ignore advice and do not adhere to relevant guidelines. You have failed to heed advice from colleagues, including those more senior.

113. The Panel considers that each aspect of this case builds up a picture of a doctor who has a harmful, deep-seated, personality and attitudinal problem.

114. Conditions could be formulated to focus on a period of surgical retraining. However, given the nature and extent of your failings, the Panel does not consider that the magnitude of the issues in this case could be sufficiently addressed by imposing conditions on your registration. The Panel is not satisfied, given the nature and gravity of its findings against you, your dishonesty and lack of probity which permeate this case, that conditions would sufficiently protect patients, the public interest or maintain public confidence in the medical profession. Furthermore, conditions would not be a proportionate response to the findings of this Panel.

115. The Panel next considered whether a period of suspension would be a sufficient sanction. The Indicative Sanctions guidance states at paragraph 69:

"Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered medical practitioner. Suspension from the register also has a punitive effect, in that it prevents the doctor from practising (and therefore earning a living as a doctor) during the period of suspension. Suspension will be an appropriate response to misconduct which is sufficiently serious that action is required in order to protect patients and maintain public confidence in the profession. However, a period of suspension will be appropriate for conduct that falls short of being fundamentally incompatible with continued registration and for which erasure is more likely to be the appropriate response.... This may be the case, for example, whether there may have been an acknowledgement of fault and where the Panel is satisfied that the behaviour or incident is unlikely to be repeated..."

**116.** Over a significant period of time you have repeatedly departed from relevant professional standards. You have demonstrated a disregard for the fundamental principles expected of all registered medical practitioners and you have a disregard for advice, guidelines and protocols.

**117.** In many of the Panel's findings there was an underlying issue concerning your honesty and probity. An aggravating feature of your dishonesty has been your attempts to cover this up. The Panel has had the advantage of seeing and hearing you give evidence in relation to the charges against you and considers that you have not been honest on a number of issues. You have failed to demonstrate insight into the matters which have brought you before this Panel. On that basis, the Panel is not satisfied that you have either the inclination or potential to modify your behaviour.

**118.** The Panel considers that you have demonstrated a pattern of misconduct which could not reasonably be described as an isolated episode or a short term lapse from relevant professional standards. The Panel has made findings across a wide spectrum of your practice. The Panel considers that you put your own interests first, for example, in relation to Patient A and undertaking the ACT procedure. Also, it believes that it was your hubris that led you to ignore the advice of others. The Panel acknowledges the evidence of Mr R that there had been a "sea change" in your attitude. However, the Panel is concerned that your own evidence did not reflect what it had heard from Mr R about your change in attitude, and the Panel cannot be satisfied that you would not act in the same way again. Your harmful, deep-seated, personality and attitudinal problems, taken together with your persistent dishonesty, clinical failings and lack of insight, cause you to be a continuing risk to patients.

**119.** Whilst the Panel has considered the mitigation advanced, it has taken account of the words of Lord Bingham, Master of the Rolls, in the case of *Bolton v The Law Society* [1994] 1 WLR 512, [1993] EWCA Civ 32, who stated that:

"... the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct

will be a person of unquestionable integrity, probity and trustworthiness...The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price."

120. The Panel considers that the aggravating features far outweigh the mitigating features of this case and it is not satisfied that suspending your registration would be sufficient for the protection of patients, maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour. Suspension is neither proportionate nor appropriate.
121. Your misconduct is fundamentally incompatible with your continuing to be a registered medical practitioner. The sanction of erasure is the only proportionate sanction to ensure the protection of patients, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour.
122. Accordingly, the Panel has determined to erase your name from the Medical Register.
123. Having reached this decision, the Panel will now take submissions on whether it should suspend your registration with immediate effect.

#### **Determination on immediate sanction**

124. Mr Chauhan: Having determined that your name be erased from the Medical Register, the Panel has considered in accordance with Section 38(1) of the Medical Act 1983, as amended, whether your registration should be suspended immediately.
125. Mr Kark, on behalf of the GMC, submitted that given the Panel's decision to erase your name from the Medical Register, an immediate order suspending your registration forthwith is appropriate.
126. Mr Sutton, on your behalf, told the Panel that an appeal against both the conduct and outcome of these proceedings is being considered. In those circumstances, he submitted that it would be wrong in principle for this Panel to place you under any fetter or restriction which may thwart any opportunity to seek and obtain relief on appeal. In making his submissions, Mr Sutton referred the Panel to Section 38 of the Medical Act 1983 and linked it with Article 6 of the European Convention on Human Rights. Mr Sutton invited the Panel to consider exercising a power under Section 38(2) of the Medical Act 1983, as amended, to impose immediate conditions on your registration or allow the conditions imposed by the Interim Orders Panel to continue.
127. The Panel has accepted the advice of the Legal Assessor that following a decision to suspend or erase a doctor's name from the Medical Register, there is no power for this Panel to impose immediate conditions in accordance with Section 38(2) of the Medical Act, 1983, as amended.

128. The Panel acts in the public interest and does not act to thwart a doctor's right of appeal.

129. Given the serious nature of this case, it is necessary for the protection of members of the public and in the public interest, to make an order suspending your registration forthwith. The Panel is satisfied that this is a measure proportionate to the risks posed by your remaining in practice.

130. This means that your registration will be suspended from today. The direction for erasure, as already announced, will take effect 28 days from today, unless you lodge an appeal in the interim. If you do lodge an appeal, the immediate suspension will remain in force until the substantive direction takes effect.

131. The order imposed by the Interim Orders Panel is hereby revoked.

132. That concludes the case.