

Dr Diana WARNER (2580395)

DETERMINATION FACTS AND IMPAIRMENT– 13/08/2024

Facts

Background

1 Dr Warner qualified in 1982 at the University of London and qualified as a GP in 1988. She practised as a GP and GP Partner from 1989 until her retirement in 2019 in various surgeries in and around Bristol.

2 The allegation that has led to Dr Warner’s hearing can be summarised as follows. It is alleged that, on 27 October 2021, Dr Warner breached a Court Order (‘the Order’) issued by the High Court (‘the Court’) on 21 September 2021 by sitting down on the live carriageway of the M25, holding a banner and gluing herself to the road surface before being removed by police and arrested. It is further alleged that Dr Warner breached the Order again on 29 October 2021 by blocking, endangering, slowing down, preventing or obstructing the free flow of traffic onto or along or off the M25 for the purposes of protesting, by entering onto the M25 Eastbound without a motor vehicle and refusing to leave the area of the M25 when asked to do so by a police constable.

3 It is further alleged that, on 15 December 2021, the Court found that Dr Warner’s actions on 27 October 2021 were a deliberate breach of the Order and in contempt of Court, and she was committed to prison for a period two months (‘the first committal’). Further, on 2 February 2022, the Court found that Dr Warner’s actions on 29 October 2021 were a deliberate breach of the Order and in contempt of Court and she was committed to prison for 30 days (‘the second committal’).

4 It is also alleged that on 31 May 2022 at Highbury Corner Magistrates’ Court, Dr Warner was convicted of, without lawful excuse, damaging furniture to the value of under £5,000 belonging to Stratford Magistrates contrary to Sections 1(1) and 4 of the Criminal Damage Act 1971 and sentenced to 12 weeks imprisonment (‘the conviction’).

5 Dr Warner self-referred to the GMC regarding the Allegation.

The Allegation and the Doctor's Response

6 The Allegation made against Dr Warner is as follows:

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

1. On 21 September 2021, the High Court ('Court') issued a Court Order ('Order') prohibiting you from doing the acts as detailed in Schedule 1. You committed acts which breached the Order on:

a. 27 October 2021 by sitting down on the live carriageway, holding a banner and gluing yourself to the surface before being removed by police and arrested;

Admitted and found proved.

b. 29 October 2021 by blocking, endangering, slowing down, preventing, or obstructing the free flow of traffic onto or along or off the M25 for the purposes of protesting, by entering onto the M25 Eastbound without a motor vehicle and refusing to leave the area of the M25 when asked to do so by a police constable.

Admitted and found proved.

2. On 15 December 2021 the Court:

a. found that your actions as described at paragraph 1a were:

i. a deliberate breach of the Order;

Admitted and found proved.

ii. in contempt of Court;

Admitted and found proved.

b. committed you to prison for a period of two months.

Admitted and found proved.

3. On 2 February 2022 the Court:

a. found that your actions as described at paragraph 1b were:

i. a deliberate breach of the Order;

Admitted and found proved.

- ii. in contempt of court;

Admitted and found proved.

- b. committed you to prison for thirty days.

Admitted and found proved.

4. On 31 May 2022 at Highbury Corner Magistrates' Court, you were:

- a. convicted of, without lawful excuse, damaging furniture to the value of under £5000 belonging to Stratford Magistrates, intending to destroy or damage such property or being reckless as to whether such property would be destroyed or damaged contrary to sections 1(1) and 4 of the Criminal Damage Act 1971;

Admitted and found proved.

- b. sentenced to 12 weeks imprisonment.

Admitted and found proved.

And that by reason of the matters set out above your fitness to practise is impaired because of your:

- a. misconduct in respect of paragraphs 1-3;

To be determined.

- b. conviction in respect of paragraph 4.

To be determined.

The Admitted Facts

7 At the outset of these proceedings, Dr Warner made admissions to all paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Fitness to Practise Rules (2004, as amended) ('the Rules') Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced all paragraphs of the Allegation as admitted and found proved. On 20 June 2023, in her written submission, Dr Warner had previously admitted all of the facts set out in the GMC Rule 7 letter dated 15 May 2023. In her witness statement which she provided to

this Tribunal, which was undated, she repeated her admission of all of the facts set out in the Allegation.

Further Background

8 The Tribunal was mindful that the facts admitted and found proved relate only to Dr Warner's conviction and the two findings of contempt of court. However, it considered that the context and background to those findings was relevant to understanding the nature of and motivations for Dr Warner's actions. The Tribunal therefore sets out the background, as established by Dr Warner's witness statement, her oral evidence and various documentary evidence below.

The First Committal Hearing

9 Dr Warner belonged to a group called 'Insulate Britain' which was organising activities designed to disrupt daily life and draw attention to its demand that the government '*create hundreds of thousands of jobs, lower our emissions, and saves lives*'. The group engaged in non-violent direct action by stopping traffic on the M25 and surrounding roads in the days before the COP26 climate change conference which took place in Glasgow between 31 October to 12 November 2021. Their actions were intended to put pressure on the government to take action to prevent climate change. The protests took place throughout September and October 2021.

10 On 21 September 2021, Mr Justice Lavender of the High Court made an order for an injunction, sought by National Highways Limited, prohibiting 'persons unknown' from blocking, endangering, slowing down, preventing or obstructing the free flow of traffic onto or along or off the M25 for the purpose of protesting, or causing damage to the surface of the M25, affixing themselves to the M25 or any other person or object, or various other activities which might obstruct traffic on the M25. The Order contained a notice that if a defendant breached the Order, then they may be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

11 Throughout September and October 2021 various other injunctions were granted by the High Court to prevent similar protests on roads in Southeast England and leading to the M25, two of which specifically named Dr Warner as a defendant, along with more than 100 other protesters.

12 A protest took place on 27 October 2021. A group of protestors, including Dr Warner, entered the A206 at the junction with the A282 and M25 at some point before 9am and sat on the road in a line across the westbound carriageway of the A206 which formed part of the overbridges of the M25. Dr Warner sat down on the

live carriageway holding a banner and glued herself to the road surface. The police arrived at 9am and the protesters were all removed by 9.51am, with traffic flowing freely an hour later, although it caused substantial traffic delays. Dr Warner was arrested.

13 On 14 December 2021, five defendants, including Dr Warner, were summoned to the High Court before Lord Justice Dingemans following an application by National Highways Limited for an order determining that the defendants were in contempt of court. Dr Warner was not present on the morning of 14 December 2021, and a warrant was issued for her arrest. However, she appeared in court that afternoon and the warrant was rescinded.

14 On the day before the above-mentioned High Court hearing, Dr Warner travelled towards the Drax power station, a biofuel plant. On the morning of 14 December 2021, Dr Warner waved a flag by the train track leading to Drax power station and caused a train to stop. Following this protest, she travelled back to London and attended the hearing at the High Court.

15 It was accepted by Dr Warner that on 27 October 2021 she had walked onto the carriageway of the A206 at its junction with the A282 and M25 and obstructed the flow of traffic. Lord Justice Dingemans and Mr Justice Johnson found Dr Warner and the other defendants had deliberately breached the order of Mr Justice Lavender on 27 October 2021 and they were found to be in contempt of court. When sentencing Dr Warner, Lord Justice Dingemans and Mr Justice Johnson took into account that she had failed to attend the first morning of the hearing and considered that this showed she was not prepared to engage in dialogue with the court. Dr Warner was therefore sentenced to two months imprisonment, which was ordered to take immediate effect. Others who were involved in the protest, and, like Dr Warner, had no previous history of breaching the Order, were subject to suspended sentences on this occasion.

The Second Committal Hearing

16 A further protest took place on 29 October 2021. At about 8am, police were called to the M25 between junctions 28 and 29. They found a group of five people, including Dr Warner, were on the eastbound carriageway, sitting down and blocking all three lanes. When approached and asked to move, they lay down on the road surface and were eventually lifted by police officers off the carriageway and moved to the hard shoulder. The protesters were removed by about 8.40am and traffic flow resumed.

17 On 2 February 2022, 16 defendants, including Dr Warner, were summoned to the High Court before Lord Justice Davis following an application by National Highways Limited for an order determining that the defendants were in contempt of court. It was accepted by Dr Warner that on 29 October 2021 she had walked onto the carriageway of the M25 and obstructed the flow of traffic. Lord Justice Davis found Dr Warner and other defendants had deliberately breached the Order of Mr Justice Lavender on 29 October 2021 and they were found to be in contempt of court.

18 Dr Warner, through her representative, gave undertakings not to breach the Order in the future. However, she failed to attend the hearing in the afternoon after those undertakings were given, and instead glued herself to the steps outside the Royal Courts of Justice. Dr Warner was sentenced to 30 days imprisonment, which began with immediate effect due to Dr Warner's actions in gluing herself to the building rather than attending the hearing.

Conviction

19 On 26 April 2022, Dr Warner and three others were attending Stratford Magistrates court as defendants in another matter. Dr Warner stated that she wished to have a McKenzie friend in court with her. A man entered the court and began filming. He refused to leave when asked by the security guard and the police officer present. The man approached the judge's desk and attempted to glue himself to the desk while continuing to film. The police officer attempted to prevent him from gluing himself to the desk and was successful after a short struggle in which the officer sustained a minor hand injury. During this incident, another woman entered the court room and glued herself to the back bench. Meanwhile, Dr Warner had glued her hand to the glass in the dock. All three were charged with criminal damage and the man with assault on an emergency worker.

20 Dr Warner pleaded not guilty on 27 April 2022 to the charge of criminal damage. On 31 May 2022 at Highbury Corner Magistrate's court, she was found guilty of criminal damage to the value of under £5,000 contrary sections 1(1) and 4 of the Criminal Damage Act 1971 and sentenced to 12 weeks imprisonment.

Impairment

21 The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Warner's fitness to practise is impaired by reason of misconduct or a conviction for a criminal offence.

The Outcome of Applications Made during the Impairment Stage

22 The Tribunal granted Dr Warner's applications, made pursuant to Rule 34(1) of the Rules, that further bundles containing seven emails of support from members of the public be admitted into evidence. The Tribunal's full decision on the application is included at Annex A.

Dr Warner's Evidence

23 Dr Warner provided her Rule 7 Submissions document dated 20 June 2023, her own undated witness statement received by the GMC in July 2024 and also gave oral evidence at the hearing.

Career History

24 Dr Warner stated that she has worked as a GP in various surgeries in and around Bristol since she qualified in 1988. No previous concerns had been raised about her fitness to practise. She stated that she is a naturally reflective doctor and constantly reflects on her work. She stated that she has, in the past, pushed professional boundaries when it is necessary for improving patient care or safety, for example, working to fully inform patients before testing for Down's Syndrome. She stated that she has become involved in the National Centre for Integrative Medicine in Bristol and has sought to look at and treat the whole patient at every consultation.

Background to Climate Activism

25 Dr Warner stated she has long been concerned about political and social causes, she was a long-standing member of the Green Party and has twice stood as a Green Party candidate for Parliament. She provided a list of voluntary activities which she has undertaken since 2002. Dr Warner stated that her grandmother was killed in Mainz by the Nazi regime, her father having escaped Germany shortly before the war began, aged 17. She stated that she was unaware of her grandmother's death until she was seven. She further stated that she had grown up with the conviction that government cannot be relied on to keep you safe. She stated that this has resulted in her commitment to take part in more disruptive forms of non-violent direct action.

26 She stated that she experienced an epiphany in 2018, shortly before her planned retirement. Several weeks earlier the 2018 Intergovernmental Panel on Climate Change ('IPCC') report and other research had been published which showed her the devastating effects of climate change. She stated that the moment of epiphany came during a routine six-week baby check while she was examining the baby to check for congenital hip dysplasia. She stated that she realised that climate change was a bigger threat to this baby than any condition she may find. She stated

that at that moment, she vowed to do everything she could to protect that baby from the worst effects of climate change.

Engagement with the GMC

27 Dr Warner stated that she tried to set up a dialogue with the GMC around doctors' responsibility to safeguard the public's health from the existential threat due to climate change and ecological emergencies in May to September 2019. She referred to e mails between her and the GMC included in the documents provided to the Tribunal. She stated that the current version of Good Medical Practice (2024) ('GMP 2024') now contains a reference to managing resources effectively and sustainability, albeit with the caveat that doctors are only expected to be held to account for matters over which they have control. She stated that this caveat was not something she was willing to accept. She stated that the GMC should do more to bring together all doctors and health organisations in the UK to discuss and implement what is necessary to safeguard the health of the population and especially the life and health of future generations. She stated that these actions will reverberate worldwide, as they have done in the past, for example, changing practice around safeguarding children and vulnerable adults.

Climate Change

28 Dr Warner stated that she has undertaken other work before participating in the Insulate Britain protests which involved in-depth looking at how government works. She stated that from this she perceived the UK government's complete lack of accountability, which is built into the laws of the land. She stated that this belief stems from her own personal research and referred the Tribunal to the High Court judgment from May 2024 which concluded that the government was failing to uphold the net zero climate policy. She stated that this lack of accountability is coupled with the erosion of expertise within the workings of government, similar to the effective dismantling of the NHS.

29 She set out her research, as detailed in the documentary evidence below, which she stated shows that the work being done to halt climate change is not enough, and if humans are to survive in the long term, we have to address all key earth systems which are at risk of collapse. She stated that this was analogous to treating a patient for only half of their illness, despite the other part being potentially fatal. She stated that it is incumbent on the healthcare system and professionals to work with scientists and government to make sure that societies keep within all planetary boundaries so that all key earth systems have a chance to recover.

30 Dr Warner stated that, for all the reasons set out in her evidence, oral and documentary, it is her strong conviction that the only way to force this agenda

before government is disruption. She stated that disruptive action alters both public and governmental awareness and she could see no other way, in the timescale we have, to change the narrative of society in general concerning what is acceptable and unacceptable.

31 She further stated that after her retirement in March 2019, she took part in the April 2019 Extinction Rebellion occupation of Oxford Circus and since then all her activities have been geared towards keeping the vow she made to the baby she cared for before her retirement. She set out her support of the Joliba Trust, a charity based in Mali, a country which is greatly affected by climate change and has resulted in high rates of internal migration.

Direct Action

32 Dr Warner stated that it is the duty of doctors to protect the public's health, and that includes from existential threats such as pollution, environmental destruction and inequity. She stated that when declaration of these dangers does not result in the necessary changes, more action is required. She stated that there is evidence that disruptive action does work:

'There is plenty of evidence that disruptive direct action does work – look at the suffragettes; the freedom fighters for black American rights; Nelson Mandela and the African National Congress (ANC) overturning the apartheid system in South Africa; Mahatma Ghandi's campaign for independence in India. While I and my colleagues in Insulate Britain have always acted peacefully, the suffragettes and the ANC did use bombs as part of their tactics.'

33 She stated that there is good evidence that the Insulate Britain campaign has been highly effective in bringing into public awareness the existential threats of pollution and the climate and ecological emergencies, inequity, the need for proper home insulation in order to reduce fossil fuel use, and the role of home insulation in putting an end to fuel poverty.

34 Dr Warner stated that fossil fuel companies have known the dangers of carbon pollution since the 1970s and they are now funding think tanks which influence government and result in media output which may convince people that climate change is not a serious matter. She stated that the result is that the UK government is reneging on its climate plans and granting new fossil fuel licences. She stated that this denial is a serious problem for medical professionals who face the same emotional responses that leave many people unable to acknowledge the public health dangers of climate change, let alone act to inform and protect patients or

safeguard the health of future generations. She stated that it is her conviction that the job of the medical profession is to seek ways to force the agenda to compel government to institute adequate and proven anti-pollution measures alongside climate mitigation measures and measure to address inequity.

35 Dr Warner set out the scale of misinformation and disinformation about climate change in the press. She stated that as doctors have a background in science and regularly read and evaluate scientific research they are in a better position than most to analyse information. Doctors should therefore engage with journalists and scientists to understand the climate and ecological emergencies that the public faces. She stated that in the absence of this dialogue with the press, she and others have engaged in direct action in order to seek change.

36 With regard to climate anxiety, Dr Warner stated that knowledge of climate change adversely affects people's mental health and can result in stress related illness, and therefore it is essential that the impact of climate change on patients is recognised by doctors.

Paragraphs 1, 2 and 3 of the Allegation

37 Dr Warner stated that the timing of the protest on the M25 was deliberate in order to put maximum pressure on the government ahead of COP26 on 30 October 2021. She added that the form of protest would have been high profile at a time when Covid restrictions limited other forms of protest which may have been as effective. She stated that as well as sitting in the road obstructing traffic, she performed the role of de-escalator and talked to the public to keep the situation calm. She stated that while the group intended to bring awareness of wider issues, the act of blocking the M25 was also intended to bring awareness to individuals of their personal contribution to the burning of fossil fuels and carbon pollution when using individual car travel. She stated that she thought long and hard about taking part in this type of disruption, but her conscience told her that she needed to do it, and by the same reasoning, she continued after the injunctions were in place.

38 Dr Warner referred to evidence which showed that a small but significant minority of the public support the Insulate Britain M25 protest and the interest arising from the protests have demonstrated the vibrancy of the public debate. She stated that she accepts that the protest was unlawful in that it breached a civil injunction, and she recognised that the protest caused inconvenience to road users and emergency services, indeed, that was the essence of the protest. It was intended to be disruptive in order to force the critical agenda of climate change.

39 Dr Warner stated that she chose not to attend the hearing held on 14 December 2021 to consider her breach of the injunction on 27 October 2021 as a continuation of her protest. She instead travelled to Drax power station the night before and stopped a train travelling to Drax. She stated that this was done at that particular time to utilise the public attention on the group and focus it on the activities at Drax which Dr Warner stated were especially serious and devastating woodland in the UK.

40 Dr Warner stated that the second breach occurred on 29 October 2021 and the hearing was held on 1 February 2022. She stated that she missed part of the hearing in the afternoon because she was engaged in another protest where she glued herself to the steps outside of the Royal Courts of Justice. She stated that she did so because she saw no genuine attempt from the Court to engage in dialogue with the group, having been denied an opportunity to make their case at the earlier hearings regarding the injunction.

41 Dr Warner stated that on each occasion she was given a shorter sentence than she had expected: the second was shorter than the previous one, and both were shorter than the sentences of the first group of nine who had had to answer for breaking the injunction but who all had attended the Court. She stated that she believed this was because the three High Court judges who made the decisions on each occasion, were fully aware that the court procedures were failing in their purpose: they were failing to result in meaningful dialogue between the two parties. Otherwise, she stated she would have expected that each episode of disobedience must have resulted in longer, not shorter, sentences – a cumulative approach.

Paragraph 4 of the Allegation

42 Dr Warner stated that her actions were part of a series of protests named 'Disobedience in the Dock'. She stated that the rationale was to highlight, peacefully in the courtroom, that earth defenders are being prosecuted, protest is increasingly being criminalised, and human rights defence arguments are restricted or removed; on the other hand, the police and judiciary are failing to investigate or address the real crime of climate genocide.

43 Dr Warner stated that the Judge in the case alluded to what he regarded as a complete disregard for the rule of law. On the contrary, she stated that she undertook this action specifically to uphold the rule of law. She stated that there was no financial cost to the court due to the damage that occurred when she glued her hand to the glass in the dock and no one was inconvenienced except the court and other Insulate Britain protesters. She stated that the Court was out of action for two

hours, one hour of which was over lunchtime and her hand came unstuck of its own accord, because she was waiting for so long for the debonding team.

44 In relation both to the breaches of the injunction, and the criminal damage charge, Dr Warner stated that she gained nothing personally from the protests. She stated that she was willing to compromise her own liberty in going to prison and is still willing to do this. She stated that she felt that she had to do this to meet her professional responsibilities, her duties to her family, patients and the public, starting with the sworn promise to the baby. She stated that she recognised there is often a price to pay for this sort of act and she has been willing to pay it.

Public Trust in the Profession

45 Dr Warner stated that she hopes her actions engender trust in patients because of their nature (peaceful, non-violent) and her motives behind them; the fact her actions were designed to protect (and to make government protect them) and not to do harm. She stated that she believed that her actions have the potential to enhance public trust.

Witness Evidence

46 In addition, the Tribunal received oral evidence from the following witnesses on Dr Warner's behalf:

- Ms Caroline Hickman, psychotherapist in private practice and a lecturer in applied social studies and had a background in mental health social work, statement dated June 2024;
- Mr Johnathon Fuller, retired civil servant and public speaker on climate change, statement dated 29 November 2023; and
- Ms Melinda Janki, a SRA-registered non-practising solicitor in England and Wales and Attorney at Law in Guyana, statement dated December 2023.

Documentary Evidence

47 The Tribunal received the following statements in support of Dr Warner:

- Mr Christopher Holmquist, social worker, undated;
- Dr Hilary Farey, retired GP, dated 21 November 2023;
- Dr Kenneth Lyne, retired psychologist, undated; and
- Rabbi Jeffrey Newman, dated 29 November 2023.

48 The Tribunal also received the following documentary evidence:

- The Order of Mr Justice Lavender, dated 21 September 2021;
- The Order of Mr Justice Cavanagh, dated 24 September 2021;
- The Order of Mr Justice May, dated 1 October 2021;

- The Order of Mr Justice Holgate, dated 2 October 2021;
- The Order of Mr Justice Lavender, dated 19 October 2021;
- Approved judgment in National Highways Ltd National Highways Limited v Buse, dated 15 December 2021;
- Committal Order of Lord Justice Dingemans and Mr Justice Johnson, dated 16 December 2021;(first committal)
- Approved judgment in National Highways Limited v Springorum and Others, dated 2 February 2022;
- Committal Order of Lord Justice William Davis, dated 2 February 2022;(second committal)
- Certificate of Conviction, dated 31 May 2023;(conviction)
- MG5 Police Summary, dated 6 June 2022;
- Witness statement of Ms Ana Heyatawin, dated 24 April 2024;
- Correspondence between various Government departments and Dr Warner, dated May and July 2012;
- Correspondence between the GMC and Dr Warner, dated between May and June 2019;
- 21 emails of various dates July 2024 and 5 emails of various dates in August 2024 and further emails received by the GMC in support of Dr Warner; (support emails)
- Lancet Countdown report on Health and Climate, dated 14 November 2023;
- World Health Organisation articles on Air Pollution and Health, various dates;
- BMJ Article ‘A lack of quality statistics is hiding the real heatwave death toll’, dated 14 May 2024;
- Statement from Michel Frost, UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, dated 23 January 2024;
- BBC Article ‘Climate change: Deadly African heatwave ‘impossible’ without warning’, dated 18 April 2024;
- Good Law Project Article, ‘Injunctions – how afraid should we be?’, dated 29 June 2023;
- Journal of International Criminal Justice Article ‘Resisting the State Crimes of the Global North’, dated 2024;
- BMA Article ‘BMA votes to protect medical professionals from GMC sanctions for activism’, dated 24 June 2024;
- Change.org petition ‘Help medical professionals keep their jobs while acting on the climate crisis’, undated;
- CrowdJustice fundraiser ‘Support medics who raised the alarm on the climate emergency’, dated July 2024;
- BMJ Article ‘Scarlett McNally: Shared learning and trust are a gift from patients’, dated 21 May 2024;

- BMJ Article, 'How to deliver equitable access to the best possible care', dated 23 May 2024;
- BMJ Article, 'Political dimensions of misinformation, trust, and vaccine confidence in a digital age', dated 20 June 2024; and
- Friends of the Earth Article, 'Judgement finds Government's climate plan 'unlawful' – again', dated 3 May 2024.

Submissions

On behalf of the GMC

49 On behalf of the GMC, Ms Widdett submitted that Dr Warner's two committals to prison amount to misconduct, both individually and taken together. She further submitted that Dr Warner's fitness to practise is impaired by reason of misconduct and conviction.

50 With regard to the misconduct and conviction, Ms Widdett reminded the Tribunal that it is not entitled to go behind the findings of the High Court or Magistrates Court, including the finding that Dr Warner's criminal conduct undermined the 'rule of law'. Ms Widdett accepted that there are no concerns about Dr Warner's clinical capabilities and submitted that the issues in this case relate to conduct in her personal life, although this was clearly closely linked to her status as a doctor, as set out in her witness statement.

51 With regard to the misconduct, Ms Widdett submitted that the incidents are a serious departure from the standards and conduct expected of Dr Warner as set out in paragraphs 1 and 65 of Good Medical Practice (2013) ('GMP 2013').

52 Ms Widdett further referred to the GMC web page titled '*Doctors taking part in protests or other forms of activism*' (30 July 2024) ('the GMC web page'), which identifies the factors which may indicate that regulatory action would be taken against a doctor involved in protests. She submitted that the following factors are present in this case: risks harm to others or damage to property, involves persistent or repeated breaches of the law (civil or criminal) including relevant court orders, and results in a custodial or high sentence (which reflects the court's assessment of the seriousness). Ms Widdett submitted that there is no '*de facto blanket restriction on the ability of doctors to participate in acts of civil disobedience without risking their careers*' as set out by the Good Law Practice, and that each case is taken on its own merits. She further submitted that the subject matter of the protest is not a relevant consideration for this Tribunal to take into account, as set out in the GMC web page which states that '*the nature of a protest that a doctor was taking part in when the events took place is not a relevant consideration*'.

53 She further submitted that Dr Warner's conduct on 27 October 2021 meets the threshold for serious misconduct for the following additional reasons:

- (a) Dr Warner was committed to prison for an immediate 2-month term. This reflects the seriousness with which the High Court treated her breach of the order of Mr Justice Lavender.
- (b) She, '*.. caused the resources of the police to be diverted from other police work to the policing of the protests*' Notably, the police arrived at 9am, 20 minutes after the protest started
- (c) '*Dr Warner made a deliberate decision to impact as many ordinary members of the public as possible*'
- (d) '*She had behaved without restraint*'
- (e) '*She had effectively sacrificed the interests of other members of the public, who wanted to get to work, keep appointments, and see friends and family, to her own desire to get publicity for her cause*'.
- (f) '*The disruption to other members of the public was very substantial...At one time the length of queueing traffic measured about 4 km...*'

54 She also submitted that Dr Warner's conduct on 29 October 2021 also meets the threshold for serious misconduct for the following additional reasons:

- (a) There was a risk of physical harm to others.
- (b) There was the potential to cause a serious traffic incident.
- (c) Dr Warner knew that her actions would require police attendance, diverting officers from other policing functions and potentially putting them at risk. Notably, the police arrived after the protest had started.
- (d) There was a risk that emergency services would not be able to respond.
- (e) Her conduct was designed to cause significant disruption and inconvenience, targeting important national infrastructure during rush-hour on a weekday.
- (f) She made a free and deliberate decision to breach the order, knowing that the consequence might be imprisonment.
- (g) Dr Warner was committed to prison for 30 days, which reflects the seriousness of her conduct.
- (h) The impact on motorists was significant. The protest took place on a weekday morning rush-hour for a period of 40 minutes. There was congestion for 3-4 miles in both directions. Average speeds were reduced to 3mph on the eastbound carriageway, and 27mph on the westbound carriageway.
- (i) Workers would be late for work.

55 In summary, Ms Widdett submitted that Dr Warner's misconduct can properly be described as deplorable by fellow medical practitioners, and she has brought the medical profession into disrepute.

56 With regard to Dr Warner's conviction, Ms Widdett submitted that Dr Warner's immediate custodial sentence of 12 weeks reflected the seriousness of her conviction for criminal damage. She further submitted that her actions were pre-planned, deliberate, caused damage and resulted in significant disruption. Ms Widdett submitted that the following factors from the guidance on doctors taking part in protests are relevant: involves undermining the rule of law, involves persistent and repeated breaches of the law (civil or criminal) including relevant court orders, and results in a custodial or high sentence (which reflects the court's assessment of the seriousness). Finally, she submitted that Dr Warner's conviction can only properly be described as deplorable by fellow medical practitioners and brings the medical profession into disrepute.

57 With regard to impairment, Ms Widdett submitted that Dr Warner's conduct could have been easily remediated by her promising this Tribunal that she will abstain in future from the breaking court orders and/or the law, when present. However, she refused to do this, and she referred to evidence provided by Dr Warner in which it was stated that Dr Warner '*intends to continue protesting to draw attention to the climate emergency, should see both the need and a clear purposeful way forward that involves protests which may break the law either intentionally or unintentionally*'. She further reminded the Tribunal that in her oral evidence, Dr Warner stated that she had no current plans to protest but could not assure the Tribunal that she would not act unlawfully in the future. Ms Widdett submitted that there is therefore a high risk of repetition in Dr Warner's case.

58 With regard to insight, Ms Widdett submitted that during cross-examination about the protest on 29 October 2021, Dr Warner had accepted that there was a risk, which she was prepared to take, of causing physical harm to others, causing a serious road traffic incident, or that emergency services would not be able to respond. She referred the Tribunal to Dr Warner's witness statement, in which she stated, '*it was intended the protest was disruptive in order to force the critical agenda*'.

59 Ms Widdett submitted that Dr Warner has poor insight into the consequences of her actions and their impact on public confidence. Ms Widdett submitted that Dr Warner does not accept that she should have behaved differently, nor does she accept that she should follow the law and comply with orders of the

court, despite the potential consequences for others. Ms Widdett submitted that Dr Warner has not apologised and continues to believe that she is above the law. Ms Widdett further submitted that Dr Warner did not accept that she has departed from GMP 2013, nor did she accept that she has brought the medical profession into disrepute. Ms Widdett submitted that Dr Warner is not prepared to engage in a dialogue with this 'court' about how she will behave differently when protesting in the future.

60 In summary, Ms Widdett submitted that public confidence in the profession and its system of regulation would be undermined if a finding of impairment were not made. She submitted that a finding of impairment was required to protect, promote, and maintain the health, safety and well-being of the public with regard to the potential risk to public safety created by the two incidents of road blockage. Further, she submitted that a finding of impairment was required 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.

Dr Warner's Submissions

61 Dr Warner submitted that her actions do not amount to misconduct and her fitness to practise is not impaired. She submitted that all her actions were acts of peaceful resistance undertaken while holding utmost respect for the rule of law and would be accepted as such in a well-functioning democracy.

62 Dr Warner submitted that the portion of the public which does not agree with her actions is rapidly diminishing into a small minority as they begin to experience the effects of climate change. She submitted that the scale of the problem posed by climate change is huge, urgent, and requires immediate and authoritative action. She further submitted that if such action is not taken, then loss of trust in government and those in positions of trust will result and have a permanent effect on children and young people.

63 Dr Warner submitted that doctors are held as especially trustworthy by the public and are tasked with looking after the public's health, both implicitly and by statute. She submitted that the impact of doctors' failure to act on climate change will damage trust in the profession. She referred the Tribunal to Ms Hickman's evidence on the impact of climate change on young people. Dr Warner submitted that this amounts to a safeguarding issue which runs to the heart of medical practice and is yet unaddressed. She submitted that ensuring the GMC acts on this issue is the immediate concern of these proceedings, whatever the verdict on her fitness to practise.

64 Turning to the GMC submission that her actions were a departure from paragraph 1 of GMP (2013), Dr Warner submitted that GMP makes a distinction between those articles that contain the word 'must' and those that do not. She submitted that is no 'must' in paragraph 1, however she agreed with and has always followed paragraph 1, save for the final clause 'within the law'. She stated:

'I continue to follow this part of article 1. These attributes of a doctor are vital and very rarely will contradict each other. As Ms Janki has detailed, there are times when it becomes impossible to fulfil these parts of article 1, and other fundamental duties of a doctor such as safeguarding. It may become necessary not to act in accordance with rule by law. There are times when to always act within the law will result in failure of your duties as a doctor. This precept is recognised by The American Medical Association, which specifies that when ethics and the law are in conflict, a doctor should usually follow the ethical route.'

65 Dr Warner referred in her oral evidence to the impact the proceedings have had on her emotional state and submitted that the line the GMC has taken, regarding climate protesters who have received a conviction or committal, that doctors must obey the law no matter what, is dangerous and damaging.

66 With regard to paragraph 65 of GMP (2013) and public confidence in the profession, Dr Warner denied that she has damaged public confidence in the profession. She submitted that she has been clear that her actions were evidence based and intended to save lives and promote health. She submitted that she has provided extensive evidence which shows that she has maintained trust in the profession and noted the BMA support for Dr Benn and others facing regulatory action for protests, BMJ articles, and emails received from the public in support of her position.

67 Turning to the criminal damage conviction, Dr Warner submitted that she did not challenge the rule of law, as the judge stated, but her intention was in fact to uphold the rule of law. She referred to the opinion of Ms Janki that *'Dr Warner's actions are fully in harmony with the values upon which the rule of law rests.'* Dr Warner reminded the Tribunal that her co-defendant in this case, Ms Heyatawin, had her sentence overturned on appeal and received a conditional discharge. She submitted that she was unable to appeal her conviction for circumstances beyond her control while she was serving her prison sentence. Moreover, she submitted that she had been advised by her solicitor that her sentence could be extended upon her appeal. She submitted that while she had received a sentence of 12 weeks imprisonment, the Tribunal should consider that this was due to her continuing

resistance by making use of the publicity, not the seriousness of the offence, and the Tribunal should therefore take that into account when considering the overall seriousness of the conviction.

68 With regard to the protests for which she was committed to prison, Dr Warner submitted that while there was a risk of harm, no harm was caused. She further referred the Tribunal to the decision of the judge in a hearing on 17 March 2023 where she was found not guilty of criminal charges relating to an earlier protest on the M25, *'Although I find that the protest caused significant disruption to a large number of people, I have not been provided with evidence of any grave consequences being caused to any individual person or business over and above the sort of inconvenience that is routinely caused by delays on the M25, such as those caused by accidents or other obstructions entering the road.'*

69 She submitted that no evidence of harm was cited by either judge at the committal hearings. Dr Warner submitted that while she accepted a very small risk to a small number of people regarding a possible road traffic accident, which would in any case be minor due to the slow speed of traffic, she did not accept that there was any wider risk to the public. She noted that ambulances and other emergency vehicles are routinely diverted, and they usually avoid the M25 during busy periods, or use the hard shoulder which remained available to them. Dr Warner submitted that the Insulate Britain protests were effective in pressing the issue of climate change and that the bulk of adverse effects were felt by the protesters themselves.

70 Dr Warner submitted that on each occasion, rather than committing misconduct, she was acting to uphold the right to life and acted in accordance with the rule of law. She submitted that her actions were part of a legitimate and peaceful civil resistance taken to force action that can potentially save a billion or more lives. She submitted that a functioning democracy must allow such actions and that the suppression of such rights to protest seriously undermines the functioning of democracy in a state. She submitted that her actions were a necessary progression following more than 20 years of efforts made both on her own and with others, as well as the failure of multiple agencies and governments to protect human life and the natural world. She submitted that her actions were taken because the UK government has failed and is failing to protect the public from the present and future dangers to health and are not safeguarding even the most fundamental of human rights, the right to life. She submitted that the evidence she has provided proves that the earth is at risk beyond doubt.

71 Dr Warner referred the Tribunal to the written submissions as prepared by the Good Law Project and her witness Ms Janki. She submitted that these show that

she has not caused a loss of trust in the profession. Dr Warner submitted that not all of the public agree with doctors taking a necessary medical intervention that may be unpopular for example, vaccination programmes. She submitted that there is growing evidence that her actions have increased public trust in the profession. She further referred to Ms Janki's submission that the GMC is required to take action in relation to fossil fuel pollution and other major public health threats in accordance with its obligations to public health under the Medical Act 1983. Dr Warner submitted that she has tried, in the past, to persuade the GMC of its responsibility to act on climate change and has lobbied the Council repeatedly but had no success.

72 In summary, Dr Warner submitted that the evidence shows beyond doubt that the public are extremely worried about climate change and other existential threats. She submitted that avoidance and failure to deal with the threats, and pathologising their health effects will compound the harm and amount to moral injury. She submitted that her physical and public interventions have given children and young people hope. She submitted that the lack of unity within the medical profession erodes trust in the profession and this is due to the GMC's failure to fulfil its duties to public health rather than her actions as a whistleblower.

The Relevant Legal Principles

73 The Legally Qualified Chair of the Tribunal gave legal guidance to the Tribunal as set out below. The Tribunal was referred to the overarching objective contained within the Medical Act (1983), as set out above.

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

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

76 In terms of misconduct, the Tribunal considered whether there has been a departure from the expected standards of conduct and behaviour. The Tribunal's attention was drawn to paragraphs 1 and 65 from GMP (2013), as a result of the facts admitted found proved in this matter, which GMC says are the expected standards from which there has been a departure. If the Tribunal find that there had been a departure from expected standards of conduct and behaviour, it considered whether that departure was serious in order to justify a finding of misconduct. Dr

Warner had also drawn the Tribunal to her position in terms of paragraph 1 and 65 of GMP (2013).

77 The Tribunal's attention was also drawn by Dr Warner to the Solicitors Regulation Authority's ('SRA') Guidance on 'Convictions arising from matters of principle or social conscience' (published 1 September 2022). This explains that a criminal conviction for acts of nonviolent civil disobedience will not automatically result in disciplinary action, but that each case will be considered on its own facts. The GMC comments on this Guidance are noted that this is not the relevant regulatory guidance applicable to Dr Warner's fitness to practise tribunal but submitted the Guidance was not inconsistent with the GMC position in any event. The Tribunal noted the GMC web page titled 'Doctors taking part in Protest or other forms of activism' 30 July 2024.

78 The Tribunal were also reminded of the case *Cuadrilla Bowland Ltd v Persons Unknown* [2020] EWCA Civ 9, in particular para [97] and [98] which relates to how committal for civil disobedience falls into a different category than other disciplinary proceedings and that sanction for committal proceedings are different in nature than other offences.

79 The Tribunal was advised that 'misconduct' has no statutory definition. It is a matter for the judgement and experience of the Tribunal. The Tribunal was referred to the guidance on 'misconduct' in *Remedy UK Ltd v GMC* [2010] EWHC 1245 in which Elias LJ derived the following principles from the authorities:

'Misconduct is of two principal kinds: (1) Firstly it may involve sufficiently serious misconduct in the exercise of professional practice such as it can properly be described as misconduct going to fitness to practice; (2) second it can involve conduct of a morally culpable or otherwise disgraceful kind which may and often will occur outside the course of professional conduct itself but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession.'

80 Conduct falls into the second limb of Elias LJ's dicta if it is dishonourable or disgraceful or attracts some kind of opprobrium; that fact may be sufficient to bring the profession of medicine into disrepute. It matters not whether such conduct is directly related to the exercise of professional skills. The Tribunal was also reminded of the guidance on this matter provided in the case of *Cheatle v GMC* [2009] EWHC 645 (Admin).

81 Misconduct has been defined as a word of general effect, ‘*involving some act or omission which falls short of what would be proper in the circumstances*’ and that ‘*the standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances*’ as per Lord Clyde in *Roylance v GMC (no 2)* [2000] 1 AC 311.

82 The Tribunal was advised that whilst the word ‘serious’ did not appear in the Medical Act 1983, it was made clear in *Meadow v General Medical Council* [2006] EWCA Civ 1390 that misconduct could be found where a doctor’s actions fell seriously short of the standards expected of a competent practitioner.

83 The Tribunal was reminded that when considering conduct within a registrant’s personal/private life, it should, ascertain which (if any) ethical standards are relevant to the registrant's conduct. The content of the obligation(s) to act within any applicable ethical standard (including the obligation to act with integrity) or to maintain trust in the profession, needs to be defined by reference to the rules of regulation/standards that are relevant to the alleged misconduct. *Ryan Beckwith v Solicitors Regulation Authority* [2020] EWHC 3231 (Admin)

84 The Tribunal was reminded that in a conviction case, a registrant cannot re-litigate the conviction as to the facts. The Tribunal should form its own view of the gravity of the conviction and its relevance to the professional standing of the registrant and therefore their fitness to practise. *Wray v General Osteopathic Council* [2020] EWHC 3409 (QB).

85 If a finding of misconduct is made, the Tribunal must then determine whether Dr Warner’s fitness to practise is impaired today, taking into account Dr Warner’s conduct at the time of the events and any relevant factors since then such as whether the matters are remediable and the likelihood of repetition.

86 The Tribunal was reminded that whilst there is no statutory definition of impairment. The Tribunal was referred to 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 927 (Admin) (‘*Grant*’). In particular the Tribunal should consider whether its finding of facts showed that Dr Warner’s fitness to practise is impaired in the sense that she:

‘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 likely 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

...’

87 The Tribunal noted that in relation to insight and remediation the case of *Cohen v General Medical Council* [2008] EWHC 581 (Admin) ruled that at the impairment stage, which require the Tribunal to consider: a. whether the conduct can be easily remediated; b. whether it has been remediated; and c. whether there is a risk of repetition.

88 Tribunal was reminded that In *Nicholas-Pillai v GMC* [2009] EWHC 1048, Mitting J at paragraph [18] stated that the attitude of a practitioner to the allegations made and any admissions of responsibility for the misconduct should be taken into account as relevant factors in determining whether or not fitness to practise has been impaired

89 The Tribunal also bore in mind the case of *General Medical Council v Meadow* [2006] EWCA Civ 1390 in which it was held: ‘...the purpose of FTP proceedings is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The FTP thus looks forward not back. However, in order to form a view as to the fitness of a person to practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past.’

Tribunal’s Determination on Impairment

Misconduct

90 The Tribunal first considered whether paragraphs 1, 2 and 3 of the Allegation amounted to serious misconduct. The Tribunal first considered whether Dr Warner’s actions constituted a departure from paragraph 1 of GMP (2013):

‘1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.’

91 The Tribunal considered Dr Warner's evidence that for her, acting within the law had become irreconcilable with her duty to protect patients. This was because the climate crisis was a health crisis and that as a doctor, she believed she had a duty to protect patients and public health, even if that meant that she broke the law.

92 The Tribunal acknowledged the written and oral evidence provided by Dr Warner and supported by the witness statement provided by Rabbi Newman. This referred to the impact that being a second-generation Holocaust survivor had made in both her decision to become a doctor and her belief when she stated in her witness statement that you cannot rely upon government to keep you safe. She also stated in her oral evidence that '*...you cannot blindly follow the law...*'

93 The Tribunal also acknowledged both Dr Warner's family history and her long personal journey into the study of climate change, her role in raising awareness of the threat of climate change and the activities she has taken part in to raise awareness, including being a member and parliamentary candidate for the Green Party. The Tribunal accepted that she has very strong genuinely held beliefs and that she and her witnesses assisted this Tribunal in providing detailed evidence in support of those beliefs and the risk to public health both physical and mental health and the threat to the planet and humanity. The Tribunal does not doubt that Dr Warner holds her beliefs sincerely and it respects Dr Warner's right of freedom of expression. The Tribunal therefore acknowledged Dr Warner's desire to raise awareness of climate change on public health grounds.

94 The Tribunal were also mindful of the submissions made by Dr Warner and evidence in support regarding what she considered to be the inadequate response of government, the media and other organisations and individuals in failing to address the issues of climate change, fossil fuel consumption and the impact on public health in a sufficiently urgent timescale.

95 The Tribunal also noted the extensive lawful and peaceful action Dr Warner has undertaken as a climate change campaigner, and it found that she had the opportunity to, and did, engage in peaceful and lawful activism. However, the Tribunal did not accept that breaking the law in the manner in which she did so was the only option remaining to Dr Warner in order to act in her patient's best interests and protect public health when raising her concerns about climate change. The Tribunal therefore found that Dr Warner was not justified in breaking the law regardless of her beliefs.

96 The Tribunal did not accept Dr Warner's submissions that there is a '*de facto blanket restriction on the ability of doctors to participate in acts of civil disobedience*

without risking their careers.' The Tribunal noted that each case is to be decided on its merits. The Tribunal noted that this Tribunal was not convened in the matter of Dr Warner merely because she chose to take part in climate change and other protests, or acts of civil disobedience per se, but because she acted in the repeated and deliberate manner that led to the two committal orders being made against her leading to time in prison on two separate occasions and the conviction and sentence resulting in the Allegation.

97 Whilst the Tribunal were referred to GMC 'guidance' *'Doctors taking part in protests or other forms of activism'* (30 July 2024), the Tribunal noted that this was not labelled as guidance but was rather a website article of the same title *'Doctors taking part in protests or other forms of activism'* (30 July 2024). Furthermore, it was not available to Dr Warner at the time of the Allegation and was therefore not considered relevant to the Tribunal's assessment of whether Dr Warner had engaged in misconduct.

98 The Tribunal was mindful that Dr Warner's conduct in the Allegation had not occurred in the course of her professional life, and it took into account the evidence provided that there were no concerns about her clinical practice. However, it noted Dr Warner's evidence that she felt she had breached the Order and engaged in the protests as part of her duty as a doctor to safeguard human life. Therefore, the Tribunal found that, by her own admission, these actions had not been solely related to her private life. In Dr Warner's own evidence there was a direct link between her role as a doctor and her actions.

99 The Tribunal therefore found that Dr Warner had clearly failed to adhere to paragraph 1 of GMP (2013) on the two occasions she deliberately and with pre-meditation breached the Order.

100 The Tribunal next considered whether Dr Warner's actions constituted a departure from paragraph 65 of GMP (2013):

'65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.'

101 The Tribunal considered the evidence provided by Dr Warner which showed that there is a portion of the public who support her actions. The Tribunal noted the fundraisers for legal fees, petitions, and a recent decision by the British Medical Association ('BMA') to support doctors facing similar proceedings, although this was not a unanimous decision and some doctors spoke against the BMA motion. The Tribunal accepted that this evidence does show that some members of the public

support Dr Warner. The Tribunal noted the support emails were all anonymised, did not state that the providers had been provided with a copy of the Allegation, were unsigned with no statement of truth included and had not been validated by the GMC upon receipt as they arrived too late in the regulatory process. It was also apparent to the Tribunal that the authors of these emails were all strong supporters of Dr Warner and were not, therefore, a representative sample of the public at large. The Tribunal noted that while several emails made mention of Dr Warner's imprisonment and conviction, not all of them did so. For this reason, the Tribunal attached limited weight to the support emails in terms of assessment of the public's trust and confidence in the actions of Dr Warner in the Allegation.

102 It further bore in mind that the general public are largely aware of climate change and concerned about the apparent inaction in tackling it from government and corporations. However, it noted the opinion of Lord Justice Dingemans and Mr Justice Johnson, which sets out the significant disruption caused to the public because of the protest which Dr Warner was involved in on 27 October 2021. It further considered that there was a significant risk to public safety, protestor safety and the safe progression of emergency services during the protests. The judgement of 15 December 2021 stated:

'The defendants had effectively sacrificed the interests of other members of the public, who wanted to get to work, keep appointments, see friends and family, to their own desire to get publicity for their cause and their sincerely held beliefs about what needs to be done. ... So far as harm is concerned on 27 October 2021 the disruption to other members of the public was very substantial, as appears from the affidavit and the oral evidence of. The Queen Elizabeth II Bridge was disrupted from the time of the protest which started at about 0900 hours to 1030 hours. At one time the length of queueing traffic measured about 4 km. There were substantial queues of traffic on the roundabouts and the slip roads which then backed up to the M25, although it is fair to record that the peak flows of traffic were before the protest started and were caused by usual traffic conditions. It is apparent that more widespread disruption was avoided by the speed and excellence of the police response to the protest that morning. However, the costs of the police response must have been very substantial. The protesters have caused the resources of the police to be diverted from other police work to the policing of the protests.'

103 The Tribunal further noted the opinion of Lord Justice William Davis and Mr Justice Johnson with regard to the impact of the protest on 29 October 2021:

'The westbound carriageway of the M25 was blocked by the protestors during a weekday morning rush-hour for a period of 40 minutes. There was no incursion into the eastbound carriageway, but the presence of protestors on the verge meant that the police closed the carriageway as a precautionary measure. There was a significant impact on motorists. There was congestion for 3-4 miles in both directions. Average speeds were reduced to 3mph on the eastbound carriageway, and 27mph on the westbound carriageway. There was, we accept, the potential to cause a serious traffic incident.'

104 The Tribunal noted Dr Warner's oral evidence, in which she stated that she had weighed the risks in her mind before protesting and had made a '*horrendously difficult*' decision to engage in the protests. The decisions to take part and accept the risk to herself, other protesters and the public were so difficult that Dr Warner explained that they had an impact on both her physical and mental health. The Tribunal found that while some members of the public may agree with Dr Warner's decision to engage in the protests despite the risks, a portion of the public would be extremely concerned by a medical practitioner deciding to put the public at risk, no matter the motivation. The Tribunal also noted the further risks she was willing to take when she decided to stand and wave a flag to prevent a train entering the Drax power station rather than attend at her first committal hearing and the impact that had on both her own safety but also that of the train driver and anyone else on the train or who witnessed her protest.

105 The Tribunal further considered that Dr Warner's actions resulted in two findings of contempt of court which, as set out above, are a clear departure from paragraph 1 of GMP (2013) and the obligations of a medical practitioner.

106 The Tribunal determined that a portion of the public would be shocked to learn that a medical practitioner had failed to adhere to GMP (2013) repeatedly and deliberately, while putting members of the public at risk, or at the very least, at a severe inconvenience. The Tribunal noted that there have been no concerns raised regarding Dr Warner's clinical capabilities. However, the Tribunal determined that Dr Warner's decision to take unlawful action may lead some patients to question her judgement and therefore it may damage patients trust in her as a medical practitioner.

107 Even if the Tribunal accepted Dr Warner's submission that there was a shift in public thinking in that a greater and ever-increasing proportion of the public were now understanding the impact of climate change and the need for governments to

act urgently to address the issues and the resulting harm to public health and the planet, the Tribunal decided that such an ongoing shift in public opinion does not mean that the majority of the public would therefore condone Dr Warner's actions. The Tribunal decided that it is unacceptable for doctors, who are held in high regard, to act in a repeatedly unlawful manner and to make conscious deliberate decisions to put other sections of the public at risk during protests.

108 In terms of the conviction, whilst there is no need for the Tribunal to make a new finding of misconduct for matters relating to a conviction, the Tribunal considered that the circumstances giving rise to the conviction and the resulting sentence were also relevant for the Tribunal in its decision making regarding a breach of paragraph 65 GMP (2013). This was because the Tribunal considered that Dr Warner's actions in taking part in the 'Disobedience in the Dock' protest campaign, which caused delay and disruption to court hearings, damage to property and injury to a police officer (albeit not directly caused by Dr Warner) in pursuit of a cause, regardless of how important they considered such a cause to be would not be acceptable to the public.

109 The Tribunal decided that the public would expect doctors to act in a manner which upheld the reputation of the profession. Furthermore, that doctors, in making decisions how to address their concerns about climate change and their wish to protect public health, do so in a manner that was within the law and in accordance with their professional standards (GMP). Whilst the Tribunal accepts that the public do not require doctors to be 'paragons of virtue' and there may be occasions when they break the law either consciously or inadvertently and in exceptional circumstances with justification that do not amount to misconduct that is serious this was not one of those cases. The Tribunal considered that the serious nature of the actions leading to the breaches of the Order amount to civil disobedience in this case. Dr Warner's subsequent decisions to not only breach the Order on two occasions but to disregard the process of the administration of justice that she had decided that her role as an activist placed her above not only the law but the legal process when she decided to use the court hearing time and her failure to attend as a way to attract greater publicity to her cause. This showed a disregard to the rule of law. The Tribunal decided that such actions by Dr Warner would breach the public's trust in her as a doctor and bring medical profession into disrepute.

110 The Tribunal therefore found that, although there is a range of public opinion on Dr Warner's actions, a portion of the public would feel that she had failed to adhere to the standards of behaviour expected of a medical practitioner, and

therefore she had failed to adhere to paragraph 65 of GMP (2013). For the avoidance of doubt, the Tribunal decided that even in the absence of the conviction Dr Warner's committals would still have amounted to a failure to adhere to paragraph 65 of GMP (2013).

111 When considering the seriousness of the misconduct, the Tribunal considered each incident individually and the course of conduct as a whole. In relation to each of the protests on 27 and 29 October 2021, the Tribunal found that the following factors increase the seriousness of Dr Warner's actions: there was a risk of physical harm to others, there was the potential to cause a road traffic incident, police resources were diverted from other matters to deal with the protest, there was a risk that emergency services may be unable to respond to emergencies, and significant disruption and inconvenience were caused. The Tribunal were not swayed by Dr Warner's submissions that it is the police's job to police protests in any event or that because there was no evidence provided of actual harm occurring that the risk is in some way retrospectively alleviated. Nor did the Tribunal accept her submissions that road traffic incidents would be minimal due to the slow-moving traffic or that emergency vehicles were regularly rerouted on the M25 for other reasons.

112 The Tribunal further noted that Dr Warner was committed to prison for two months on the first occasion and 30 days on the second. The Tribunal found that these were substantial periods of time which reflected the Judge's view of the seriousness of the breaches of the Order. The Tribunal further considered that the length of these terms of imprisonment reflect that on both occasions Dr Warner had failed to attend the entirety of the court proceedings and had instead capitalised on the publicity generated by the protests to engage in further disruptive actions, at Drax and outside the Court.

113 The Tribunal also noted that some of Dr Warner's co-defendants had received suspended sentences following the protests on 27 and 29 October 2021, in both the first and second committal proceedings. However, Dr Warner's decision to not attend the start of both committal hearings and instead take part in further acts of protest using the court hearings to raise the profile of her cause had been taken into consideration when the decisions were made to order immediate committal as opposed to suspended committal orders for Dr Warner. The Tribunal decided that this reflected the serious nature of her deliberate and repeated decisions to act in the way she did.

114 The Tribunal found that Dr Warner had failed to adhere to paragraphs 1 and 65 of GMP (2013) by repeatedly and deliberately breaching the Order. The Tribunal further found the breaches of the Order resulted in committal to prison and severe disruption which posed a risk to public safety. The Tribunal therefore found that Dr Warner's actions at paragraphs 1, 2 and 3 of the Allegation amounted to misconduct.

Conviction

115 The Tribunal considered whether the nature of the conviction was so serious in Dr Warner's case as to lead to impairment. The Tribunal was mindful that not all convictions result in a finding of impairment.

116 The Tribunal found that Dr Warner's actions in gluing herself to the glass in the Stratford Magistrates court was a deliberate, planned course of action called 'Disobedience in the Dock' intended to cause disruption to the court and waste its time. The Tribunal noted Dr Warner's evidence that she considered carefully the consequences of her actions and was well aware of the risk of imprisonment. The Tribunal was concerned that there were others involved in the disorder and that a police officer was injured.

117 The Tribunal found that Dr Warner's conviction was a clear departure from paragraphs 1 and 65 of GMP (2013).

118 The Tribunal therefore concluded that Dr Warner had been convicted of a criminal offence which had the potential to seriously undermine patient's trust in Dr Warner and public trust in the medical profession.

Rule of Law

119 Whilst the Tribunal noted the submissions of Dr Warner and Ms Janki, that Dr Warner's actions set out in the Allegation were necessary to uphold the rule of law, this was not accepted by the Tribunal. The Tribunal found that, given her departures from GMP (2013), her actions set out in the Allegation amounted to a breach of the rule of law. The Tribunal determined that it is not for Dr Warner to select what laws are applicable to her and what laws are not, nor which causes justify her breaking the law.

Impairment

120 The Tribunal, having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct which it found serious and a conviction, Dr Warner's fitness to practise is currently impaired.

121 The Tribunal had regard to Dame Janet Smith’s formulation, as set out in *Grant*, in its assessment of impairment. The Tribunal determined that, having found that Dr Warner has failed to adhere to paragraphs 1 and 65 of GMP (2013), Dr Warner has, in the past, brought the medical profession into disrepute, and has, in the past, breached a fundamental tenet of the profession, namely the requirement to act within the law.

122 The Tribunal then made its assessment as to whether Dr Warner is liable in the future to bring the medical profession into disrepute and in the future to breach its fundamental tenets. In making its assessment of the risk of repetition, the Tribunal had regard to Dr Warner’s current insight into her misconduct and any remediation of her misconduct.

123 The Tribunal then considered whether Dr Warner has shown insight into her misconduct and conviction. The Tribunal noted that throughout her oral and written evidence, Dr Warner was steadfast in her assertion that she was justified in breaking the law. Further, she stated repeatedly that the consequences were a price worth paying for the opportunity to put pressure on the government in the days leading up to COP26 and gain publicity for the issue of climate change. She stated as follows:

‘In relation both to the breaches of the injunction, and the criminal damage charge, I gained nothing personally from the protests. In fact, I was willing to compromise my own liberty in going to prison. I was and am willing to do this. In fact, I believe I had to do this to meet my professional responsibilities, my duties to my family, patients, the public, starting with the sworn promise to the baby. I recognise there is often a price to pay for this sort of act and I have been willing to pay it. I have always accepted the consequences of my actions – what I did broke national law and I knew the potential consequences.’

124 The Tribunal accepted that it was Dr Warner’s genuinely held belief that she was acting in the best interest of public health. However, the Tribunal found that Dr Warner’s evidence indicated a lack of insight on her part. For example, Dr Warner asserted that her unlawful acts had more impact, and were therefore justified, because she is a medical practitioner:

‘Although I do not draw attention to the fact that I am a doctor in order to seek to leverage my position in any way, the fact is that I am a doctor and I am solely motivated to safeguard the public’s health. People who become aware of my actions are also well aware that as a medical doctor I am motivated on their behalf and for the health of their families. They also know that I am reasonably intelligent, caring, and thoughtful. My acts of resistance

therefore do have more weight than actions of a lay person, and people do think more carefully about them.'

125 The Tribunal was further concerned that Dr Warner was unable to understand why others might view her behaviour as wrong, despite her admissions to breaking the law on several occasions. In her written submissions, she stated:

'Perhaps my greatest barrier to success is that I find it difficult to fathom how some people seem to have no insight at all into what I see so clearly.'

126 The Tribunal found that this statement reflected the evidence which Dr Warner gave. The Tribunal decided that Dr Warner has poor insight into the consequences of her actions and their impact on public confidence. Dr Warner has not accepted that she should have behaved differently, she does not accept that she should follow the law and comply with orders of the court despite the potential consequences for others. Dr Warner did not accept that she had departed from GMP (2013) or accept that she had brought the medical profession into disrepute. In fact, she believes that she has enhanced the public trust in the medical profession by her actions. The Tribunal decided this evidenced a lack of insight. The Tribunal therefore found that Dr Warner has very limited insight into her misconduct and conviction.

127 The Tribunal then considered remediation. It bore in mind that this misconduct and conviction would be remediated if the Tribunal was sure that Dr Warner would not act in the same way again. The Tribunal noted that Dr Warner has served her terms of imprisonment as per the two committal orders and the prison sentence arising from the conviction and is no longer subject to any other imprisonment or sentencing requirements. However, the Tribunal found that there is no evidence of remediation before it. The Tribunal noted that Dr Warner had not offered any apology, nor had she provided any assurances to this Tribunal that she would refrain from breaking the law in pursuit of future protests. In fact, Dr Warner has been candid in stating that she would act outside of the law in the future if she felt it was necessary. The Tribunal noted that Dr Warner had made an undertaking to the Court not to breach the Order, and she remained committed to that undertaking as she stated that was a personal promise that she had made to the court, and she felt bound by such a personal promise. However, she was not prepared to agree that she would not carry out other unlawful acts of protest in the future.

128 The Tribunal then considered the risk of repetition. The Tribunal took in account Dr Warner's assertion that she is prepared to act outside of the law in the future, if she deems it necessary, and further, it has found that she has extremely limited insight into her actions and why some members of the public would find

them unacceptable. The Tribunal therefore found that there is a significant risk of repetition.

129 In view of its findings that Dr Warner lacks insight and has not remediated her misconduct, and Dr Warner's indication that she cannot rule out the possibility of acting illegally in the future, the Tribunal determined that Dr Warner is liable, in the future, to bring the medical profession into dispute, and is liable, in the future, to breach fundamental tenets of the profession.

130 The Tribunal has therefore determined that Dr Warner's fitness to practise is currently impaired. The Tribunal concluded that a finding of impaired fitness to practise is also necessary 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.