

PUBLIC RECORD

Dates: 28/01/2021

Medical Practitioner's name: Dr Adrian Marsden
GMC reference number: 2980146
Primary medical qualification: MB BS 1984 University of London
Type of case MPT - Preliminary

Tribunal:

Legally Qualified Chair	Mrs Emma Boothroyd
Lay Tribunal Member:	Ms Bronwen Cooper
Medical Tribunal Member:	Dr Stephen Duxbury

Tribunal Clerk:	Ms Jan Smith
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Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Carlo Breen, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Preliminary Matters - 28/01/2021

1. This preliminary hearing was convened in order to consider an application made by Dr Marsden for his substantive hearing, scheduled to commence on 1 February 2021, to be held entirely in private.
2. In an email to the GMC on 5 January 2021, Dr Marsden outlined the reasons for his application. Primarily, he was concerned about the impact a public hearing would have on his family, XXX. Dr Marsden explained that it was likely that a public MPTS Tribunal hearing would rekindle the press and public's interest in his case and would have an adverse effect on his family and possibly be upsetting to former vulnerable patients. Dr Marsden submitted that there was no overriding public interest in having the hearing in public and the public interest would be served by the outcome of his removal from the register.
3. Mr Breen submitted that Dr Marsden's substantive hearing should be held in public. It was his contention that it was not enough for Dr Marsden to point to the adverse effects of a public hearing. Mr Breen reminded the Tribunal that the facts of Dr Marsden's conviction are already known to the public and it is important that the public is informed about the action his regulator is taking and the sanction that may be ultimately imposed.
4. Mr Breen stated that Dr Marsden's desire to protect his family is understandable and cannot be disregarded. However, he referred to Rule 41 which concerns the attendance of the public. He submitted that Rule 41 makes it clear that all Tribunal hearings should be heard in public unless there are particular circumstances which outweigh the public interest. He submitted that none of the applicable exceptions under Rule 41 would apply to this case.
5. Mr Breen submitted that, at the time of the offences which resulted in the conviction, Dr Marsden was working in a position of trust. He committed serious crimes and the public interest dictates that his professional regulator should not be prevented from bringing those matters to a public hearing by virtue of the fact that XXX would be affected by a public hearing.
6. Mr Breen submitted that it would be an unacceptable precedent for any doctor who has committed serious crimes and is subsequently convicted to say that the public should

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not be made aware of the details of any regulatory proceedings because of the impact on their family.

7. Mr Breen referred to the two aspects on which Dr Marsden has made his application, namely XXX and the safeguarding of his family, and he stated that these are not sufficient for the entire Tribunal hearing to be heard in private. XXX. Furthermore, his case has already been heard in a Magistrates' Court in public and that it is in the public interest for the regulatory proceedings to be held in public.
8. The Tribunal has borne in mind the legal advice provided, in particular the provisions of Rule 41 as set out below:

'Attendance of the Public

(1) Subject to paragraphs (2) to (6) below, hearings before the Committee and a Medical Practitioners Tribunal shall be held in public.

(2) The Committee or Medical Practitioners Tribunal may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the particular circumstances of the case outweigh the public interest in holding the hearing in public.

(3) Subject to paragraphs (4) to (6), the Committee or a Tribunal shall sit in private, where they are considering- (a) whether to make or review an interim order; or (b) the physical or mental health of the practitioner.

(4) Where it is considering an allegation or a non-compliance matter, the Medical Practitioners Tribunal may revoke an interim order in public.

(5) A Tribunal shall, where it is considering matters under paragraph (3)(a), sit in public where the practitioner requests it to do so.

(6) Subject to paragraph (5), the Committee or Tribunal may, where they are considering matters under paragraph (3)(a) or (b), hold a hearing in public where they consider that to do so would be appropriate, having regard to- (a) the interests of the maker of the allegation (if any); (b) the interests of any patient concerned; (c) whether a public hearing would adversely affect the health of the practitioner; and (d) all the circumstances, including the public interest.

(7) The Committee or Tribunal may deliberate in camera, in the absence of the parties and of their representatives and of the public, at any time.'

Tribunal Decision

9. The Tribunal has carefully considered all the documentation provided to it by the GMC and by Dr Marsden in deciding whether Dr Marsden's substantive hearing, commencing on 1 February 2021, should be held entirely in private. It has borne in mind that the starting point is that the hearing should be held in public. The Tribunal has also borne in mind the overarching objective.
10. XXX. The Tribunal accepted that a public hearing would be upsetting and stressful for Dr Marsden. XXX. In the circumstances the Tribunal did not consider that there was sufficient evidence about XXX to outweigh the public interest in holding the hearing in public.
11. The Tribunal had regard to the difficult circumstances that Dr Marsden has explained and took particular account of the letter from Ms A about the impact any media coverage of the hearing would have upon XXX. The Tribunal considered very carefully whether this would outweigh the public interest in holding the hearing in public. The Tribunal considered that it would undoubtedly be upsetting for XXX to have the details returned to the public domain, but the Tribunal did not consider that by itself it was a reason for holding the hearing entirely in private. XXX.
12. The Tribunal has taken into account all of the particular circumstances of this case. It has borne in mind that the serious matters in the case are already in the public domain. Dr Marsden's serious offences and his subsequent conviction are a matter of public record and have been widely reported. The GMC, Dr Marsden's professional regulator, has a duty to investigate these matters and it should be able to say, on a transparent basis, what regulatory action has been taken in serious matters of this kind. The effect of Dr Marsden's offences and subsequent conviction on his XXX family is not, in the Tribunal's view, sufficiently exceptional to outweigh the public interest in a public hearing.
13. The Tribunal has borne Rule 41 in mind. It is aware that a Tribunal can hear parts of a hearing in private session where confidential or sensitive matters are raised. The information relating to the doctor's XXX family circumstances can be heard in private and the Tribunal in the substantive hearing can take all necessary measures to protect personal information in respect of safeguarding issues. This will enable Dr Marsden to put forward such mitigating information and background matters which is of a confidential or

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sensitive nature in private session. The Tribunal considers that this is the appropriate balance and takes into account Dr Marsden's Article 6 and 8 rights and the public interest in transparent regulatory proceedings.

14. Accordingly, the Tribunal has refused Dr Marsden's application for his substantive hearing to be heard in private. It has determined that the hearing should be heard in public and that those matters relating to confidential or sensitive material may be heard in private subject to the discretion of the Tribunal considering the matter.

Confirmed

Date 28 January 2021

Mrs Emma Boothroyd, Chair

ANNEX A – 28/01/2021

Application on Service and Proceeding in the Absence of the Doctor

Service

1. Dr Marsden is neither present nor represented at this hearing. The Tribunal therefore considered whether notice of this hearing has been properly served in accordance with Rules 20 and 40 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004 (“the Rules”) and paragraph 8 of the Schedule 4 to the Medical Act 1983.

2. The Tribunal was provided with a copy of a service bundle which contained a number of documents including:

- a. A screenshot of Dr Marsden’s registered address and email address;
- b. A telephone note which detailed Dr Marsden’s request for all correspondence to be forwarded to two email addresses;
- c. The Notice of hearing issued by the MPTS on 23 December 2020;
- d. An email acknowledgement from Dr Marsden confirming receipt of the Notice of Hearing; and
- e. An email from Dr Marsden, dated 22 January 2021, confirming his non-attendance at today’s proceedings.

3. Mr Carlo Breen, Counsel on behalf of the GMC, referred to the documentation provided in the service bundle and submitted that it is clear that the Notice of Hearing has been served on Dr Marsden, he has acknowledged his receipt of the Notice of hearing and, therefore, service has been effected in accordance with the Rules.

4. In the circumstances, the Tribunal was satisfied that all reasonable efforts have been made to serve Dr Marsden with notice of this hearing in accordance with Rules 20 and 40.

Proceeding in Absence

5. Having determined that notice of this hearing has been properly served, the Tribunal went on to consider whether it would be appropriate to proceed with the hearing in Dr Marsden’s absence in accordance with Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.

6. The Tribunal noted Dr Marsden’s email to the MPTS and the GMC 22 January 2021 in which he confirmed that: XXX The MPTS responded to Dr Marsden on 22 January 2021 and invited him to submit an application to postpone, if he wished to do so. Dr Marsden has not

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responded to this email nor has he submitted an application to postpone today's proceedings.

7. Mr Breen invited the Tribunal to proceed in Dr Marsden's absence and reminded the Tribunal of relevant case law in this regard. He submitted that Dr Marsden is clearly aware of this hearing, has voluntarily absented himself and waived his right to attend. He reminded the Tribunal that there has been no formal application to postpone the hearing and that there is no evidence an adjournment now would serve any useful purpose or that Dr Marsden would attend at a later date. Mr Breen submitted, therefore, that it was fair and in the public interest for this preliminary hearing to proceed in Dr Marsden's absence.

8. The Legally Qualified Chair indicated the relevant legal principles to the Tribunal including:

- The nature and circumstances of the doctor absenting himself, in particular whether this was voluntary;
- Whether an adjournment would result in his attending on a subsequent occasion;
- The public interest that a hearing should take place expeditiously.

9. The Tribunal considered carefully all the information provided to it. It was satisfied that Dr Marsden has voluntarily absented himself from these proceedings and is content for the hearing to proceed in his absence. Further, it concluded that there was no evidence before it to indicate that an adjournment would secure his attendance at a later date.

10. The Tribunal was mindful that Dr Marsden had made the application for his substantive hearing to be held in private and this was due to commence on 1 February. The Tribunal determined that it was also in Dr Marsden's interests for the Tribunal to consider the matter in advance of the substantive hearing.

10. Taking into account the public interest, the Tribunal decided that it was fair and in the interests of justice to proceed with this hearing. Therefore, in accordance with Rule 31, the Tribunal has determined to proceed in Dr Marsden's absence.