

PUBLIC RECORD

Dates: 03/06/2024 - 05/06/2024

Medical Practitioner's name: Dr Atila MORLOCAN
 GMC reference number: 7463991
 Primary medical qualification: Doctor - Medic 2012 Titu Maiorescu
 University of Bucharest

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	No facts found proved	Consideration of impairment not reached

Summary of outcome

Adjourned to a new tribunal.

Tribunal:

Legally Qualified Chair	Mr Lindsay Irvine
Lay Tribunal Member:	Ms Sarah McAnulty
Medical Tribunal Member:	Mr Thomas George
Tribunal Clerk:	Ms Evelyn Kramer 03/06/2024 Mr Larry Millea 04 - 05/06/2024

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Ms Vivienne Tanchel, Counsel, instructed by CMS Law
GMC Representative:	Mr Ian Brook, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Application on behalf of Dr Morlocan for the Tribunal to recuse itself - 05/06/2024

1. At the outset of proceedings, prior to the GMC commencing its case, Ms Tanchel, counsel on behalf of Dr Morlocan, made an application for the Tribunal to recuse itself on the basis that the contents of the bundles of documents produced by the GMC had not been properly redacted and contained information which parties had agreed should be redacted, and which the Tribunal had seen. The Tribunal had also been provided with, and read, allegations against Dr Morlocan which the GMC had indicated it would be withdrawing at the outset of the case.

Submissions

On behalf of Dr Morlocan

2. On behalf of Dr Morlocan, Ms Tanchel provided written submissions to the Tribunal.

3. Ms Tanchel submitted that the fundamental and inescapable issue in this case was the sheer volume of prejudicial material which had been placed before the Tribunal and which it had read, and that the extent of the required redactions changes the very essence of the case now faced by Dr Morlocan.

4. She submitted that each prejudicial document/assertion in of itself creates the very real risk that a fair-minded observer would consider that the Tribunal could not approach the remaining allegations with an objective mind, and that the situation is aggravated by the cumulative effect of these.

5. She submitted that the entire scope of the case has changed and that the remaining allegations concern only alleged clinical failings in respect of two patients six years and three years ago respectively, and an allegation of dishonesty in relation to one event.

6. She submitted that the now redacted prejudicial material is particularly offensive in light of the allegations of dishonesty faced by Dr Morlocan and that allegations 7-9 are of the utmost severity, which if found proven, may have a very significant impact on Dr Morlocan's ability to practice medicine. She submitted that it is therefore imperative that his credibility and reliability as a witness are not viewed or not perceived to be viewed through the prism of serious allegations now abandoned. She submitted XXX.

7. Ms Tanchel submitted that the significant and distinct features of this case which are relied upon in support of this application are as follows:

- The amount of material;
- The circumstances in which the material was made available to the Tribunal - namely unlike cases cited [in her submission] this is not a case involving unfortunate press coverage but rather it is material that was provided to the Tribunal with the express purpose of them being able to consider it in detail and with care in advance of the hearing. It is impossible to ascertain how it can now be asserted that it can now be simply disregarded;
- The material was also considered with care when assessing the application to stay allegations 7-9;
- The serious nature of the allegations faced;
- The direct link between allegations 7-9 and the material which has now been excluded - namely that XXX.

8. She submitted that the amount of material, the circumstances in which it was made available to the Tribunal, the fact that it has been read and considered in detail both in advance of the hearing and in consideration of the stay application makes it plain that there can be no remedy to a perception of bias in this case.

On behalf of the GMC

9. On behalf of the GMC, Mr Brook submitted that the GMC had considered Ms Tanchel's written submissions and the objective test and is of the opinion that the defence position is understandable and correct.

10. He submitted that the GMC, therefore, concede to the application for the Tribunal to recuse itself and for these proceedings to be relisted to a differently constituted Tribunal.

The Tribunal's Approach

11. In making its decision on whether it should recuse itself, the Tribunal had regard to the case of *Porter v Magill* [2002] 2 AC 357 which set out the test for bias and is:

'whether a fair minded and informed observer, having considered the facts, would conclude that the tribunal was biased.'

12. It also had regard to case of *R (Mahfouz) v GMC* [2004] EWCA Civ 233, in which the Court of Appeal held that there is no absolute rule that knowledge of any prejudicial material is fatal to the fairness of the proceedings and that the effect of such material must be considered in the context of the proceedings as a whole, including the likely impact of the oral evidence and the legal advice available.

13. The Tribunal also considered the case of *R (Short) v (1) Police Misconduct Tribunal (2) Chief Constable of Bedfordshire Police* [2020] EWHC 385 (Admin), in which Saini J referred to the cases of *Mahfouz* and *Subramanian v GMC* [2002] UKPC 64; [2003] Lloyd's Rep Med 69, as demonstrating that a professional panel was well capable of putting irrelevant and/or prejudicial matters out of its mind. Justice Saini said that it was likely to be a common occurrence that irrelevant, inadmissible or prejudicial material would be read or heard but said that the Police Misconduct Panel hearing Short's case were all people, *'well-placed to identify and ignore irrelevant and inadmissible material'*.

14. The Tribunal reminded itself that it must first identify all the circumstances which have a bearing on the suggestion that it could be biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the Tribunal was biased.

15. The Tribunal was mindful that there must be good reason for recusal and has borne in mind the submissions of both representatives.

The Tribunal's Decision

16. The Tribunal took into account the submissions of both parties and the relevant legal principles in reaching its decision.

17. It also considered Rule 29(2) of the GMC (Fitness to Practise Rules) 2004 as amended ('the Rules'), which states:

29(2) Where a hearing of which notice has been served on the practitioner in accordance with these Rules has commenced, the Committee or Tribunal considering the matter may, at any stage in their proceedings, whether of their own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as they think fit.

18. The Tribunal considered that in light of the applicable case law and the submissions made on behalf of both parties, it would be appropriate to allow the application and to recuse itself and adjourn the case to another Tribunal.

19. The Tribunal was satisfied that in the circumstances, taking into account the GMC's concession, a fair-minded and informed observer would conclude that there was a real possibility that the Tribunal was biased.

20. The Tribunal noted that parties proposed that the case be relisted to a differently constituted Tribunal, to hear Dr Morlocan's case in-person within the already scheduled timeslot if this could be accommodated.

21. The Tribunal therefore determined to grant Ms Tanchel's application to recuse itself, and to adjourn under Rule 29(2) of the Rules, for the case to be relisted to a differently constituted Tribunal in due course.

ANNEX A – 04/06/2024

Application on Abuse of Process

1. At the outset of the hearing, Ms Tanchel, Counsel for Dr Morlocan, made a preliminary application pursuant to Rule 17(2)(a) of the GMC (Fitness to Practise Rules) 2004 as amended ('the Rules') to stay paragraphs 7 to 9 of the Allegation as an abuse of process.

2. Paragraphs 7 to 9 of the Allegation are as follows:

Making a false statement to an inquest

7. Between 28 January 2019 and 11 February 2022, in the course of providing written and/or oral evidence to the inquest into Patient A's death, you falsely stated that:

- a. you had no further contact with Patient A's family after you met with Ms C on 7 August 2018;
- b. Patient A told you that he was taking Tramadol;
- c. Patient A told you that he had previously used fentanyl patches.

8. You knew when you made the statement described at:

- a. paragraph 7.a, that you had continued to exchange messages with Ms C via WhatsApp during August 2018 and September 2018;
- b. paragraph 7.b, that:
 - i. Patient A had not told you he was taking Tramadol;
 - ii. a false claim that Patient A was taking Tramadol supported your decision to prescribe stronger pain relief;
- c. paragraph 7.c that:
 - i. Patient A had not told you that he had previously used fentanyl patches;
 - ii. a false claim that Patient A had previously used fentanyl patches supported your purported belief that he was not 'opiate naïve'.

9. Your actions at:

- a. paragraph 7.a were dishonest by reason of paragraph 8.a;
- b. paragraph 7.b were dishonest by reason of paragraph 8.b;
- c. paragraph 7.c were dishonest by reason of paragraph 8.c.

Submissions

On behalf of Dr Morlocan

3. Ms Tanchel submitted that, in line with the principles of an abuse of process identified in criminal cases, the GMC's pursuit of paragraphs 7 to 9 of the Allegation should offend the Tribunal's sense of justice and propriety and would undermine public confidence in the regulatory process. She referred the Tribunal to the case of *Misra v General Medical Council (GMC)* [2003] 72 BMLR 108 (*'Misra'*). Ms Tanchel submitted that the circumstances of Dr Morlocan's case were analogous with those in *Misra*.

4. Ms Tanchel submitted that the dishonesty allegations were predicated on whether the Tribunal would accept or reject the evidence given by Dr Morlocan in respect of the substantive Allegation including: whether Patient A informed Dr Morlocan that he was taking Tramadol at the time he attended Accident and Emergency ('A&E') in July 2018; whether Patient A informed Dr Morlocan that he had previously taken fentanyl; and how often and when Dr Morlocan contacted Patient A's family during 2018. Ms Tanchel submitted that if Dr Morlocan maintains his defence as set out in evidence he gave to the Coroner, and the Tribunal accepts his evidence, paragraphs 7 to 9 could not be proven.

5. Ms Tanchel submitted that if, on the other hand, the Tribunal disbelieves Dr Morlocan on the issues set out above, the Tribunal will have to consider Dr Morlocan's failings on the basis that he prescribed fentanyl in an excessive dose to an opiate naïve patient. It will further have to set into context and consider findings of misconduct and current impairment based on ongoing alleged inappropriate contact with Patient A's family and that he had either been untruthful to the Tribunal on oath, or had misunderstood the information provided to him by Patient A or did not have a clear recollection of these events which took place almost six years ago.

6. She submitted that there is no jurisprudence which overrules or limits the scope of the Privy Council's judgment in *Misra* and so there is no support for the proposition that it is

ever appropriate or necessary in order for the GMC to discharge its statutory function, to add allegations which arise out of a doctor's conduct of their defence. She submitted that such an approach is oppressive and wrong in law.

7. Ms Tanchel submitted that such an approach falls foul of a presumption of innocence and reverses the well-established burden of proof. Moreover, she submitted, such an approach should not be permitted on public policy grounds as it creates the very real and significant risk that doctors will become reluctant to “defend” themselves properly and fully as is their right if any such defence is then relied upon to support further allegations. She submitted that the robust and unequivocal tone of Lord Scott in *Misra* could not make it more plain, that this practice shouldn't be permitted and is oppressive

8. Ms Tanchel submitted that, for understandable reasons of ill-health and concerns about cognitive function, Ms B was not attending these proceedings. Ms Tanchel submitted that Dr Morlocan was so significantly disadvantaged by not having the opportunity to cross-examine Ms B about her account as to what discussion was had during Dr Morlocan's consultation with Patient A that the only remedy was to stay paragraphs 7 to 9 of the Allegation.

9. Ms Tanchel submitted that unfairness is a spectrum and that the prejudice arises because of the serious consequences of having been found to have lied to a Coroner. She submitted that the question for the Tribunal to consider is whether or not it is unfair and oppressive to hear serious allegations when the GMC has no evidence to prove the allegation themselves. She submitted that to pursue these charges would be oppressive, and that there is a public interest against discouraging doctors from carrying out their professional obligations

On behalf of the GMC

10. On behalf of the GMC, Mr Brook submitted the GMC opposed the application and invited the Tribunal to dismiss the application for a stay. He submitted that there is no allegation of inappropriate prescribing of Tramadol before the Tribunal and that it would be shocking if these regulatory proceedings did not pursue the allegation of dishonesty. He submitted that public confidence would be undermined if an allegation of a doctor lying to a Coroner was not pursued.

11. Mr Brook submitted that the relevant facts must be proved first and that the Tribunal could infer that Dr Morlocan lied to the Coroner in respect of the above, as he wished to support his decision to prescribe stronger pain relief, and his purported belief that Patient A was not opiate naïve when prescribing the fentanyl, because he was concerned that his actions might be found to have contributed to/caused the death of Patient A.

12. Mr Brook submitted that the circumstances of this case are wholly different to those in the case of *Misra*. In that case, lies to the family and in instructions to a solicitor, if proved, would have taken the matter no further, whereas Dr Morlocan is alleged to have lied to the Coroner in order to seek to minimise any possible culpability for the death of Patient A. He submitted that alleged lies, on oath and/or under a declaration as to veracity, to a Coroner conducting a statutory enquiry into cause of death, in breach of paragraph 72 of Good Medical Practice (2013) (GMP), as set out below, is entirely distinguishable from *Misra*.

13. Mr Brook submitted that it is not oppressive, nor should it offend the Tribunal's sense of justice and propriety, to pursue allegations 7.b. & c. In his submissions Mr Brook accepted that allegation 7.a. was perhaps more akin to *Misra* principles, but submitted that the evidence was still given, in breach of GMP, and that it would not be oppressive to pursue that.

14. Mr Brook submitted that there is no falling foul of the presumption of innocence, nor any reversal of the burden of proof and that Dr Morlocan can still have a fair hearing without Ms B giving oral evidence or being cross-examined. He submitted that in any event, there are no exceptional circumstances requiring the rare step of a stay in regulatory proceedings, to be taken

The Relevant Legal Principles

15. The Tribunal acknowledged that there is no specific provision of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules') relating to abuse of process. It accepted the LQC's advice that there is legal authority that the common law remedy traditionally used in the criminal jurisdiction can apply to regulatory proceedings. It had regard to the case of *R v Maxwell* [2011] 4 All ER 941 ('*Maxwell*') from which the two limbs of the abuse of process argument advanced by Ms Tanchel originate, namely that:

1. It would be impossible to give the registrant a fair hearing

2. A hearing would offend the Tribunal's sense of justice and propriety in the circumstances of the case

16. In considering the application, the Tribunal had regard to the cases *Saluja* [2006] EWHC 2784 (Admin) and *R (Clinton) v GMC* [2017] EWHC 3304 (Admin) ('*Clinton*') which confirm that to impose a stay of proceedings in regulatory proceedings is exceptional. The Tribunal must consider all the circumstances which entails examining the Allegation and as set out in *Clinton*, whether '*the public interest in ensuring that standards are upheld and grave crimes are prosecuted is outweighed by the public interest in the integrity and fairness of the process.*'

17. The Tribunal was mindful that the burden of proof does not shift and remains with the GMC throughout the fact-finding stage of proceedings.

The Tribunal's Decision

18. The Tribunal had regard to the first limb of *Maxwell* noting Ms Tanchel's submission that, in the absence of Ms B, it would be impossible for Dr Morlocan to have a fair hearing in respect of paragraphs 7 to 9 of the Allegation.

19. The Tribunal bore in mind that the GMC was not seeking in this case to adduce any written statement or evidence from Ms B. It was seeking to withdraw paragraphs 3 to 6 of the Allegation in the absence of her being well enough to attend these proceedings. The Tribunal had not, in consequence, been invited to consider any hearsay application to adduce any of Ms B's evidence. The Tribunal noted also that Ms Tanchel was not seeking a stay of the whole Allegation. The GMC had confirmed that it would be putting its case in respect of paragraphs 7 to 9 of the Allegation based on the medical records and the evidence of Ms C, the daughter of Patient A and Ms B, who was attending.

20. In the absence of having received any evidence of Ms B, the Tribunal was unable to determine what Ms B would or could have contributed in support of the GMC's case. It was therefore unable to conclude the level of prejudice Dr Morlocan's defence would suffer by her absence.

21. The Tribunal was mindful that, at a later stage, it would remain open to Dr Morlocan's representatives to make any submissions about the inherent strength or weakness of the GMC's case, which the Tribunal noted, retained the burden of proof at all times.

22. The Tribunal was not satisfied that it could properly conclude, at this stage, whether or not the absence of Ms B and her evidence would have such a prejudicial impact on Dr Morlocan's case as to be exceptional and therefore warrant a stay due to abuse of process. It was not satisfied that the only remedy to ensure a fair hearing for Dr Morlocan, was at this preliminary stage of proceedings, to stay paragraphs 7 to 9 of the Allegation.

23. The Tribunal then considered the second limb of *Maxwell*. It had been submitted on behalf of Dr Morlocan that paragraphs 7 to 9 of the Allegation were oppressive and unnecessary, as found in the case of *Misra*.

24. The Tribunal considered the specific facts and circumstances in the case of *Misra* and in particular, it considered the similarities and differences between *Misra* and this case.

25. The Tribunal was not persuaded that *Misra* and the circumstances surrounding this case were analogous. In *Misra*, it was alleged that Dr Misra had acted dishonestly in respect of the complainant and his legal representatives. In the Tribunal's judgment, the circumstances of this case are qualitatively different from those in *Misra*. Paragraphs 7 to 9 of the Allegation allege that Dr Morlocan made false statements in another jurisdiction, an inquest, in which his conduct was bound by paragraph 72 of Good Medical Practice (2013) (GMP):

'72 You must be honest and trustworthy when giving evidence to courts or tribunals. You must make sure that any evidence you give or documents you write or sign are not false or misleading.

a You must take reasonable steps to check the information is correct.

b You must not deliberately leave out relevant information.'

The Tribunal noted that paragraph 5 of GMP states that *'You must'* is used for an overriding duty or principle, which therefore underlines the importance of the mandate in paragraph 72.

26. The Tribunal concluded that paragraphs 7 to 9 of the Allegation could not be considered similar to the allegations in *Misra* in which the Court held that *'the addition of the allegations of dishonesty in the present case was unnecessary and oppressive. The allegations added nothing to what would have been shown to be the degree of culpability of Dr Misra if*

the substantive allegations that he had declined to admit were found proved against him’. The Tribunal concluded that paragraphs 7 to 9 of the Allegation, due to their direct connection to a duty in GMP, add to the degree of culpability within the Allegation if they were to be found proved. As such, the Tribunal was not persuaded that paragraphs 7 to 9 of the Allegation, were oppressive and unnecessary in and of themselves.

27. The Tribunal was of the view that the public would expect scrutiny of a doctor’s conduct at an inquest, including an assessment of their truthfulness. It considered that the public would consider an allegation that a doctor had lied in another jurisdiction to be qualitatively different from an allegation that they had lied to their lawyers or a complainant as in *Misra*.

28. The Tribunal then considered whether paragraphs 7 to 9 of the Allegation were oppressive and unnecessary when taking into account the other substantive factual findings it would be required to make, before as submitted by Ms Tanchel, it could consider whether Dr Morlocan had acted dishonestly by giving false statements.

29. The Tribunal had regard to the whole of the Allegation taking into account the indication from GMC Counsel that he would be applying in due course, on behalf of the GMC, for paragraphs 3-6 to be withdrawn. In respect of paragraph 7a of the Allegation, the Tribunal could not identify any previous substantive paragraph of the remaining paragraphs of the Allegation that referred to Dr Morlocan’s contact with Patient A’s family after he allegedly met with Ms C on 7 August 2018. Further, the Tribunal was mindful that Ms Tanchel had conceded that there was a message in evidence that was dated later than 7 August 2018. In such circumstances, the Tribunal could not accept if allowed to proceed, and later be found proved, that paragraph 7a of the Allegation would unfairly increase the culpability of Dr Morlocan.

30. In respect of paragraphs 7b and 7c of the Allegation, the Tribunal again could not identify any previous substantive paragraphs of the Allegation that would render a finding in respect of what Dr Morlocan allegedly told the inquest about his consultation with Patient A to be oppressive, unnecessary and unfairly increase his culpability in the case.

31. The Tribunal had regard to the absence of any connected substantive findings and that Dr Morlocan was bound by a specific provision in GMP to tell the truth at Patient A’s inquest. In such circumstances, the Tribunal determined that its sense of justice and propriety was not offended by allowing paragraphs 7 to 9 of the Allegation to proceed.

32. In conclusion, the Tribunal determined to refuse the application made on behalf of Dr Morlocan to stay paragraphs 7 to 9 of the Allegation as an abuse of process.