

**Dates:** 25/02/2019 - 27/02/2019

**Medical Practitioner's name:** Dr Cathal STEELE

**GMC reference number:** 6051006

**Primary medical qualification:** MB BCh 2002 Queens University of  
Belfast

**Type of case**  
New - Conviction / Caution

**Outcome on impairment**  
Impaired

**Summary of outcome**  
Suspension, eight weeks

**Tribunal:**

Legally Qualified Chair	Mr Neil Dalton
Lay Tribunal Member:	Ms Elizabeth Daughters
Medical Tribunal Member:	Dr Farhan Munawar

Tribunal Clerk:	Mr Rowan Barrett Mr Michael Murphy (27 February 2019 only)
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**Attendance and Representation:**

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Ms Fiona Horlick, Counsel, instructed by Ryan Solicitors
GMC Representative:	Ms Rebecca Vanstone, Counsel

## **Record of Determinations – Medical Practitioners Tribunal**

### **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 Facts and impairment - 26/02/2019**

#### **FACTS**

##### **Background**

1. Dr Steele qualified in 2002 and, at the time of the events which have led to this hearing, had been working as a Consultant Clinical Immunologist at NHS Tayside.
2. In 2017, Dr Steele moved XXX from Northern Ireland to a new home in Dundee. XXX
3. Between 4 September 2017 and 29 January 2018, Dr Steele assaulted XXX, Person A, by punching him on the head and body and striking him on the body with a shepherd's crook. Also between those dates, he assaulted XXX, Person B, by repeatedly slapping him on the face and head.
4. The assaults XXX resulted in Dr Steele being charged with assault and appearing before the criminal court where he pleaded guilty. As a result, his case was disposed of by Dundee Sheriff Court on 10 April 2018 by way of Admonishment and Dismissal.

##### **The Outcome of Applications Made during the Facts Stage**

5. At the outset of the hearing, Ms Horlick on behalf of Dr Steele made an application under Rule 41(2) for those parts of the hearing which relate to information which may identify the victims of the offences to be heard in private. The Tribunal determined to grant this application. The Tribunal's full decision on the application is included at Annex A.

##### **The Allegation and the Doctor's Response**

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1. On 10 April 2018 at Dundee Sheriff Court you were convicted of an assault on:
  - a. person A; **Admitted and found proved**
  - b. person B. **Admitted and found proved**
2. On 8 May 2018 in respect of the convictions referred to at paragraph 1 you were dismissed with an admonition. **Admitted and found proved**

And that by reason of the matters set out above your fitness to practise is impaired because of your conviction. **To be determined**

### The Evidence

6. The Tribunal received a bundle of documents from the GMC, including:
  - Self-referral email to the GMC from Dr Steele dated 5 February 2018
  - Letter from counsellor at NHS Tayside dated 24 April 2018
  - Charge Sheet dated 8 May 2018
  - Letter from NHS Tayside dated 17 September 2018
  - Extract of Conviction dated 25 May 2018
  - Responsible Officer Statement from Professor C dated 13 February 2019
  - Letter from XXX dated 22 October 2018
7. The Tribunal also received a bundle of documents from Dr Steele, which included but was not limited to:
  - Report of Dr D,XXX, dated 31 January 2019
  - Letter from XXX dated 22 October 2018
  - Letters from Ms E, XXX dated 24 April 2018 and 23 January 2019
  - Letter from Dr F, Consultant Clinical Scientist and Clinical Director for Diagnostics dated 21 February 2018
  - Letters from Dr G, Consultant Clinical Scientist and Clinical Lead dated 21 February 2018 and 26 October 2018
  - Letter from Dr H dated 19 February 2018
  - Letter from Dr I, Consultant in Biomedical Medicine (undated)
  - Email from Dr J, Clinical Care Group Director dated 1 February 2019
  - Witness statements of: Dr Steele, Mrs K, Mr L and Dr M
  - Dr Steele's CV
  - Letter from XXX dated 22 October 2018
  - Various testimonials
  - Evidence of CPD

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8. In addition to his witness statement, Dr Steele provided his own reflective statement and also gave oral evidence to the Tribunal.

### **The Admitted Facts**

9. At the outset of these proceedings, through his counsel, Ms Horlick, Dr Steele admitted the Allegation in its entirety, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

## **IMPAIRMENT**

### **Submissions**

10. Ms Vanstone, on behalf of the GMC, submitted that Dr Steele's fitness to practise is currently impaired by reason of his convictions for assault. She said that a finding of current impairment was entirely necessary therefore on public interest grounds, and that public confidence would be undermined if a finding of impairment was not made.

11. In support of her submission, she reminded the Tribunal of the terms of the overarching objective. Namely:

- To protect, promote, and maintain the health, safety, and well-being of the public;
- To promote and maintain public confidence in the medical profession;
- To promote and maintain proper professional standards and conduct for members of that profession.

12. Ms Vanstone cited paragraph 65 of Good Medical Practice ('GMP') which states:

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

She said that, by his actions, Dr Steele was in breach of this.

13. In addition, she reminded the Tribunal that the Sanctions Guidance ('SG') draws attention to the particular seriousness of conduct in a doctor's personal life which involves XXX and/or violence (Paragraph 56.)

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14. In considering the circumstances in which the assaults took place, she submitted that these were not uniquely stressful ('it's simply life'), and that – when the Tribunal considered the risk of such behaviour in future – stressful situations are likely to arise again for the doctor.

15. In summary, Ms Vanstone submitted that a warning in this case 'doesn't go anywhere near far enough' and she reminded the Tribunal of the Grant decision. Viz:

*'It is essential, when deciding whether fitness to practice is impaired, not to lose sight of the fundamental considerations; namely the need to protect the public and the need to declare and uphold proper standards of conduct and behavior so as to maintain public confidence in the profession.'*

[*CHRE v NMC and Grant* [2011] EWHC 927 [Admin] at paragraph 71]

and:

*'Do the findings of fact in respect of the doctor's conviction show that his fitness to practice is impaired in the sense that he:*

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

[*Ibid* at paragraph 76]

16. She submitted the Tribunal could find that the allegation here required a finding of impairment, therefore, on public interest grounds.

17. Ms Horlick submitted on behalf of Dr Steele that his fitness to practice is not currently impaired.

18. She said that (1) any risk of repetition of such behavior was so low as to be negligible and (2) a finding of impairment was not necessary to uphold public confidence.

19. Referring to the conduct forming the subject of the allegation, she submitted the following:

- It did not occur in a clinical setting, and fell outwith his professional work.

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- It arose in an 'absolutely unique' set of XXX circumstances (a 'perfect storm' which, given the changes since that time, would not arise again).
- The victims did not sustain any physical injuries.

20. More generally, she drew the Tribunal's attention to the following:

- Dr Steele self-referred to the GMC immediately on being charged by the police, pleaded guilty before the criminal court, and was given the lowest form of sentence. He also admitted the facts before this Tribunal.
- Numerous testimonials describe him as being gentle and kind in nature. The behavior forming the subject of the allegation was wholly out of character.
- Since the assaults happened, Dr Steele has been through a thorough process of remediation and learning – as set out in detail in the case papers – and that process has been successful, XXX Dr Steele now has complete insight, in Ms Horlick's submission.
- Moreover, Dr Steele also has coping mechanisms which enable him to anticipate when like difficulties could occur in future and techniques to de-escalate them.
- Ms Horlick drew the Tribunal's attention to Dr D's report of 31 January 2019, and his conclusion that Dr Steele was fit to practice.
- Ms Horlick said Dr Steele had been remorseful and ashamed by his actions. She concluded that the 'public interest' reason for finding an impairment had already been satisfied as a result of the criminal conviction and admonishment, and as a result of the GMC investigation and Tribunal hearing.

21. In conclusion, she said that while the Tribunal might decide that it could issue a warning in due course, an impairment finding was not justified.

### **The Relevant Legal Principles**

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

23. In exercising its own judgement the Tribunal has had regard to the statutory overarching objective, set out above.

24. It noted that it must be 'highly relevant' in determining if a doctor's fitness to practice is impaired 'that first his or her conduct which led to the charge is easily remediable, second that it has been remedied, and third that it is highly unlikely to be repeated'.

[*R (on the application of Cohen) v GMC [2008] EWHC 581 (Admin)* at paragraph 65]

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25. The Tribunal also noted that the attitude of the practitioner to the events that give rise to the specific allegations against is, in principle, something which can be taken into account either in his or her favour or against him or her by the Tribunal, both at the stage when it considers whether that practitioner's fitness to practice is impaired, and at the stage of determining what sanction should be imposed upon that person.

[*Nicholas-Pillai v GMC* [2009] EWHC 1048 [Admin] at paragraph 19]

26. The Tribunal reminded itself of the words used in the case of Grant:

*'It is essential, when deciding whether fitness to practice is impaired, not to lose sight of the fundamental considerations; namely the need to protect the public and the need to declare and uphold proper standards of conduct and behavior so as to maintain public confidence in the profession.'*

[*CHRE v NMC and Grant* [2011] EWHC 927 [Admin] at paragraph 71]

*'Do the findings of fact in respect of the doctor's conviction show that his fitness to practice is impaired in the sense that he:*

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

[*Ibid* at paragraph 76]

### The Tribunal's Decision

27. The Tribunal noted that the circumstances in which the assaults occurred, as described by Dr Steele XXX, were testing; and that he was certainly experiencing XXX difficulties and other stressors at the time. XXX

28. The Tribunal noted, further, the many favourable testimonials, personal and professional, provided on Dr Steele's behalf attesting to his good character.

29. Moreover, the Tribunal bore in mind the persuasive evidence that, since being charged by the police in relation to these events he has (quite apart from admitting the matters in the criminal courts and before this Tribunal) undergone a detailed process of remediation. This involved a period of reflection XXX; as well as (so it is suggested) a greater capacity to identify stressors and to de-escalate stressful situations.

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30. It considered very carefully all such evidence in these matters, including the comments by Professor C, Dr Steele's Responsible Officer:

*'During the period of the Police investigation, subsequent prosecution and awaiting GMC Tribunal [...] NHS Tayside have required Dr Steele to keep regular contact with senior clinical management. This has mostly taken the form of a meeting with the Medical Director or his deputy.*

*Since May 2018 the above meetings have been with myself as Deputy Medical Director.*

*XXX*

*Dr Steele has also received help from three supportive colleagues from within NHS Tayside, with whom he has shared his problems, remorse and insight.*

*During meetings with myself he has shown profound, and I believe, heartfelt regret for his actions*

*Dr Steele has also shared his revalidation MSF. He is described as 'approachable', 'insightful', 'thoughtful', 'valuable colleague', 'thorough' and generally appears to be highly valued.*

*There are no concerns with respect to his clinical practice.*

*Dr Steele provides Clinical Immunology services. The impact of Dr Steele not being able to fulfil this role would be relatively profound. I believe he represents 25% of Scotland Clinical Immunologists. Certain aspects of care would not be able to be delivered within the region. We would need to restructure clinical activities of the department to try and source service some cross-cover from other specialities within the region or from immunologists from Aberdeen or Edinburgh. We perceive there will not be able [sic] to access locum cover for his duties.'*

31. The Tribunal considered Dr Steele's remorse and apology, and his willingness to change, as articulated in his written and oral evidence, to be entirely sincere.

32. Nevertheless, the Tribunal was unequivocal in its view that the facts set out in the allegation were serious. As Dr Steele himself said in oral evidence to the Tribunal, the public would be 'horrified' about his conduct XXX. He acknowledged that the public would be alarmed that he could have behaved so.

33. To recap, his conduct involved assaulting XXX on more than one occasion. On one of those occasions he had, in effect, used a weapon. XXX

34. XXX

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35. In considering GMP, the Tribunal found that Paragraph 1 was engaged (the requirement to act within the law) as well as paragraph 65 (ante).

36. The Tribunal also noted that the seriousness of such conduct in a doctor's personal life is clearly reflected in the SG at paragraph 56.

37. The Tribunal considered carefully the submission on Dr Steele's behalf that the risk of repetition was so low as to be negligible. However, the Tribunal considered that, while the evidence suggested the risk was low, it could not adopt Ms Horlick's submission that it was so low as to be negligible.

38. XXX

39. Reflecting therefore on all these matters, and reminding itself of Grant (paragraphs 71 and 76 *Ibid*), the Tribunal determined that Dr Steele's fitness to practise is currently impaired.

### **Determination on Sanction - 27/02/2019**

1. Having determined that Dr Steele's fitness to practise is impaired by reason of conviction, the Tribunal has now considered what action, if any, it should take with regard to Dr Steele's registration.

2. In doing so, the Tribunal has given careful consideration to all of the evidence adduced at the facts and impairment stages, together with submissions made by Ms Vanstone, on behalf of the GMC, and Ms Horlick, on behalf of Dr Steele.

### **Submissions**

3. Ms Vanstone submitted that the appropriate sanction in this case would be one of suspension. She submitted that there are no concerns about Dr Steele's clinical practice and that the basis of his impairment was on public interest grounds. She acknowledged that there was a low risk of repetition.

4. Ms Vanstone submitted that 'take no action' would not be appropriate as there are no exceptional circumstances and that conditions would not be workable or appropriate.

5. Ms Horlick submitted that a short period of suspension would satisfy the public interest. Such a sanction would not interfere with his capacity to be able to deliver clinical care, nor his ability financially to support his family.

6. She informed the Tribunal that Dr Steele has apologised XXX; that he had provided excellent testimonials in relation to his clinical work; and that the conduct has not happened before or since. She submitted that Dr Steele has provided

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evidence that he has asked for help and advice from a lot of people, and she reminded the Tribunal that he admitted his actions to the court and to this Tribunal. She also submitted that Dr Steele has kept his knowledge and skills up to date and has engaged with all of the matters addressed in the SG in relation to remediation.

7. Ms Horlick referred the Tribunal to the references and testimonials in support of Dr Steele and stated that they were targeted at the concerns the Tribunal is addressing and were made in full knowledge of the facts. She submitted that Dr Steele has made full and sincere expressions of regret and apology, has displayed insight,XXX. She referred the Tribunal to Paragraph 58 of the SG and suggested that it give considerable weight to the Responsible Officer's statement.

8. Ms Horlick then turned to the question of the suitability of suspension as an appropriate sanction, and said that the conduct the Tribunal was looking at was captured by paragraph 91 - 93 and 97 (a) (b) (f) (g) of the SG.

9. Turning to the length of suspension, she submitted that any suspension should be for a very short period, bearing in mind the kind of work Dr Steele does. She drew particular attention to the correspondence from Dr G dated 22 February 2019 which described the effect that suspending Dr Steele would have upon the immunology services and thereby upon the public. In conclusion she submitted that a very short period of suspension would be appropriate in this case, and that a review hearing would not be necessary.

### **The Tribunal's Approach**

10. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement.

11. In reaching its decision, the Tribunal has taken account of the Sanctions Guidance (2018) and Good Medical Practice (2013). It has borne in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although it may have a punitive effect.

12. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Steele's interests with the public interest. It has taken account of the statutory overarching objective, which includes the protection of the public, the maintenance of public confidence in the profession, and the promoting and maintaining of proper professional standards and conduct for members of the profession.

13. The Tribunal has already given a detailed determination on facts/impairment and has taken those matters into account during its deliberations on sanction.

### **Mitigating and Aggravating factors**

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14. The Tribunal first identified the following mitigating factors in this case:

- Dr Steele understands the seriousness of the circumstances which formed the subject of the allegation, and has displayed complete insight into this;
- It was clear from all the evidence in the defence bundle, and the statement from the responsible officer, that Dr Steele is adhering to important principles of good practice;
- The Tribunal noted, in its facts/impairment determination, the particular circumstances ( including the personal matters) which formed the context to his conviction, and considered that these had some mitigating force;
- The Tribunal also noted that the matters forming the subject of the Allegation had never happened before and have not occurred since;
- It was clear to the Tribunal that Dr Steele - having identified the matters that he needed to address in terms of remediation – had gone on to take timely and full steps (after the intervention of the police/XXX) to address these matters. XXX In addition, he has developed a support network around him, as set out in the written evidence, and as he articulated further in his oral evidence to the Tribunal;
- He has co-operated with formal enquiries relating to the assaults. In this regard he pleaded guilty at the criminal court, and admitted matters before the Tribunal;
- The Tribunal was particularly impressed with his very full and persuasive reflective statement, and likewise impressed with how he developed its themes in his evidence before the Tribunal;
- Finally, the references and testimonials provided by Dr Steele were uniformly excellent. The Tribunal noted that these had been made by their authors in full knowledge of the facts relating to his conviction and targeted at the Tribunal’s concerns.

15. In summary, the Tribunal considered that there was powerful mitigation in Dr Steele’s case. His expressions of regret and apology were fulsome and judged by the Tribunal to be sincere. It considered that, to repeat, Dr Steele has complete insight.

16. Turning to the aggravating features, the Tribunal considered that few of the factors set out in the SG (paragraphs 50 – 56) applied. Nevertheless, the Tribunal considered that particular features of Dr Steele’s conduct were, of themselves, aggravating. The reasons for this are set out at paragraphs 32 to 36 of the Tribunal’s facts/impairment determination.

### **The Tribunal’s Determination on Sanction**

17. The Tribunal considered each sanction in ascending order of seriousness, starting with the least restrictive.

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### **No action**

18. The Tribunal first considered whether to conclude this case by taking no action. However, the Tribunal determined that there were no exceptional circumstances that would justify this.

### **Conditions**

19. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Steele's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

20. Reflecting on this, the Tribunal determined that, given the nature of its concerns and the basis for its finding of impairment, conditions would not be appropriate in this case.

### **Suspension**

21. The Tribunal determined that the appropriate sanction in this case would be one of suspension.

22. Dr Steele's conduct represented a departure from proper standards of conduct and behaviour, and went directly to the issue of eroding public confidence in the profession. Against that background, the Tribunal considered that a period of suspension would have a deterrent effect and could be used to send out a signal to Dr Steele, the profession, and the public about what is regarded as behaviour unbecoming a registered doctor. A period of suspension is appropriate in this case because it has involved conduct leading to a conviction on Dr Steele's part that is serious but falls short of being fundamentally incompatible with continued medical registration.

23. In reaching this determination, the Tribunal was satisfied that a number of the factors set out in paragraph 97 of the SG are engaged. In particular, sub paragraphs (a), (e), (f) and (g). The reasons for this are set out above at paragraph 14.

24. The Tribunal went on to consider the length of the suspension, taking into account the SG in that regard.

25. It considered there was no objective basis to identify risk to public safety/public protection. Therefore, it determined that a suspension for a period of 8 weeks would be sufficient to address the impairment and to signal that Dr Steele's conduct had represented a departure from proper standards of conduct and behaviour, and went to the issue of eroding public confidence in the profession.

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26. The Tribunal went on to consider very carefully whether to direct a review hearing. In this regard it reminded itself of SG paragraphs 163 – 171, in particular paragraph 164.

27. On full reflection, the Tribunal determined that, given the specific features of this case, unusually a review hearing was not necessary.

28. In reaching this view, in bore in mind the following:

- Dr Steele already had full insight into his conduct;
- He had expressed sincere, fulsome and persuasive apologies and remorse. It was plain that he fully appreciated the gravity of his offence;
- It also considered that his remediation had been extensive and that he had put into place a network of contacts to help him, moving forward. XXX

29. In all the circumstances, the Tribunal was clear that there was no objective evidence that patients would be placed at risk if Dr Steele returned to unrestricted practice following suspension without a review hearing. Therefore, a review hearing would serve no useful purpose, in the Tribunal's assessment.

30. The effect of the foregoing direction is that, unless Dr Steele exercises his right of appeal, his registration will be suspended 28 days from the date on which written notice of this decision is deemed to have been served upon him. A note explaining his right of appeal will be sent to him.

### **Determination on Immediate Order - 27/02/2019**

1. Having determined to suspend Dr Steele's registration for a period of eight weeks, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Steele's registration should be subject to an immediate order.

### **Submissions**

2. On behalf of the GMC, Ms Vanstone, Counsel, told the Tribunal that the GMC made no application for an immediate order.

3. Ms Horlick, Counsel, acting on behalf of Dr Steele, stated that in the light of the GMC's position, she had no submissions to make.

### **The Tribunal's Determination**

4. In deliberating on the matter, the Tribunal took into account the paragraphs of the Sanctions Guidance (February 2018) which deal with the matter of immediate orders, in particular paragraph 172 which states:

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*172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*

5. The Tribunal had regard to the principle of proportionality and balanced Dr Steele's interests with the public interest. It was of the view that the substantive suspension of eight weeks was sufficient to uphold public confidence in the profession and to promote and maintain proper professional standards and conduct. The Tribunal has found no risk to patient safety in this case, and is satisfied in these circumstances that an immediate order is not necessary to protect the public interest.

6. This means that Dr Steele's registration will be suspended 28 days from when written notice is served upon him, unless he lodges an appeal. If Dr Steele does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

7. The interim order currently imposed on Dr Steele's registration is revoked.

8. That concludes this case.

**Confirmed**

**Date** 27 February 2019

Mr Neil Dalton, Chair

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**ANNEX A – 25/02/2019**

**Application to hear the evidence partly in private**

1. XXX