

PUBLIC RECORD

Dates: 15/09/2022 - 21/09/2022

Medical Practitioner's name: Dr Colin WILSON
GMC reference number: 0848488
Primary medical qualification: MB BS 1963 University of London

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Consideration of facts not reached	Consideration of impairment not reached

Summary of outcome

Voluntary erasure

Tribunal:

Legally Qualified Chair	Mr Nicholas Flanagan
Lay Tribunal Member:	Mrs Carrie Ryan-Palmer
Medical Tribunal Member:	Dr Ranjana Rani
Tribunal Clerk:	Mr John Poole 15 – 16 September 2022 Mr Edward Kelly 20-22 September 2022

Attendance and Representation:

Medical Practitioner:	Not present and represented
Medical Practitioner's Representative:	Mr Ravi Gupta, the Medical Protection Society
GMC Representative:	Ms Katie Jones, 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 Voluntary Erasure - 21/09/2022

1. This determination will be handed down in private as matters relating to XXX are mentioned. However, as this case concerns alleged misconduct, a redacted version will be published at the close of the hearing with those matters relating to XXX removed.

Application for Voluntary Erasure

2. Dr Wilson did not attend the hearing and was not represented when the matter was first listed on the 15 September 2022. However, Dr Wilson's wife was in attendance at the Hearing as a supporter. The Tribunal noted that the Allegation dated from October 2013 and therefore enquired as to why it was considering allegations from nine years ago and the reasons for any delay. The GMC asked for time to take instruction and provide responses to the Tribunal's queries, which was granted.

3. Dr Wilson's representative, Mr Ravi Gupta of the Medical Protection Society, joined the Hearing around noon on the 15 September 2022 and provided an explanation to the Tribunal for Dr Wilson's absence, namely XXX. Mr Gupta also explained that due to XXX, he had limited instructions and was only instructed to receive communications from the MPTS and GMC, as well as to make a voluntary erasure ('VE') application.

4. In response to the Tribunal's request, the GMC supplied it with details of the chronology of events, previous MPTS determinations and XXX. The Tribunal was informed of the following events regarding the Allegation:

October 2013	-	events behind the present Allegations
Early 2014	-	complaint made to GMC, investigation began – including the obtaining of an expert report
22 December 2014	-	GMC closed investigation
28 April 2020	-	GMC informed Dr Wilson of intention to re-open investigation
December 2020	-	Further expert evidence obtained
May 2021	-	Rule 7 letter issued to Dr Wilson

5. The Tribunal was also informed that Dr Wilson had been the subject of separate MPTS proceedings that were heard in July 2021, concluding in March 2022. In those proceedings

(‘the 2021 Tribunal’), Dr Wilson was alleged to have acted inappropriately and in a sexually motivated manner towards a patient in October 2018. The 2021 Tribunal did not find the majority of that Allegation proven, in particular the sexual motivation, but did issue a warning to Dr Wilson with regards to his future conduct.

6. The GMC informed the Tribunal that the 2018 Allegation led to a review of the 2013 Allegation in 2020. The Tribunal noted that the events leading to the resurrection of the 2013 Allegation were aired in the 2021 Tribunal, as well as whether they should be joined together. The allegations were not joined together due to a concern that it would cause further delay to the 2018 Allegation being heard. At the conclusion of the facts stage, the 2021 Tribunal considered a VE application by Dr Wilson, which it ultimately refused.

7. XXX.

8. The Tribunal was informed that previous applications by Dr Wilson for VE, as well as interim order applications made by the GMC, as follows;

- 30 March 2021 – VE application refused;
- 25 June 2021 – VE application refused;
- 23 August 2021 – IOT suspension (due to expire 11 June 2023).

9. The Tribunal was informed of correspondence from 2 September 2022 regarding VE, as well as the parties’ intention to invite the Tribunal to consider this at the end of the facts stage. Following an indication given by the Tribunal to the parties, regarding the appropriate order for considering the issues, the GMC confirmed that an application for VE had been made online on 16 September 2022. Against that background, Mr Ravi Gupta confirmed on day two of the Hearing that Dr Wilson wished to make a further application for VE on the 16 September 2022 before the Tribunal.

10. The Tribunal considered it appropriate to take the issues in stages. The Tribunal had regard to the evidence in relation to XXX. The Tribunal was conscious that the GMC indicated its wish to proceed in Dr Wilson’s absence, but was also mindful of the delay in the proceedings, which was not the fault of Dr Wilson. The Tribunal also had regard to Dr Wilson’s legal representative and his ability to assist the Tribunal. The Tribunal considered the General Medical Council (Fitness to Practise) Rules 2004 and in the absence of an express provision, determined that it would be appropriate in the circumstances to consider the VE application as a preliminary legal argument, under Rule 17(2)(b) of the Rules.

Evidence

11. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included, but was not limited to:

- XXX;
- XXX;

- XXX;
- MPTS Determination on Facts, dated 23 July 2021;
- MPTS Determination on VE, dated 30 July 2021; and
- MPTS Determination on Warning, dated 15 March 2022.

Submissions on behalf of Dr Wilson

12. On behalf of Dr Wilson, Mr Gupta made the application for voluntary erasure ('VE') in accordance with Section 3(8) of The General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004, as amended ('the Regulations'):

“Where, on the date the Registrar receives an erasure application, an allegation against the practitioner has been referred to a FTP Panel under the Fitness to Practise Rules and the hearing before the FTP Panel has commenced, the Registrar shall refer the application for determination by the FTP Panel, and the application shall be determined by the FTP Panel accordingly.”

13. Mr Gupta submitted that Dr Wilson is 81 years of age and will be 82 in November. Mr Gupta submitted that Dr Wilson is XXX and that given his XXX age, it would be extremely unlikely that he would return to practise should the Tribunal grant the VE application.

14. Mr Gupta submitted that Dr Wilson formerly retired in August 2021, prior to an order of suspension being imposed by an Interim Orders Tribunal. He also outlined Dr Wilson's fitness to practise history, noting another MPT hearing with similar allegations which concluded in March 2022 by way of a warning on Dr Wilson's registration. XXX.

15. Mr Gupta submitted that prior to Dr Wilson's retirement, he had wound down his practice considerably and was not seeing any new patients only a few existing patients to ensure they had continuity of care.

16. Mr Gupta submitted that there were exceptional circumstances to allow the VE application to be granted. Specifically, XXX and that he is very unlikely XXX to practise medicine again. In support of the application, the Tribunal was provided with evidence in relation to XXX.

GMC Submissions

17. Prior to making her submissions, Ms Jones provided a brief background to the Allegation.

18. In summary, at the time of the events that are the subject of the Allegation, Dr Wilson was working as a Consultant Psychiatrist and had been instructed by a firm of solicitors to provide an expert report in relation to the health conditions of Patient A and Patient B as part of a claim against the Local Authority for not taking them into care sooner.

19. Patient A and Patient B were vulnerable and had suffered extensive physical and emotional abuse by Mr C. Patient A also suffered sexual abuse and became pregnant by Mr C. During the pregnancy Patient A managed to escape and Mr C was reported to the police. She went on to give birth to the baby, but it passed away on 16 October 2012. A year after the death of Patient A's baby, Patient A and Patient B met with Dr Wilson on 16 October 2013. It is alleged that Dr Wilson conducted the interviews without adequate consideration or adjustment with regard to the subject matter and made inappropriate comments to the patients. It is further alleged that Dr Wilson inappropriately made physical contact with Patient A by touching the tattoos on her forearm and it is alleged that his actions were sexually motivated. It is also alleged that Dr Wilson's comments to the patients were not consistent with his legal instructions and likely to cause anxiety or offence to the patients.

20. The concerns were raised by the support workers who had attended the consultations with Patient A and Patient B. The support workers raised their concerns in regard to how Dr Wilson conducted himself during the consultations to their agency who referred the matter to the GMC.

21. After providing the background to the case, Ms Jones submitted that the application for VE should be refused.

22. Ms Jones invited the Tribunal to have regard to the 'Guidance on making decisions on VE applications and advising on administrative erasure' ('the VE Guidance').

23. Ms Jones submitted that if the application were granted and Dr Wilson decided to apply to go back on the register in a year or two, the GMC would have to effectively resurrect the case. She submitted that the witnesses may not be willing to engage at that point and that it is not certain therefore that the GMC would be able to revive the case.

24. Ms Jones submitted that whilst the public may be protected by VE, there is a clear public interest in the case being considered in accordance with the fitness to practise procedures.

25. Ms Jones noted the XXX. As such, she submitted that there is nothing to suggest that notwithstanding Dr Wilson's age, he would not seek to return to practise once these proceedings are over.

26. Ms Jones submitted that there was a real prospect of establishing impairment in Dr Wilson's case. She submitted that the decision by the Case Examiners in 2014 to discontinue the matters originally was flawed and should not detract from the seriousness of the Allegation.

27. Ms Jones submitted that there are no exceptional circumstances in this case to warrant VE being granted. She accepted that there is evidence XXX wouldn't necessarily preclude him from working remotely.

The Tribunal's Approach

28. This application was made pursuant to the General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004/2609, as replicated in paragraph 3 above.

29. The Tribunal considered that the determination of a VE application is not referenced in the Fitness to Practise Rules 2004 and there was therefore no specific procedure that should be followed. However, the Tribunal was conscious that it should apply the relevant guidance relating to a VE. The GMC guidance from March 2021 is entitled '*Guidance on making decisions on voluntary erasure applications and advising on administrative erasure*' ('VE Guidance'). Whilst the VE Guidance is directed at case examiners it was equally applicable to a Tribunal.

30. The Tribunal accepted the submissions of both parties that it should consider the application as a fresh rehearing today, as opposed to a review of the earlier case examiners' earlier decision or that of the 2021 Tribunal.

31. The Tribunal had regard to the VE Guidance and reminded itself that it must balance the public interest and the requirements of the overarching objective, with the interests of Dr Wilson. It must also consider the likelihood of Dr Wilson returning to practice and the ability for the revival of the Allegation against him, should he apply for restoration in the future. The Tribunal had particular regard to paragraph 11 of the VE Guidance, which states:

'Case examiners should be satisfied that it is right in all the circumstances to grant VE [...]. This will involve a careful balancing of the relevant factors to decide whether or not erasure is in the public interest. Case examiners will need to weigh the seriousness of the concerns against any additional information that is available regarding:

- XXX.
- *our ability to revive the Allegations should the doctor apply for restoration.'*

The Tribunal's decision

32. The decision as to whether to grant the application for VE is a matter for this Tribunal alone to determine, exercising its own judgement. In reaching its decision, the Tribunal had careful regard to the Regulations, the VE Guidance, and the submissions made by both parties. It also had regard to all the documentary evidence provided on behalf of the GMC and on Dr Wilson's behalf.

33. The Tribunal noted that it may accept an application for VE if it determines that it is appropriate to do so in all the circumstances of the case, whilst having careful regard to the statutory overarching objective. The overarching objective is 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 doctors. The Tribunal considered all elements of the application, including the seriousness of the Allegation; the amount of time which has elapsed since the incident and since Dr Wilson last practised; his continued retirement and the likelihood of an application in the future for restoration.

34. The Tribunal first considered XXX and the likelihood of him returning to practice.

35. The Tribunal noted that Dr Wilson is soon to be 82 years old. He continued in practice up until August 2021 in some capacity but since then XXX

36. Whilst, in 2021, Dr Wilson XXX, presently he has provided instructions to his solicitor only for the purpose of receiving correspondence on his behalf and to make an application for VE. Taking into account XXX, the Tribunal considered the likelihood of Dr Wilson returning to practice to be very low.

37. The Tribunal considered that even if Dr Wilson were to apply to come back to medical practice in the future, he would not be allowed back on to the register without XXX, as well as the misconduct matters, being considered. The Tribunal was informed that Dr Wilson had been suspended by the Interim Orders Tribunal in August 2021, XXX and that suspension is due to continue until Summer 2023. The Tribunal considered that any application for restoration would realistically have to be made in the next year or so given Dr Wilson's age XXX, as the likelihood of him returning to the register will be even lower as time passes, as he would become more deskilled overtime.

38. The Tribunal next considered the GMC's ability to revive the Allegation in the unlikely event that Dr Wilson applied for restoration. The Tribunal bore in mind that the Allegation relates to events in October 2013 and the delay in it being referred to a hearing is due to the decision by the GMC in 2014. The Tribunal was conscious that Patient A and Patient B did not wish to be part of these proceedings or provide any evidence. The only factual evidence the GMC has relied upon comes from the support workers, both of whom have made themselves available to give evidence at this hearing – some nine years after the incident. The GMC did not suggest that the witnesses' memories would be adversely impacted, as they would be relying on contemporaneous notes. There is no evidence they would not engage should the hearing be brought back in a year or so. The Tribunal was mindful that further delay may reduce the witnesses' appetite to engage in the proceedings, but it was no more than speculation to suggest that they would not continue to assist the GMC. The Tribunal therefore determined that the GMC had reasonable prospects of reviving the Allegation, if necessary.

39. In terms of protecting the public, the Tribunal was conscious that Dr Wilson had continued to work from the time of the Allegation until August 2021 and XXX no finding of serious misconduct or impairment had been made against him. Furthermore, there is no evidence that he put the public at risk during the last nine years. The Tribunal therefore

considered that granting the VE application would serve to protect the public from any potential risk, as Dr Wilson would not be permitted to practise.

40. The Tribunal then considered whether VE would promote and maintain public confidence. In so doing, it considered the seriousness of the Allegation, which includes a charge of sexually motivated behaviour towards a vulnerable patient.

41. As part of the Allegation, it is alleged that Dr Wilson touched Patient A's tattoo on the arm and that his actions were sexually motivated. The GMC, having obtained an expert report, did not instigate proceedings against Dr Wilson in 2014. However, the latest expert opined that some of Dr Wilson's actions fell seriously below the expected standard. The Tribunal considered the sexual misconduct charge to be at the lower end of the spectrum of sexual misconduct: it concerned one individual patient, did not involve any intimate medical examination, occurred in the only consultation and was in the presence of a support worker. As Dr Wilson XXX, he had not been able to obtain any rebuttal expert evidence and would not be able to test the factual or expert evidence. The Tribunal was mindful of the need for cogent evidence before the Allegation could be proven and that whilst there had been other MPTS proceedings, they did not result in any finding of sexually-motivated behaviour or serious misconduct against Dr Wilson.

42. In balancing the need for investigations into a doctor's misconduct to be investigated and aired in public with Dr Wilson's interests, the Tribunal considered that public confidence was most likely to be damaged by the nine-year delay in the proceedings. This delay could not be attributed to Dr Wilson. The Tribunal was also concerned with how the public and the profession would perceive proceeding with the hearing and considering the Allegation nine years later, when Dr Wilson was not going to be able to engage or participate. The Tribunal determined that the public interest would be best served by allowing the VE application. The Tribunal was satisfied that this would be a proportionate and just disposal of the case.

43. The Tribunal was satisfied that in applying the VE Guidance, the public interest considerations and overarching objective supported Dr Wilson's VE application. Furthermore, whilst it was strictly not necessary to do so, the Tribunal also considered this case have several features of exceptional circumstances. The Tribunal considered the alleged sexual behaviour to be at the low end of the spectrum. As Dr Wilson had practised for eight years since the Allegation, without proven misconduct, the Tribunal considered that he demonstrated little public protection risk. XXX In reality, given his age and XXX he is very unlikely XXX to be able to practise again. It follows that the VE guidance further supports the decision to allow Dr Wilson's application for VE.

44. Accordingly, the Tribunal determined to grant the application for Voluntary Erasure.

45. That concludes this case.