

PUBLIC RECORD

Dates: 16/02/2021 and 05/03/2021

Medical Practitioner’s name: Dr Constance JOHNSON

GMC reference number: 5203811

Primary medical qualification: MB BS 1988 University of Benin

Type of case Review - Deficient professional performance	Outcome on impairment Not Impaired
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Summary of outcome
Conditions revoked

Tribunal:

Legally Qualified Chair	Mrs Emma Boothroyd
Lay Tribunal Member:	Miss Safia Iman
Medical Tribunal Member:	Professor Irving Benjamin

Tribunal Clerk:	Miss Jan Smith (16/02/2021) Miss Olivia Moy (16/02/2021) Miss Evelyn Kramer (05/03/2021) Mr Josh Dayco (05/03/2021)
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Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner’s Representative:	Ms Jill Harris, of Brodies LLP
GMC Representative:	Mr Kevin Slack, Counsel (16/02/2021) Ms Ceri Widdett, Counsel (05/03/2021)

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.

Determination on Impairment - 05/03/2021

1. The Tribunal has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr Johnson's fitness to practise is currently impaired by reason of deficient professional performance.

Background

2. The Tribunal has heard that Dr Johnson's case was first considered before a Fitness to Practise Panel in October / November 2014 and reviewed by a Fitness to Practise Panel in November / December 2015. Dr Johnson's case was then reviewed by a Medical Practitioners Tribunal in November / December 2016, June / July 2018, 8 and 9 August 2019 and, most recently, on 28 February 2020. The Tribunal does not intend to rehearse the full background to Dr Johnson's case but has had regard to the determinations of the previous Panels and Tribunals.
3. Dr Johnson was appointed onto a General Practitioner ('GP') training programme in August 2010, after a two-year rotation, her training was terminated and she was referred to the GMC because of concerns about her professional performance. As a result, Dr Johnson was invited to undergo a GMC Performance Assessment ('PA') on 18 March 2013. She scored below the 25th percentile in all 5 domains in the Simulated Surgery Test and 7 of the 12 stations in the Objective Structured Clinical Examination Test. She also scored below the standard set mark in the Knowledge Test.

2014 Panel

4. Dr Johnson's case was first considered by a Fitness to Practise Panel in 2014. It found her fitness to practise to be impaired by reason of deficient professional performance as a result of the outcome of the PA in 2013, and misconduct arising from her non-compliance with conditions imposed by an Interim Orders Panel in September 2012. The 2014 Panel determined to impose a substantive order of conditions on Dr Johnson's registration for a period of 12 months.

2015 Tribunal

5. Dr Johnson's case was reviewed by a Fitness to Practise Panel in 2015 which found that the concerns about her professional performance had not been resolved and that she had made further clinical errors. The 2015 Panel determined that Dr Johnson's fitness to practise remained impaired by reason of her deficient professional performance. It was satisfied that Dr Johnson had the potential to respond positively to retraining and to improve on her level of insight. The 2015 Panel determined to impose a varied order of conditions for a period of 12 months to allow Dr Johnson the time and opportunity to address the outstanding performance concerns.

2016 Tribunal

6. Dr Johnson's case was reviewed by a Medical Practitioners Tribunal in 2016 which considered that Dr Johnson had developed some insight into her deficient professional performance such that she was aware that she was still making clinical errors. The 2016 Tribunal was not satisfied that Dr Johnson had fully remediated the identified deficiencies and it found that her fitness to practise remained impaired. The 2016 Tribunal determined to impose a varied order of conditions on Dr Johnson's registration for a period of 18 months.

2018 Tribunal

7. Dr Johnson's case was next reviewed by a Medical Practitioners Tribunal in 2018 which noted that, whilst no new concerns about Dr Johnson's professional performance had been raised since 2016, she had not practised medicine for 18 months and had not had the opportunity to fully demonstrate remediation in a clinical environment, or to address the identified deficiencies in her clinical practice. The 2018 Tribunal therefore

concluded that Dr Johnson's fitness to practise remained impaired. It determined that a further period of conditional registration was an appropriate sanction which would help her to progress in her career and gain the skills required. The 2018 Tribunal determined to impose conditions for a period of 12 months.

2019 Tribunal

8. The 2019 Tribunal considered that Dr Johnson had demonstrated commendable insight as she had conceded that she still required supervision. However, it noted that clinical errors continued to be made by Dr Johnson up to 2016 and she did not practise for 18 months. Whilst the 2019 Tribunal took into account that there had been no clinical concerns raised in Dr Johnson's current role, it bore in mind that this was in respect of a relatively short period against a backdrop of widespread clinical failings over a number of years. The 2019 Tribunal concluded that Dr Johnson had demonstrated developing insight and made steps towards remediation but had not yet fully remediated.
9. The 2019 Tribunal therefore determined that Dr Johnson's fitness to practise remained impaired by reason of deficient professional performance.
10. The 2019 Tribunal noted that Dr Johnson had engaged fully with the GMC since the last 2018 Tribunal hearing and had made efforts to demonstrate insight and remediation. The 2019 Tribunal determined to impose conditions on Dr Johnson's registration for a period of 6 months, which it considered was a sufficient period of time for her to further develop her remediation.

2020 Hearing

11. Dr Johnson's case was most recently reviewed on 28 February 2020. The 2020 Tribunal had been provided with details of Dr Johnson's progress since the previous review hearing. It noted that Dr Johnson was working as an ST1 Trust Grade Physician in Care of the Elderly Medicine at the Princess Royal Hospital within the Shrewsbury and Telford NHS Trust. The 2020 Tribunal took account of the reports provided by Dr Johnson's workplace supervisors. They all shared the view that she no longer required close supervision although she did require to be under supervision.

12. The 2020 Tribunal was provided with documentation which demonstrated Dr Johnson's continuing progress. It took account of Dr Johnson's acknowledgement that she required supervision whilst she addressed the identified deficiencies in her clinical practice. The 2020 Tribunal noted that Dr Johnson conceded that her fitness to practise was impaired.
13. The 2020 Tribunal determined that Dr Johnson's fitness to practise remained impaired by reason of deficient professional performance.
14. The 2020 Tribunal was impressed with the progress that Dr Johnson had made since the review hearing in August 2019. It acknowledged the effort she had put into her e-portfolio and recognised how she had developed her insight.
15. The 2020 Tribunal took account of the reports from Dr Johnson's supervisors, workplace reporters and Consultant colleagues who all attested to her hard work and who all appeared keen for her to remain at the Trust in the future.
16. The 2020 Tribunal concluded that a further period of conditional registration was the necessary and proportionate sanction to impose in Dr Johnson's case. In the light of all the reports provided and the recommendation of her supervising colleagues, the 2020 Tribunal determined to impose varied conditions on Dr Johnson's registration; in particular, it removed the requirement for Dr Johnson to be under "close supervision". The 2020 Tribunal considered that a period of 12 months was sufficient for Dr Johnson to be able to demonstrate full remediation of the clinical concerns previously raised.

Review Hearing

17. The 2020 Tribunal directed that Dr Johnson's case must be reviewed by a Medical Practitioners Tribunal. It considered that the Tribunal reviewing her case would be assisted by provision of the following:
 - A report from her educational / clinical supervisor,
 - A report from her workplace reporter,
 - A copy of her PDP,
 - A copy of her annual appraisals,
 - Any other evidence which Dr Johnson considers will assist a reviewing Tribunal.

Today's Review Hearing

18. This Tribunal has reviewed Dr Johnson's case and has considered, in accordance with Rule 22 (1)(f) whether her fitness to practise is currently impaired by reason of deficient professional performance

Evidence

19. The Tribunal has taken account of all the documentary evidence provided, which included but was not limited to:
- Record of Determinations dated 6 November 2014
 - Record of Determinations dated 1 December 2015
 - Record of Determinations dated 1 December 2016
 - Record of Determinations dated 23 July 2018
 - Record of Determinations dated 9 August 2019
 - Record of Determinations dated 28 February 2020
 - A copy of Dr Johnson's Personal Development Plan (PDP) sent to the GMC on 2 June 2020
 - An email dated 1 October 2020 from Dr Johnson to the GMC confirming details of her clinical supervisors and workplace reporter
 - A report from Dr A, Dr Johnson's clinical supervisor, dated 6 October 2020
 - A report from Mr B, Dr Johnson's workplace reporter, dated 9 October 2020
 - A report from Dr A, dated 12 January 2021
 - A report from Mr B, dated 20 January 2021
 - Evidence of Dr Johnson's Continuing Professional Development (CPD) activities and training courses attended
 - Testimonial evidence
 - A supplementary bundle of documents including Dr Johnson's undated reflective statement, assessments of behaviour (multi source feedback), an updated PDP and further examples of CPD activities
20. The Tribunal has also taken account of Dr Johnson's oral evidence, given under oath at today's hearing.

21. In her oral evidence, Dr Johnson told the Tribunal that she has been working at the Princess Royal Hospital (PRH) for three years and, initially, was working in the Care for the Elderly Department. She said that in July 2020 she began working as an ST1 level doctor in the Stroke Rehabilitation Department where she has made good progress, without any complaints, and is under supervision. Dr Johnson explained that Dr A continues to be her clinical supervisor and Dr C is her deputy clinical supervisor when Dr A is not available. Mr B continues to be her workplace reporter.
22. Dr Johnson told the Tribunal that she had previously studied for her MRCP1 examinations but had not been successful. She said she found the process very stressful and decided to apply to for a place at university to gain a diploma in Care of the Elderly. Dr Johnson enrolled on the course and she explained that this was a 12-month course, running from September 2020 to August 2021 and was divided into 6 modules. She is required to take an examination at the completion of each module and, to date, has completed and passed the examinations in two of the modules and is awaiting the results of the third module.
23. Dr Johnson told the Tribunal that her current contract at the Princess Royal Hospital was due to expire in March 2021 but the Trust has extended her contract until the end of August 2021. She referred the Tribunal to an email from Dr A, dated 9 January 2021, in which he stated that it was hoped to offer Dr Johnson a permanent ST1 level post.
24. Dr Johnson conceded that, previously, she had worked at a much higher level but she acknowledged that she was working well at ST1 level. She told the Tribunal that she was working in a supportive environment and that, if offered a permanent ST1 post, she would be happy to accept it. Dr Johnson stated that she has learnt the procedures of the Stroke ward and teaches aspects of her practice to junior doctors. Dr Johnson confirmed that she had received no complaints about her work in her current post.
25. Dr Johnson confirmed that she has seen the reports of her clinical supervisors, her workplace reporter and all the reports from Consultant colleagues. She acknowledged that they all agree that she should remain at ST1 level in the immediate future and continue to be supervised in the same way as all other ST1 grade doctors. Dr Johnson said she is content to remain at ST1 level, she is well-supported and she is looking forward to gaining her postgraduate diploma in Care of the Elderly.

GMC Submissions

26. Mr Slack submitted that, based on the evidence it has heard today, Dr Johnson's fitness to practise remains impaired. He acknowledged that there is much to be positive about since the previous hearing in February 2020 and that it is to Dr Johnson's credit. He said that it is clear that she has fitted in well on the stroke unit and all the evidence shows that she is a valued member of the stroke team at Princess Royal Hospital.
27. Mr Slack referred to the comments of Dr A and Dr C who are of the firm opinion that Dr Johnson requires long-term supervision and needs to continue to work at ST1 level. Mr Slack reminded the Tribunal that this is a low level post and below the level at which Dr Johnson was working when the investigation into her fitness to practise commenced in 2013. Mr B is of the opinion that closer supervision would be required if Dr Johnson was to work at a higher level. Mr Slack reminded the Tribunal that neither Dr A nor Dr C had offered an opinion about a possible progression to an ST2 post once Dr Johnson has completed her diploma.
28. Mr Slack submitted that the GMC's view is that Dr Johnson has found a niche in which she is performing satisfactorily as an ST1 level doctor. He stated that Dr Johnson is receiving education and training as if she was on a training programme, even though she is not. If she was to move to a permanent position, then there is a concern as to whether the present available support would remain in place.
29. Mr Slack submitted that there is a burden on Dr Johnson to demonstrate that the impairment of fitness to practise has been successfully remediated. It was his contention that, on the evidence of Dr A's reports, Dr Johnson has not discharged that burden and that her fitness to practise remains impaired by reason of deficient professional performance.

Submissions on behalf of Dr Johnson

30. Ms Harris reminded the Tribunal of the history of the restrictions which have been placed on Dr Johnson's registration and the gradual relaxation of some of the conditions since 2019. She referred to the previous hearing in February 2020 when the requirement for 'close supervision' was removed and replaced with 'supervision'. Ms Harris told the Tribunal that Dr Johnson has been at the Princess Royal Hospital for three years and had made considerable progress in remediation during that time.

31. Ms Harris confirmed that Dr Johnson has continued to comply with the restrictions on her registration, as evidenced by Dr A in his clinical supervision reports. She referred to the reports of Dr Johnson's clinical supervisors and workplace reporter as well as all the testimonial letters, in which all her consultant colleagues confirm that they have no concerns about Dr Johnson's fitness to practise.
32. Ms Harris spoke of the audit cycles that Dr Johnson has undertaken, particularly in the use of IPC sleeves, the significant CPD activities she has undertaken to keep her knowledge and skills up to date, and her progress in her post graduate diploma. She said that Dr Johnson has kept her PDP updated and made every effort to improve those areas of her practice in which she was found to be deficient. Similarly, she has worked hard on her e-portfolio in an effort to address the previous concerns raised.
33. Ms Harris confirmed that Dr Johnson has provided training for junior doctors and has received positive feedback from them. She referred to the Team Assessment Behaviour documentation which included multi source feedback provided by thirteen of Dr Johnson's colleagues, senior nurses and pharmacists. Ms Harris told the Tribunal that Dr Johnson was to have had an appraisal in August 2020 but that all appraisals had been cancelled because of the Covid-19 pandemic. Ms Harris submitted that Dr Johnson took steps to obtain the team feedback in the absence of her appraisal.
34. Ms Harris told the Tribunal that Dr Johnson is happy in her role at the Princess Royal Hospital and hopes to remain there in the future. She confirmed that there is a possibility that Dr Johnson may be offered a permanent ST1 level post at the end of her contract in August 2021.
35. Ms Harris submitted that Dr Johnson has insight into her limitations and that she has stated her intention to continue her progress at ST1 level; a level at which she is performing well. Ms Harris confirmed that the level of supervision which Dr Johnson receives is inherent within an ST1 level post.
36. Ms Harris submitted that the Tribunal can be satisfied that Dr Johnson has remedied the previously identified deficiencies in her clinical practice and has performed satisfactorily since 2019. Ms Harris submitted that Dr Johnson has developed full insight, she is aware of limitations in her practice and is content to continue to work as an ST1 doctor on the stroke rehabilitation ward at the Princess Royal Hospital.

37. Ms Harris stated that there is no evidence of repetition and that Dr Johnson continues to improve her medical knowledge and skills to ensure that the risk of repetition remains low.

Tribunal Approach

38. The Legally Qualified Chair gave legal advice which was accepted by Mr Slack, Ms Harris and the Tribunal as follows. The Tribunal should have particular regard to the statutory overarching objective which includes: to protect and promote the health, safety and wellbeing 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 the profession.
39. The Legally Qualified Chair advised the Tribunal to bear in mind that, in a review case, there is a persuasive burden on the doctor to demonstrate that all the identified deficiencies in her clinical practice have been adequately addressed, and that remediation has taken place.
40. The decision of impairment is a matter for the Tribunal's independent judgement taking into account the background of proceedings but carrying out a review of all the circumstances as they exist today.

Tribunal Decision

41. The Tribunal has noted that Dr Johnson has worked at the Princess Royal Hospital since 2018 and no concerns have been raised. She has worked in a number of clinical areas at the hospital, including Endocrinology, Care of the Elderly and in Stroke Rehabilitation. She has responded well to the level of supervision which has been put in place.
42. The Tribunal has borne in mind the efforts Dr Johnson has made to keep her medical skills and knowledge up to date and it is clear from the evidence provided that she has fully complied with all the conditions on her registration. The Tribunal has noted that Dr Johnson has completed two modules of her post graduate diploma and is awaiting the results of the third module. It acknowledges that Dr Johnson has developed good insight into her educational development. Dr Johnson has undertaken this study alongside her work.

43. The Tribunal has taken account of all the reports from Dr Johnson's clinical supervisors and workplace reporters and noted that the supervision she receives is in line with the supervision required for any other doctor working at ST1 level. It has borne in mind Dr Johnson's comments in the reflective statement she submitted today, as well as her oral evidence to this Tribunal. Dr Johnson has stated that she is happy to work in the stroke rehabilitation unit at the Princess Royal Hospital at the level of ST1. The Tribunal noted that Dr Johnson is well-supported, she has progressed well in the past 12 months under supervision and no further concerns have been raised in relation to her clinical practice. It has also noted that she may be offered a permanent ST1 level post at the completion of her current contract in August 2021.
44. The Tribunal has been provided with testimonial letters from Dr Johnson's clinical supervisors, workplace reporter and consultant colleagues, all of whom agree that there are no concerns in relation to Dr Johnson's fitness to practise. For example, in his letter dated 22 December 2020, Dr D, Consultant Physician with Special Interest in Stroke, stated *"I am quite happy for her to continue working at ST1 level under our supervision ... I do not have any person concerns on Dr Johnson's fitness to practise."* Dr A also stated *"personally I have no concerns regarding Dr Johnson's fitness to practise in her current post."* Dr C and Mr B agreed with their opinions.
45. The Tribunal considers that Dr Johnson has made excellent progress since the last review hearing in February 2020. It noted that there is no evidence that she has attempted to work outside of her level of competence and accepted that she has complied fully with the conditions on her registration. It has taken into account Dr Johnson's plans for the future and noted that she is content to remain at ST1 level and would accept an offer of a permanent post at that level at the end of her contract.
46. The Tribunal has taken into account all the documentary evidence provided to it, as well as Dr Johnson's own oral evidence. It has concluded that Dr Johnson is performing well in her current post. She is supervised in the same way as other doctors at ST1 level and is well supported by her clinical supervisors and consultant colleagues. The Tribunal is satisfied that Dr Johnson has developed full insight into the limitations of her clinical practice and has successfully remediated the identified deficiencies. There is no evidence that Dr Johnson requires a level of supervision above that which is inherent in an ST1 level post. Further, there is no evidence that Dr Johnson has sought to work outside the scope of an ST1 level doctor.

47. Accordingly, the Tribunal has determined that Dr Johnson’s fitness to practise is no longer impaired by reason of deficient professional performance.
48. The Tribunal has noted that the current conditions on Dr Johnson’s registration will expire in five days on 10 March 2021. In these circumstances, the Tribunal has determined that, in light of the opinions of Dr Johnson’s clinical supervisors and consultant colleagues, the conditions on her registration should be revoked with immediate effect.
49. This concludes the case.

Confirmed
Date 05 March 2021

Mrs Emma Boothroyd, Chair