

PUBLIC RECORD

Date: 08/05/2026

Doctor: Dr Elliot BURNS

GMC reference number: 6119007

Primary medical qualification: MB ChB 2005 University of Sheffield

Type of case MPT - Preliminary

Tribunal:

Legally Qualified Chair	Ruth Curtis
Lay Tribunal Member:	Catherine Pease
Registrant Tribunal Member:	Dr Euan Strachan-Orr

Tribunal Clerk:	Angela Carney
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Attendance and Representation:

Doctor:	Not present, represented
Doctor's Representative:	Mr Scott Ivill, Counsel, instructed by CMS
GMC Representative:	Mr Ryan Donoghue, 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.

Protecting the Public

Throughout the decision making process the tribunal has borne in mind the statutory duty as set out in s1(1) of the Medical Act 1983 (the 1983 Act) to protect the public. The tribunal has considered the relevance and impact on each of the three distinct parts of public protection to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Preliminary Matters - 08/05/2026

Background

1. Dr Burns qualified as a doctor in 2005. At the time of the events which are the subject of the Allegation at the substantive hearing, Dr Burns was working as a locum GP at the Dinnington Group Practice, which included the Anston Medical Centre
2. It is alleged that Dr Burns, whilst working as a Locum GP at the Anston Medical centre, engaged in an improper emotional and sexual relationship with a vulnerable patient, Patient A, which included both physical sexual activity and the sending of sexualised emails.
3. Dr Burns is due to attend a Medical Practitioners Tribunal ('MPT') hearing ("the substantive Tribunal") scheduled to take place from 1 – 12 June 2026 to face an Allegation of misconduct.
4. This hearing was convened to discuss preliminary matters relating to the substantive case. The Tribunal had to make decisions on the following preliminary matters:
 - to admit hearsay evidence from Patient A in the form of a Video Recorded Interview ("VRI") which Patient A provided to the Police on 28 April 2021, as part of a criminal investigation into Dr Burns (which was subsequently closed with no further action taken).
 - To admit evidence of what Patient A purportedly told her mental health nurse regarding the allegations against Dr Burns.

Documentary Evidence

5. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included, but was not limited to, the following:
 - Preliminary witness bundle
 - Preliminary documents bundle
 - Patient A contact bundle
 - The Draft Rule 15 Allegation

6. The Tribunal also received written skeleton arguments from Mr Ryan Donoghue, Counsel, on behalf of the GMC and Mr Scott Ivill, Counsel, on behalf of Dr Burns in advance of the hearing. Both of whom provided supplementary oral submissions.

Submissions

On behalf of the GMC

7. Mr Donoghue provided the background to the case. He stated that the Allegation concerns misconduct, in that Dr Burns engaged in an improper emotional and/or sexual relationship with a vulnerable patient, Patient A. He stated that the GMC's application is to admit evidence under Rule 34(1) in the absence of agreement between the parties.

8. Mr Donoghue stated that the application is to admit evidence of a VRI which Patient A gave to the police during an earlier police investigation and also evidence of a recent complaint, an account provided by Patient A to a Mental Health Nurse, Ms B, who has provided a witness statement and a number of supporting documents. He said that there is also the police crime report evidence dated 27 April 2021 which describes the nature of the initial complaint made by Patient A to the police which was captured before her VRI.

9. Mr Donoghue referred the Tribunal to the transcript of VRI in which Patient A confirmed she would tell the truth during the police interview where she describes three alleged sexual activities. He also referred the Tribunal to the witness statement of Ms B.

10. Mr Donoghue referred the Tribunal to the cases of:

- *Ogbonna v Nursing and Midwifery Council [2010] EWCA Civ 1216*
- *Thornycroft v Nursing and Midwifery Council [2014] EWHC 1565 (Admin)*
- *Mansaray v Nursing and Midwifery Council [2023] [2023] EWHC 730 (Admin)*

He stated that he relied on the case of *Thornycroft* regarding hearsay evidence in professional discipline proceedings, as follows:

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‘1.1. The admission of the statement of an absent witness should not be regarded as a routine matter. The FTP rules require the Panel to consider the issue of fairness before admitting the evidence.

1.2. The fact that the absence of the witness can be reflected in the weight to be attached to their evidence is a factor to weigh in the balance, but it will not always be a sufficient answer to the objection to admissibility.

1.3. The existence or otherwise of a good and cogent reason for the non-attendance of the witness is an important factor. However, the absence of a good reason does not automatically result in the exclusion of the evidence.

1.4. Where such evidence is the sole or decisive evidence in relation to the charges, the decision whether or not to admit it requires the Panel to make a careful assessment, weighing up the competing factors. To do so, the Panel must consider the issues in the case, the other evidence which is to be called and the potential consequences of admitting the evidence. The Panel must be satisfied either that the evidence is demonstrably reliable, or alternatively that there will be some means of testing its reliability.’

11. Mr Donoghue submitted that this evidence is plainly relevant to the allegation in paragraph 3(f) because this is the evidence upon which that allegation is based. He submitted that the test of relevance is clearly met, but the real question for the Tribunal here is that of fairness. He stated that the principal submission on the part of Dr Burns is that it would, in essence, be unfair to admit this evidence given Patient A is not a witness who the GMC proposes to call to give oral evidence and therefore cannot be cross-examined. He submitted that *Thorneycroft* requires the Tribunal to consider the reasons for the witness, Patient A not being called to give evidence. He said that Patient A having engaged with the police investigation and held some initial engagement, then disengaged and indicated a desire to take no further part in the GMC proceedings.

12. Mr Donoghue stated that *Thorneycroft* makes clear, even if the Tribunal was to consider that this did not constitute a good reason for Patient A being called to give evidence, the absence of a good reason does not automatically result in the exclusion of the evidence. Significantly, *Thorneycroft* highlights the importance of the Tribunal considering whether the hearsay evidence is the sole or decisive evidence in relation to the charges. He submitted

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that the VRI is not the sole or decisive evidence in support of the paragraphs of the Allegation relating to physical sexual activity, Patient A's VRI is supported by the content of the emails exchanged between Dr Burns and Patient A, which included multiple references to sexual activity having taken place.

13. Mr Donoghue submitted that the witness statement of Ms B and the supporting documents demonstrate the extent of the distress and trauma that Patient A described in her e-mail and support the fact that there is a good reason for her non-engagement.

14. Mr Donoghue referred the Tribunal to paragraph 56 of *Thorneycroft*, when applying the four criteria above, as to whether there was any reason to suggest the witness had a reason to fabricate the allegations. He stated that in this case there has been no reason advanced by Dr Burns at any stage to suggest what Patient A's reason would be, or that there would be a reason for her to fabricate these allegations. He submitted that the Tribunal is entitled to take that into account when assessing this application.

15. Mr Donoghue submitted that the GMC has taken reasonable steps to secure the attendance of Patient A. There was contact with Patient A and attempts at reassurance, but contact which had to be managed very carefully in the context of a patient with a significant mental health history.

16. Mr Donoghue stated that it is not the case that Dr Burns has not had prior notice of this evidence because if the Tribunal grant the GMC's application he would be able to respond to it.

17. Mr Donoghue referred the Tribunal to the email exchanges in which Patient A refers to sexual activity taking place at XXX house and in Dr Burns' room at the GP surgery, both of which he submitted are consistent with two of the three occasions of sexual activity referred to in Patient A's VRI. He submitted that Dr Burns was not dismissing the comments about sexual activity made by Patient A in her emails, but when he replied, he was actively endorsing them and adding his own details. He stated that to date, no explanation has been provided by Dr Burns as to the context of those email messages. Mr Donoghue submitted that those emails provide strong support for the evidence of Patient A in the VRI and are highly consistent with that evidence and is demonstrably reliable. He stated that this was not a case of Patient A making an informal hearsay statement to one person or having heard it

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from another but is in fact her providing a recorded interview to the police, which has been transcribed for this Tribunal.

18. Mr Donoghue submitted that the test under Rule 34(1) requires fairness, not only to Dr Burns, but also to the GMC, which represents the public interest in these proceedings. He submitted that there is a strong public interest in any allegation of sexual activity by a doctor with a vulnerable patient being properly considered by the Tribunal.

19. Mr Donoghue submitted that the weight which may be attached to the evidence in the VRI and the evidence of Patient A's complaint to Ms B and to the Police, would be a matter for the substantive Tribunal when reaching its determination on the Allegation. He stated that it would run contrary to that public interest if Dr Burns were to avoid a hearing on the allegations of physical sexual activity with Patient A, by reason of her vulnerability in not attending to give evidence because of the potential impacts upon her mental health.

20. Mr Donoghue submitted that in all the circumstances of the case, and considering the evidence as a whole, the admission of Patient A's VRI meets the test of fairness under rule 34(1). He submitted that the evidence in Patient A's VRI is relevant to the Allegation which Dr Burns faces and that it is fair for it to be admitted, such that the Tribunal is invited to grant the GMC's application.

On behalf of Dr Burns

21. Mr Ivill stated that he agreed with the case law authorities referenced by Mr Donoghue. He stated that objection is taken to the admissibility of the VRI as well as to the admissibility of what Patient A purportedly told others, including the contents of the police report and her account to Ms B. He objected to the admission of that material on the grounds that it is hearsay and cannot be properly tested. He submitted that admitting the evidence would be unfair, particularly given the seriousness of the allegations. He stated that the greater the potential consequence for a registrant, the more compelling the reasons must be for depriving the registrant of the opportunity to test the evidence by way of cross-examination.

22. Mr Ivill acknowledged that the issue is one of fairness and did not contend that this is not a relevance issue. He agreed that this is particularly germane to paragraph 3(f), namely the suggestion of physical, sexual interaction between Dr Burns and Patient A. He submitted

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that the Fitness to Practise Rules (“the Rules”) do not override the need to ensure that the doctor is afforded a fair opportunity to challenge the evidence. He stated that although the Rules prescribe that any evidence effectively can be admitted so long as it is fair and relevant and that the Tribunal is not constrained by issues that may be prevalent in a civil or criminal court. Nonetheless, he repeated that the Rules do not override the need to ensure that the doctor is afforded fair opportunity to challenge the evidence.

23. Mr Ivill stated that Patient A’s account to the Police and Ms B, including the context of the messaging, is contested. He said that Dr Burns denies that he engaged in physical sexual activity with Patient A and will say that what is being described in their communications was fantasy role play conversations. Mr Ivill submitted that the loss of the ability to test the evidence is particularly acute where the complainant’s account is the GMC's only direct evidence of what was meant in those messages.

24. Mr Ivill stated that he did not submit that this is a case which falls within the category of sole evidence because it plainly is not, as a consequence of what is said in the communications between them. But it is undoubtedly the decisive evidence and what this means in effect is that without the complainant, it is not possible to explore the context or her motive or credibility.

25. Mr Ivill submitted that the defence are precluded from exploring or putting such matters to Patient A and the Tribunal will also be precluded from exploring those matters. He said that in circumstances where Patient A is not engaging the defence is unable to question her about her account, unable to test the reliability of her account and/or to challenge the context or meaning of the communications.

26. Mr Ivill referred to the point made in *Thorneycroft* about an assessment as to whether there is good reason for a witness's non-attendance and how even if there is not a good reason, then that does not automatically result in a decision that it should not be admitted. He submitted that even if it were to be determined that there was good reason for non-attendance that does not automatically justify admitting hearsay evidence any more than the absence of good reason automatically renders hearsay inadmissible.

27. Mr Ivill submitted that the inability of the defence to test Patient A's evidence through cross-examination goes to the very heart of the fairness of the proceedings. He stated that the GMC argues for the public interest in admitting this evidence, however, the

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right to a fair hearing is paramount and the argument for the public interest does not override the need to ensure fairness for the registrant.

28. Mr Ivill submitted that the criterion of fairness is not simply how much weight to assign to a piece of evidence, rather it is whether the evidence should be admitted at all. He submitted that if admitting the evidence were unfair it does not cease to be so by attaching less weight to it, if it is unfair to admit it then it should not be admitted, because it is either fair to admit or it is not fair to admit.

29. Mr Ivill also objected to Ms B's evidence, that her second-hand account further compounds the unfairness as it presents Patient A's primary allegations from a secondary source. He stated that the GMC's claim that Ms B's account provides a means to test Patient A's reliability is flawed because that account is based on what Patient A told her. He submitted that it is not independent corroboration. He stated that since Patient A is the sole witness and conceded to be the decisive witness to the alleged conduct, it is hard to see how an opportunity to cross-examine what Patient A told Ms B would advance the ability to challenge that part of the Patient A's evidence upon which those allegations rest. He submitted that the point is an empty one, given that there is no means of actually meaningfully testing that evidence. Mr Ivill referred the Tribunal to the recent complaint which was made on the 30 March 2021 which is approximately 6 years later.

30. Mr Ivill submitted that the VRI evidence is separate in terms of the assessment as to admissibility of what Ms B states that Patient A told her. He submitted that both matters should be excluded in so far as what would be the appropriate approach for the Tribunal to take, it should consider those aspects separately. He submitted that those issues need to be dealt with separately, not least because the conversations with Ms B are subject to additional considerations regarding their reliability and or the ability for the doctor to challenge them.

31. Mr Ivill, in conclusion, submitted that Dr Burns faces very serious allegations at paragraph 3(f) that carry potentially grave consequences. He submitted as a result of the non-engagement of the complainant the defence are unable to cross-examine Patient A in order to test the reliability of her account. He said that Patient A's evidence is central to making good the allegation. He said that in circumstances where a witness's evidence is central to making good the allegation, she is a witness of critical importance, and it follows that her evidence is a critical part of the case against Dr Burns. He stated that it has been

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conceded that Patient A's evidence is the decisive evidence, because it would be difficult indeed to see how an alternative conclusion could in fact be reached.

32. Mr Ivill submitted that fairness requires that the doctor be entitled to test Patient A's evidence by way of cross-examination. He stated that the removal of the means to test her evidence in that way means the test of fairness is not satisfied and, in those circumstances, the contested material should be excluded.

33. In response to a question from the Tribunal Mr Ivill stated that the VRI evidence is material which comes directly from the complainant herself and the material that Ms B refers to is a second-hand account because it is her saying what Patient A told her. He stated that he could not meaningfully challenge that evidence as it would be very difficult to assert that in fact Patient A did or did not say something because it's simply unknown. He further stated that the doctor is not present and in those circumstances that adds an additional layer of prejudice in relation to the ability to adequately challenge or explore what may have been said, because effectively, one is left with what Ms B repeating what Patient A told her. Ms B cannot say whether or not what Patient A said is accurate because she was not present during the alleged events, which would not be effective cross-examination. He said that he would not have the ability to challenge which adds an additional layer in relation to that material.

The Relevant Legal principles

34. The Legally qualified chair (LQC) referred to the guidance at para 22 of section 3: MPT hearings "When assessing whether it is fair to admit hearsay evidence, the MPT should first consider admissibility and then consider the weight to be attached to the evidence, taking into account that it's not been tested in cross examination".

35. As this is a preliminary hearing the Tribunal are just addressing the matter of admissibility. Rule 34 provides that the Tribunal may admit any evidence it considers fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.

36. The Tribunal must first assess whether the evidence is relevant, does it relate to the issues of the case. Fairness is to be considered in the round, having regard to all of the

relevant factors. Fairness must always be looked at for both parties and the Tribunal should consider whether fairness can be achieved.

37. The principles to be considered by the Tribunal in considering whether to admit hearsay are set out in a number of key cases of which the pertinent points are set out in the case of *R (Bonhoeffer) v GMC* [2011] EWHC 1585 (Admin) as set out by Mr Donoghue in paragraph 10 above.

38. If the Tribunal determine to admit the hearsay evidence it will be for the substantive Tribunal to adopt a careful balancing exercise when considering the hearsay evidence, and the weight to attach to it, especially where it is key evidence for a particular allegation.

39. The LQC referred to the case of *Freeman v GMC* 2023 where the Court observed that even in criminal proceedings the right conferred by Article 6 to cross-examine is not absolute.

The Tribunal's decision

40. The Tribunal took into account the submissions from both parties and had consideration of the skeleton arguments which had also been provided. The Tribunal accepted the LQC's advice that it needed to determine the admissibility of the hearsay evidence of both the i) Video recorded interview ("VRI") from Patient A and ii) the witness statement of Ms B.

41. The Tribunal noted that both Counsel conceded that the evidence to be considered is relevant. The Tribunal was clear that the video evidence went to the heart of the allegation against the doctor and that the witness statement of Ms B was a further account of the allegation. It therefore determined that both pieces of evidence were relevant to the issues.

42. In considering the fairness of admitting the evidence the Tribunal considered each piece of evidence separately. It first considered the fairness in admitting the VRI and the police crime report.

VRI and Police crime report

43. The Tribunal noted that both the VRI and the police crime report detailed the evidence that Patient A had disclosed to the Police. It took the view that when considering

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the relevance and fairness of admitting these documents it could consider this evidence together. The Tribunal was provided with a transcript of Patient A's VRI, a copy of the police crime report and a copy of the allegation against Dr Burns. The Tribunal noted that the witness had disengaged with the GMC prior to giving a formal GMC witness statement pertinent to these proceedings and that the VRI and the police crime report was the evidence which the GMC wished to rely upon in presenting their case.

44. The Tribunal considered the reasons for the non-attendance of the witness. It considered the emails sent from the GMC to Patient A in and around January 2023 and in particular the email from Patient A stating: *"I've read the attached transcript and I don't believe I can go through with this. It was incredibly distressing and traumatic to relive the events in the police interview and I can't bring myself to do it again, I know I have told the truth in every word and the stress and trauma that this has caused me has done so much damage over the past years that I don't think I can go through with it. I'm so very sorry, I wanted to do the right thing and be able to help but it's too much."*

45. The Tribunal considered Patient A's medical notes and Mr Donoghue's submission that Patient A was suffering from mental health issues, XXX and suicidal ideation before she went to see her GP, Dr Burns. The Tribunal further considered the content of Patient A's allegations against Dr Burns and her contention that reading the transcript has caused her distress.

46. The Tribunal determined that the GMC has made reasonable attempts to obtain Patient A's attendance and that there is an understandable reason for Patient A's non-attendance and disengagement from the proceedings.

47. The Tribunal accepted that the evidence of Patient A was of high importance in these proceedings. It noted that the VRI was a recorded police interview which had gone through the proper procedural channels for a police interview with appropriate warnings given on the requirement to be honest. The officer conducting the interview initially listened to Patient A's allegations but then preceded to ask questions and gather further details of the alleged conduct. The Tribunal noted that it was also provided with Dr Burns' police interview regarding the same matters.

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48. The Tribunal was of the view that to exclude Patient A's interview would create an unfairness to the proceedings as it would mean that only Dr Burns' police interview would be seen by the substantive MPT when they determined the facts (the "MPT").

49. The Tribunal considered the other evidence and determined that the email exchanges between Dr Burns and Patient A is objective evidence which may support the evidence on the VRI and the police crime report. It would therefore be possible for the MPT to test the veracity of the VRI and the police crime report against the content of the emails. The Tribunal was of the view that the emails may support both parties' narrative and that the MPT would need to have an understanding of Patient A's narrative in order to properly test and weigh the other evidence it had before it.

50. The Tribunal considered the unfairness which may be presented to Dr Burns by not being able to challenge and cross examine Patient A. Whilst the Tribunal noted that the veracity of the content of the VRI evidence and the police crime report cannot be tested by cross-examination, it was satisfied that there was sufficient other evidence, even in the absence of Patient A, by which the reliability of the VRI and the police crime report could be tested to ensure fairness in the round in relation to these matters.

51. The Tribunal therefore determined to grant the application to admit Patient A's VRI evidence and the police crime report.

Witness statement of Ms B

52. The Tribunal noted that Ms B's evidence is a second-hand account of the account by Patient A. Patient A first disclosed the interactions with Dr Burns to Ms B, XXX community mental health nurse in 2021. Patient A had been seeing Ms B XXX. Ms B's witness statement is an account of what Patient A told her during an appointment on 30 March 2021.

53. The Tribunal was certain that the evidence was relevant to the issues on this matter. It went on to consider the fairness to both parties of admitting the evidence.

54. The Tribunal was of the view that the VRI evidence can be tested against Ms B's evidence and vice versa. The Tribunal rejected Mr Ivill's submission that admitting this evidence compounds the unfairness towards Dr Burns. The Tribunal considered that it was

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not relevant whether Patient A was present to be cross examined, on whether it was fair to admit the evidence of Ms B.

55. The Tribunal was of the view that the MPT must decide whether Ms B is a reliable and credible witness and whether she captured the account of Patient A. It would be for the MPT to determine the weight to give to this second-hand account taking into consideration all the other evidence when making a determination on facts.

56. When considering fairness in the round, the Tribunal was of the view that not admitting Ms B's evidence would create more unfairness as her witness statement provides a further account of the events alleged by Patient A and the MPT would be able to test the veracity of the other evidence against this account and the other supporting evidence.

57. The Tribunal concluded that the evidence of Ms B is relevant and fair and determined to admit the evidence.