

PUBLIC RECORD

Dates: 01/03/2021 - 04/03/2021

Medical Practitioner's name: Dr Fiona DAVIDSON

GMC reference number: 2605397

Primary medical qualification: MB ChB 1982 University of Dundee

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Impaired

Summary of outcome

Suspension, 14 days

Tribunal:

Legally Qualified Chair	Ms Margaret Obi
Medical Tribunal Member:	Dr Edward Smith
Medical Tribunal Member:	Dr Pranveer Singh
Tribunal Clerk:	Olivia Moy

Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Chris Hamlet, 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 Facts - 02/03/2021

1. Dr Fiona Davidson qualified in 1982 from The University of Dundee and completed her General Practitioner training at Orchard House, Stirling in 1987. Prior to the events which are the subject of the hearing, Dr Davidson was a GP partner at Kelvinside Medical Centre, Glasgow from 1988 to 2018. Dr Davidson then worked there as a sessional salaried GP before retiring in April 2020.
2. The allegation that has led to Dr Davidson's hearing can be summarised as follows: Between 16 January and 28 February 2019, Dr Davidson self-prescribed medication or prescribed medication for family members. It is alleged by the General Medical Council ('GMC'), that Dr Davidson used her married name on the prescriptions in question to obscure the fact she was self-prescribing or prescribing for family members. The GMC further alleges that Dr Davidson's actions were dishonest.
3. The initial concerns were raised with the GMC after Ms C, a Pharmacist and Store Manager at Boots, Airdrie ('The Pharmacy'), decided to undertake further checks regarding a prescription for XXX. Ms C called Kelvinside Medical Centre and it was confirmed they did not recognise the patient name on the prescription. Following this, Ms C then contacted the Boots Pharmacy Support Office for advice, which referred her to the GMC.

The Outcome of Applications Made during the Facts Stage

4. The Tribunal, of its own volition, determined that it did not need to recuse itself after reading documents which did not relate to stage one of the hearing. The Tribunal's decision on this matter is included at Annex A.
5. The Tribunal granted the GMC's application, made pursuant to Rule 41 of Rules, to exclude the public from those parts of the proceedings where the facts of this case relating to patients' medical conditions be held in private session. The Tribunal's full decision on the application is included at Annex B.

6. The Tribunal granted the GMC’s application, made pursuant to Rules 15 and 40 of the General Medical Council (Fitness to Practise) 2004 (“the Rules”) that the hearing should proceed in the doctor’s absence in accordance with Rule 31 of the Rules. The Tribunal’s full decision on the application is included at Annex C.

The Allegation and the Doctor’s Response

7. The Allegation made against Dr Davidson is as follows:

That being registered under the Medical Act 1983 (as amended):

1. You prescribed to your family members in that you prescribed to:
 - a. Mr A on or around 16 January 2019; **Admitted and found proved**
 - b. Mr A on or around 1 February 2019; **Admitted and found proved**
 - c. Ms B on or around 28 February 2019. **Admitted and found proved**

2. You:
 - a. self-prescribed on or around 1 February 2019; **To be determined**
 - b. used your married name (as set out in Schedule 1), as the name of the purported patient, when prescribing as set out at paragraph:
 - i. 1. b.; **Admitted and found proved**
 - ii. 2. a.; **To be determined**
 - c. signed the prescription dated 1 February 2019 Patient Declaration in your married name. **Admitted and found proved**

3. You used your married name as described in paragraph 2. b. to obscure that you were:
 - a. prescribing to a family member; **To be determined**
 - b. self-prescribing. **To be determined**

4. You signed your married name as described in paragraph 2. c. to obscure that you were:
 - a. prescribing to a family member; **To be determined**
 - b. self-prescribing. **To be determined**

5. Your actions at paragraph 2 were dishonest by reason of paragraph:
 - a. 3; **To be determined**
 - b. 4. **To be determined**

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

The Admitted Facts

8. At the outset of these proceedings, through a written statement, Dr Davidson made admissions to paragraphs and sub-paragraphs of the Allegation, 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.

The Facts to be Determined

9. In light of Dr Davidson's response to the Allegation made against her, the Tribunal was required to determine whether Dr Davidson self-prescribed, whether she used her married name to obscure the fact she was prescribing for herself or to family members and whether her actions were dishonest.

Factual Witness Evidence

10. The Tribunal received evidence on behalf of the GMC in the form of witness statement a from the following witness:

- Ms C, a Pharmacist and Store Manager at Boots, Airdrie.

11. Ms C was tendered as a witness by the GMC. However, as the Tribunal had no questions for her she did not give oral evidence.

Documentary Evidence

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

- Dr Davidson's stage 1 written submissions;
- A written statement from Dr Davidson, dated 7 December 2020;
- An incident form from Boots Pharmacy, dated 5 April 2019;
- Copies of the prescriptions in question.

The Tribunal's Approach

13. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Davidson does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

14. The Tribunal reminded itself that it must form its own judgement about the evidence. It noted that it must decide whether to accept or reject such evidence, and where it is accepted, what weight to attach to it.

15. Where relevant to its decision-making process, the Tribunal had regard to the test for dishonesty set out in *Ivey v Genting Casinos (UK) Limited (t/a Crockfords Club) [2017] UKSC 67*. It states:

'When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'

16. The Tribunal also bore in mind that it should assess and determine each paragraph and sub-paragraph of the Allegation separately. It noted that while it can draw inferences from the evidence, it must not speculate as to any further evidence that has not come before it.

17. The Tribunal took account of the requirement to give sufficient and clear reasons for its determination.

The Tribunal's Analysis of the Evidence and Findings

18. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

Paragraph 2(a) and (b)ii of the Allegation

19. The Tribunal found paragraph 2(a) of the Allegation not proved for the following reasons:

20. The Tribunal noted that, if taken literally, Dr Davidson did ‘self-prescribe’ by putting the prescription in her own name; as what she intended to do with the medication afterwards could be seen as separate matter. However, it was made clear by the GMC at the outset of the hearing that the allegation that Dr Davidson ‘self-prescribed’ is an alternative to ‘prescribed for members of your family.’ Dr Davidson stated in her witness statement that XXX Mr A, received a telephone call from his GP surgery during the week commencing 7 January 2019, informing him of XXX and that urgent XXX investigations would need to be carried out. She also stated that on 31 January 2019 Mr A was diagnosed with XXX. Dr Davidson’s written evidence was not challenged by the GMC and the Tribunal accepted that the prescription for XXX on 16 January 2019 was for [Mr A].

21. The Tribunal also accepted that the prescription Dr Davidson wrote on or around 1 February 2019 for XXX and XXX was also for [Mr A] and not for her own personal use. Accordingly, the Tribunal has therefore found paragraph 2(a) not proved.

22. The Tribunal found paragraph 2(b)ii of the Allegation not proved on the basis that paragraph 2(a) was found not proved.

Paragraphs 3-4 of the Allegation

23. The Tribunal found paragraph paragraphs 3-4 of the Allegation not proved for the following reasons:

24. The Tribunal bore in mind that during the relevant timeframe [Mr A] had received a XXX diagnosis. The Tribunal accepted Dr Davidson’s written evidence that this was a period of significant stress. This was not disputed by the GMC. The Tribunal noted that Dr Davidson would have been aware XXX that something was wrong and acknowledged XXX would have been distressing.

25. The Tribunal noted that Dr Davidson is of previous good character and has had no prior Fitness to Practise concerns. XXX The Tribunal noted that Dr Davidson’s use of her married name on the prescriptions she wrote on 1 February 2019 and 28 February 2019 (XXX for XXX Ms B) could be interpreted as an attempt to obscure the fact that she was prescribing for members of her family knowing that it is a breach of Good Medical Practice. However, the

Tribunal was unable to rule out the possibility that it was an error or a careless failure due to the stress that Dr Davidson was under at the time. The Tribunal took the view that this was more likely than a deliberate attempt to obscure her relationship with the intended recipient of the medication. The Tribunal accepted that Dr Davidson would have been under a sustained period of distress throughout the months the prescriptions were written, and it was satisfied that this level of upset is likely to have caused Dr Davidson to have made an error.

26. The GMC bears the burden of proof and the Tribunal concluded that insufficient evidence that this was more than an error or careless failure. The Tribunal took into account the fact that Dr Davidson used both her married name and professional name on the prescription she wrote on 16 January 2019. The Tribunal took the view that this was equally consistent with the conclusion that during this period Dr Davidson was under significant stress and made careless errors.

27. The Tribunal therefore found paragraphs 3-4 of the Allegation not proved.

Paragraphs 5 of the Allegation

28. The Tribunal found paragraph 5 of the Allegation not proved for the following reasons:

29. The Tribunal found paragraphs 3-4 of the Allegation not proved and determined that Dr Davidson used her married name on the prescriptions in question in error rather than in an attempt to deliberately obscure that she was prescribing to family members or to herself. The Tribunal therefore determined that Dr Davidson's actions were not dishonest and accordingly, paragraph 5 of the allegation was found not proved.

The Tribunal's Overall Determination on the Facts

30. The Tribunal has determined the facts as follows:
That being registered under the Medical Act 1983 (as amended):

1. You prescribed to your family members in that you prescribed to:
 - a. Mr A on or around 16 January 2019; **Admitted and found proved**
 - b. Mr A on or around 1 February 2019; **Admitted and found proved**
 - c. Ms B on or around 28 February 2019. **Admitted and found proved**
2. You:

- a. self-prescribed on or around 1 February 2019; **Found not proved**
 - b. used your married name (as set out in Schedule 1), as the name of the purported patient, when prescribing as set out at paragraph:
 - i. 1. b.; **Admitted and found proved**
 - ii. 2. a.; **Found not proved**
 - c. signed the prescription dated 1 February 2019 Patient Declaration in your married name. **Admitted and found proved**
3. You used your married name as described in paragraph 2. b. to obscure that you were:
- a. prescribing to a family member; **Found not proved**
 - b. self-prescribing. **Found not proved**
4. You signed your married name as described in paragraph 2. c. to obscure that you were:
- a. prescribing to a family member; **Found not proved**
 - b. self-prescribing. **Found not proved**
5. Your actions at paragraph 2 were dishonest by reason of paragraph:
- a. 3; **Found not proved**
 - b. 4. **Found not proved**

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

Determination on Impairment - 03/03/2021

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Davidson's fitness to practise is impaired by reason of misconduct.

The Outcome of Applications Made during the Facts Stage

2. The Tribunal granted the GMC's application made pursuant to Rule 34(1) of the Rules, to admit further information in the form of an additional prescription ("the 4th prescription"). The Tribunal's full decision on the application is included at Annex D.

The Evidence

3. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.
4. Additionally, The Tribunal now has before it the further information relating to the 4th prescription.

Submissions

5. On behalf of the GMC, Mr Hamlet submitted that Dr Davidson is impaired by reason of misconduct.
6. Mr Hamlet submitted that on three separate occasions Dr Davidson knowingly acted in breach of Good Medical Practice by prescribing medication for members of her family. He drew the Tribunal's attention to paragraph 16(g) of GMP which states:

*“16 In providing clinical care you must
g wherever possible, avoid providing medical care to yourself or anyone with
whom you have a close personal relationship.”*

7. Mr Hamlet acknowledged that although the guidance makes it clear that prescribing to family members is not completely prohibited, he suggested that it is evident that medical care to family members should be provided 'in extremis only'.
8. Mr Hamlet also acknowledged that Dr Davidson was under personal stress during the time these prescriptions were produced. However, he drew the Tribunal's attention to Dr Davidson's witness statement, where she outlined the reasons why she prescribed medication for her family members. In respect of Ms B, Dr Davidson stated that Ms B had run out of XXX and could not attend her own GP due to a demanding XXX schedule. In respect of Mr A, Dr Davidson stated that Mr A was working full-time, that his surgery was busy and that it was not easy to get an appointment. Mr Hamlet invited the Tribunal to conclude that these reasons are not adequate.
9. Mr Hamlet submitted that the 4th prescription indicates that Dr Davidson's actions were not purely altruistic as she also self-prescribed during the relevant period. He further submitted that her prescribing activity was for reasons of 'convenience' and demonstrates 'a cavalier attitude towards Good Medical Practice'. Mr Hamlet submitted that collectively, Dr Davidson's actions indicate 'catastrophically poor judgement' and although her actions were found not to be dishonest, they amount to a deliberate breach of GMP.

10. Mr Hamlet submitted that when considering impairment, the Tribunal should bear in mind the impact on public confidence along with the message her actions send to other members of the profession. Mr Hamlet concluded that with that in mind, a finding of

impaired practice is required in order to maintain public confidence in the profession and to uphold proper professional standards.

The Tribunal's Determination on Impairment

The Relevant Legal Principles

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

12. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct and, secondly, whether its findings on this led to a finding of impairment.

13. The Tribunal must determine whether Dr Davidson's fitness to practise is impaired today, taking into account Dr Davidson's conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

The Tribunal's Determination on Impairment

Misconduct

14. The Tribunal first considered whether the conduct found proved in the case of Dr Davidson amounted to misconduct.

15. At the facts stage of these proceedings, Dr Davidson admitted that she prescribed medication for Mr A between 16 January and 1 February 2019 and Ms B on or around 28 February 2019. Accordingly, this paragraph of the Allegation was found proved.

16. The Tribunal had regard to paragraph 16g of GMP which states:

*"16 In providing clinical care you must
g wherever possible, avoid providing medical care to yourself or anyone
with whom you have a close personal relationship."*

17. The Tribunal also had regard to the duties of a registered medical practitioner as set out in GMP. These duties include the following:

*"You are personally accountable for your professional practice and must
always be prepared to justify your decisions and actions."*

18. The Tribunal noted that GMP does not prohibit prescribing medication for family members. The Tribunal took the view that there are a range of situations where prescribing for family members may be justified and it is likely that paragraph 16(g) is in recognition that a hard and fast rule would be overly restrictive. However, there is an expectation that doctors will exercise good judgement. The Tribunal noted that Dr Davidson stated in her witness statement that she prescribed for Mr A because he was working full time and it is not easy to get an appointment at his GP's surgery and she prescribed for Ms B because she had a demanding XXX schedule. The Tribunal concluded that Dr Davidson wrote prescriptions for members of her family for reasons of convenience. In relation to Ms B she prescribed XXX. The Tribunal was of the view that convenience is not an adequate justification. There was no evidence before the Tribunal that Dr Davidson had considered reasonable alternatives and no evidence of the steps she, or [Mr A], had taken to obtain an appointment at his GP surgery.

19. The Tribunal concluded that Dr Davidson's actions demonstrated very poor judgement which was repeated on three separate occasions within a short period of time. Her actions demonstrate a departure from GMP. The Tribunal noted Dr Davidson's stressors during the relevant period but concluded that the departure is significant because of the persistent nature of her actions and inadequacy of her justification.

20. Accordingly, the Tribunal found that Dr Davidson's actions amounted to misconduct which is serious.

Impairment by reason of misconduct

21. The Tribunal, having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Davidson's fitness to practise is currently impaired by reason of her misconduct.

22. The Tribunal had regard to Dr Davidson's written statement where she states:

"I am appalled at my obvious lack of judgement during this pressurised time. I have reflected very carefully on my actions in prescribing for [Mr A] and consider that this was not in accordance with Good Medical Practice. I have re-reviewed the GMC's Good Medical Practice and Prescribing and Managing medicines and Devices guidance."

...

"I fully acknowledge that these prescriptions should have been dealt with through Mr A and Ms B's respective GPs. I wholly accept that I should not have written or signed these prescriptions."

...

“I fully accept that each prescription is my responsibility.”

23. The Tribunal took the view that Dr Davidson had thought carefully and intensely about her failure to adhere to the high standards expected of her as a registered doctor. It was clear to the Tribunal that she deeply regretted her actions, and the gravity of her failings. The Tribunal accepted that her remorse was genuine.

24. The Tribunal took the view that Dr Davidson has developed sufficient insight relative to the actions which led to the finding of misconduct. Although Dr Davidson stated in her witness statement *“My sole intention during this period of acute stress was to assist [Mr A] and [Ms B] in whatever way possible”* the Tribunal noted that she also prescribed for herself during the same period. However, the Tribunal was satisfied that this did not undermine her overall level of insight.

25. In reaching this conclusion the Tribunal noted that since the relevant events, Dr Davidson has taken the following remedial steps:

- Undertaking various courses such as an intensive course run by The Clinic for Boundaries Studies called *“Maintaining Professional Ethics”*
- Revisiting the prescribing aspects of Good Medical Practice
- Completing the BMJ module on Safe and Effective prescribing
- Re-reading GMC guidelines
- Engaging in a detailed discussion in a face to face meeting with her Responsible Officer regarding the prescribing incidents

26. The Tribunal took the view that the risk of repetition is very low in this case due to the level of Dr Davidson’s insight and the stressful impact these proceedings have had upon her. Furthermore, the Tribunal had no reason to doubt that Dr Davidson is a competent doctor which is supported by the testimonial provided by Dr D, retired partner at Kelvinside Medical Centre. In these circumstances, the Tribunal concluded that Dr Davidson’s fitness to practise is not impaired from a personal perspective.

27. The Tribunal went on to consider the wider public interest which includes upholding trust and confidence in the medical profession and upholding proper standards of behaviour.

28. The Tribunal took the view that Dr Davidson’s actions brought the profession into disrepute. Her actions undermined trust and confidence in her professional standing as a doctor and the profession as a whole. Her conduct fell far below the standard expected of a doctor and the Tribunal concluded that a finding of impairment is required to declare and uphold proper standards of conduct and behaviour. The panel also concluded that public trust and confidence in the profession would be seriously undermined if there was no finding of impairment.

29. The Tribunal concluded that the wider public interest requires a finding that Dr Davidson's fitness to practise is currently impaired.

30. The Tribunal therefore, determined that Dr Davidson's fitness to practise is impaired by reason of her misconduct.

Determination on Sanction - 04/03/2021

1. Having determined that Dr Davidson's fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

The Evidence

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

Submissions

3. On behalf of the GMC, Mr Hamlet submitted that the appropriate sanction in the case of Dr Davidson, is a period of suspension.

4. Mr Hamlet submitted that although there are mitigating factors in Dr Davidson's case, her actions amounted to misconduct which was serious and committed on three occasions. Mr Hamlet reminded the Tribunal that it had determined that Dr Davidson's attempt to justify her actions was inadequate as the inappropriate prescriptions were born out of convenience rather than clinical necessity.

5. Mr Hamlet drew the Tribunal's attention to the relevant paragraphs of the Sanctions Guidance and submitted that a sanction is imperative to maintain public confidence and uphold proper professional standards.

6. Mr Hamlet submitted that an order of conditions would not be appropriate or practical in the case of Dr Davidson as, along with the fact she has retired and is not currently practising, conditions do not reflect the gravity of her conduct.

7. Moving to the next sanction available to the Tribunal, Mr Hamlet submitted that in order to address the need to maintain public confidence and uphold proper professional standards, an order of suspension on Dr Davidson’s registration is necessary and proportionate.

The Relevant Legal Principles

8. The Legally Qualified Chair reminded the Tribunal that the decision as to the appropriate sanction, if any, is a matter for this Tribunal’s own independent judgement. The Tribunal was reminded that it should consider the least restrictive sanction first, before moving on to consider more serious sanctions. The Tribunal should also consider proportionality by weighing Dr Davidson’s interests against the interests of the public.

9. In reaching its decision, the Tribunal should take into account the Sanctions Guidance and the statutory overarching objective, which includes protecting and promoting the health, safety and wellbeing of the public, promoting and maintaining public confidence in the profession, and promoting and maintaining proper professional standards and conduct.

The Tribunal’s Determination on Sanction

10. The Tribunal, in reaching its decision had regard to relevant paragraphs of the Sanctions Guidance (SG). It has borne in mind that the purpose of a sanction is not to be punitive, although it may have a punitive effect.

Mitigating Factors

11. The Tribunal consider the following to be mitigating features of Dr Davidson’s case:
- Dr Davidson has a previously unblemished record and is otherwise a competent doctor.
 - Although Dr Davidson’s conduct occurred on three occasions, it is isolated in the context of her overall career.
 - Dr Davidson was under significant personal stress at the time the events took place.
 - Dr Davidson has made full admissions.
 - Dr Davidson displayed good and sufficient insight.

- Dr Davidson has expressed genuine remorse for her actions and has sought to remedy her conduct.
- There is a low risk of repetition, notwithstanding her retirement.

12. The Tribunal balanced those mitigating features against what it considered to be the aggravating features in this case:

Aggravating Factors

13. The Tribunal identified the following factors:

- Dr Davidson’s misconduct was repeated on three separate occasions within a relatively short period of time.
- Dr Davidson’s actions were for reasons of convenience rather than clinical necessity.

No action

14. The Tribunal first considered whether to conclude Dr Davidson’s case by taking no action. The Tribunal noted that following a finding of impairment, taking no action is only considered appropriate where there are exceptional reasons for doing so. The Tribunal determined that there were no exceptional circumstances which would justify a decision to take no action. It therefore determined that taking no action would not be appropriate, proportionate or in the public interest.

Conditions

15. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Davidson’s registration. The Tribunal bore in mind that any conditions imposed would need to be appropriate, proportionate, workable, and measurable.

16. The Tribunal noted that the purpose of a sanction in Dr Davidson’s case is to maintain trust and confidence in the profession and uphold proper standards of conduct and behaviour. The Tribunal has already determined that Dr Davidson is a competent doctor and from a personal perspective is fit to practise. As a consequence, there are no clinical issues to

address which require a period of retraining or supervision. Dr Davidson’s prescribing activities in January and February 2019 demonstrate an attitudinal failing during a period of considerable stress. The Tribunal concluded that, in these circumstances, it would not be possible to formulate a set of conditions which would adequately address her misconduct and they would be neither sufficient nor appropriate.

17. The Tribunal concluded that conditions would not be appropriate, proportionate, workable or measurable.

Suspension

18. The Tribunal next considered whether it would be appropriate and proportionate to suspend Dr Davidson’s registration. The Tribunal gave careful consideration to the paragraphs of the SG on suspension.

19. Paragraphs 91-93 of the SG were given particular consideration. These paragraphs emphasise that suspension has a deterrent effect and can be used to send a signal to the doctor, the profession, and the public about what is regarded as behaviour unbecoming a registered doctor. In addition, suspension is an appropriate response to misconduct that is so serious that action must be taken to maintain public confidence in the profession.

20. The Tribunal also had regard to paragraph 97 of the SG which outlines the features which indicate that a period of suspension might be appropriate. The relevant features are set out below:

“a A serious breach of Good medical practice, but where the doctor’s misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.”

...

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.

21. The Tribunal took into account the mitigating and aggravating features in this case. This included Dr Davidson's current level of insight and the steps she has taken to remediate her conduct. The Tribunal took the view that although there is significant mitigation, however, the primary purpose of imposing sanctions is the wider public interest. It is for this reason that even where a doctor is unlikely to pose a direct risk to patients, is unlikely to re-offend in the same manner and has accepted full responsibility from the outset, it may still be necessary to impose a sanction in the interests of maintaining public trust and confidence. The Tribunal concluded that this applies to the present case; the gravity of Dr Davidson's misconduct needs to be marked.

22. The Tribunal was satisfied that a period of suspension would re-affirm to the wider profession and the public the high standards of conduct of behaviour expected from doctors at all times. Therefore, the Tribunal concluded that a period of suspension was the appropriate sanction to mark the seriousness of Dr Davidson's misconduct and, in so doing, to maintain public confidence in the profession and uphold proper standards of conduct and behaviour.

23. Having determined that a period of suspension was appropriate in this case, the Tribunal went on to decide what the appropriate length of the suspension should be. The Tribunal noted that there are no patient safety concerns in this case and no additional remedial steps are required. The sole purpose of the sanction is to mark the seriousness of Dr Davidson's conduct. In these circumstances only a short period of suspension was required.

24. Balancing all the relevant factors, the Tribunal concluded that it was appropriate, necessary, and proportionate to suspend Dr Davidson's registration for a period of 14 days. In reaching this conclusion the Tribunal took the view that the act of suspension itself was sufficient to send a signal to the wider profession and the public with regards to the standards expected. Therefore, the Tribunal was satisfied that it would be appropriate to impose the lowest period of suspension that would achieve that aim, whilst reflecting the seriousness of Dr Davidson's actions.

25. The Tribunal considered whether to direct a review in this case. It had regard to the absence of any patient safety concerns and the limited purpose of the sanction. The Tribunal concluded that a review hearing would be unnecessary as it would serve no useful purpose.

26. The effect of this direction is that, unless Dr Davidson exercises her right of appeal, her name will be suspended from the Medical Register for a period of 14 days with effect from 28 days from when written notice of this determination has been served upon her.

Determination on Immediate Order - 04/03/2021

1. Having determined to impose a period of suspension on Dr Davidson's registration, the Tribunal has now considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Davidson's registration should be subject to an immediate order.

2. On behalf of the GMC, Mr Hamlet did not make an application for an immediate order. The Tribunal noted that there is no interim order on Dr Davidson's registration.

The Tribunal's Determination

3. The Tribunal had regard to paragraphs 172-178 of the SG which advise when an immediate order may be necessary.

4. The Tribunal considered that given there are no clinical concerns in this case, an immediate order of suspension is not necessary to protect the public. The Tribunal also considered that an immediate order is not necessary to protect the public interest which is served by the finding of impairment and the substantive sanction of suspension for a period of 14 days.

5. That concludes the case.

Confirmed

Date 04 March 2021

Ms Margaret Obi, Chair

ANNEX A – 01/03/2021

1. Prior to the commencement of this hearing, Mr Hamlet informed the Tribunal that the skeleton arguments it read in relation to an application to admit additional evidence was not intended for stage one of the hearing but was to be considered when the Tribunal had reached a decision on Facts. The Tribunal raised, of its own motion, the issue of whether or not to recuse itself, on the basis that information potentially prejudicial to Dr Davidson’s case had been inadvertently disclosed prior to the determination of the facts.
2. The Tribunal invited submissions upon whether, in light of the issues highlighted, it was fair and in the interests of justice for it to continue to hear the case.

Submissions on behalf of the GMC

3. Mr Hamlet submitted that it is not necessary for the Tribunal to recuse itself, he stated that this is a professional Tribunal which is in a position to put things intellectually out of its mind at this stage.
4. The Tribunal had regard to the advice of the Legally Qualified Chair (LQC). The starting point in its considerations should be that the Tribunal was independent and professional, and capable of disregarding irrelevant material, even of a potentially prejudicial nature, in reaching its decisions. However, it had a duty to consider the fairness of proceedings, especially in light of Dr Davidson not being legally represented. The Tribunal were reminded of the test of bias in the case of *Porter v Magill* [2002] 2 AC 357, where Lord Hope of Craighead said that “the question is whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Tribunal was biased”.
5. The Tribunal was mindful of its overarching objective in maintaining public confidence in the profession and of the need for fairness to all parties to a hearing. It also had regard to the benefit to all parties of the expeditious disposal of Allegations.
6. The Tribunal is satisfied that if it identified material to be irrelevant and potentially prejudicial, it could properly disregard it and discharge its duty without there being a perception of unfairness. The Tribunal would ensure that its approach to the evidence and its reasoning were clear in any subsequent determinations. It concluded a fair minded and informed observer on reading this determination, would not perceive the Tribunal to have been unfairly influenced by reading the material prior to the hearing commencing.
7. The Tribunal therefore determined that, in all the circumstances, it was fair for the hearing to proceed with the Tribunal as constituted.

ANNEX B – 01/03/2021

1. On behalf of the GMC, Mr Hamlet made a preliminary application to the Tribunal, pursuant to Rule 41 of the General Medical Council (Fitness to Practise) Rules Order of Council 2004 (the Rules). Mr Hamlet applied to exclude the public from those parts of the proceedings where the facts of the case concern the health details of patients. He submitted that the patient’s right to anonymity outweighs the public interest in the entire case proceeding in public.

2. The Tribunal considered Mr Hamlet’s application regarding the patients and noted that hearings should be heard in public wherever possible. That accords with the principle of open justice. Nevertheless, the Tribunal considered that the needs of the patients override the general public interest in the entire case being conducted in the open. Therefore, the Tribunal determined that it is in the interests of justice that parts of proceedings pertaining to the health of the patients be held in private.

3. The Tribunal determined that any matters relating to Dr Davidson’s health or the health of any member of her family should also be heard in private. This is necessary in order to protect the private life of the doctor. The Tribunal balanced the principle of open justice against the private interests of the doctor. The Tribunal concluded that it is proportionate for health issues concerning Dr Davidson to be considered in private session.

4. Accordingly, the Tribunal determined to grant Mr Hamlet’s applications under Rule 41 in order that part of the proceedings can take place in private.

ANNEX C – 01/03/2021

1. Dr Davidson is not present today at this Medical Practitioners Tribunal (‘MPT’) hearing. The Tribunal therefore considered whether the relevant documents had been served in accordance with Rules 20 and 40 of the General Medical Council (‘GMC’) (‘Fitness to Practise’) Rules 2004 (‘the Rules’) and paragraph 8 of the fourth Schedule to the Medical Act 1983.

2. Mr Hamlet, Counsel, on behalf of the GMC provided the Tribunal with various documents regarding service of Notice of the Hearing of Dr Davidson. This included the Notice of Allegation, which was sent via email on 18 January 2021 and a response from Dr Davidson’s representative, acknowledging receipt of the Notice of Allegation. Additionally, the Tribunal was provided with the Notice of Hearing, which was sent via email on 25 January

2021. An email response from Dr Davidson’s representative confirming that neither herself nor her representative would be attending the hearing was received by the MPTS on 25 January 2021.

3. Mr Hamlet submitted that as Dr Davidson and her representative have provided written submissions, the Tribunal should view this as an invitation to proceed in their absence.

4. The Tribunal had regard to the documents before it and the submissions made by Mr Hamlet and was satisfied that notice of this hearing had been served in accordance with Rules 20 and 40.

Proceeding in Absence

5. Having been satisfied that notice was properly served upon Dr Davidson, the Tribunal then considered whether to proceed with this hearing in her absence, in accordance with Rule 31 of the Rules. The Tribunal was conscious that in accordance with the principles in *R v Jones (2001) EWCA Crim 168* and *Adeogba (2016) EWCA Civ 162*, the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.

6. The Tribunal has evidence before it that Dr Davidson was aware of the hearing commencing on 1 March 2021. The Tribunal determined that Dr Davidson has chosen to voluntarily absent herself from today’s proceedings. Furthermore, it has not received any indication that Dr Davidson has requested an adjournment in order to engage at a later date.

7. Dr Davidson’s representative, Ms Nicola O’Connor, has provided written submissions for Stage 1 of the hearing, which the Tribunal will take into account.

8. The Tribunal concluded that it is in the public interest and in the interests of justice to proceed with this hearing today. Additionally, the Tribunal were mindful that there was a witness scheduled to give evidence on 1 March 2021 and noted that it would be wrong for a witness to be inconvenienced by such an adjournment, without a good reason.

9. Accordingly, the Tribunal determined that it was fair and reasonable to proceed in Dr Davidson’s absence.

ANNEX D – 02/03/2021

1. On behalf of the GMC, Mr Hamlet made an application under Rule 34(1) of the Rules to admit further information in the form of an additional prescription (“the 4th prescription”).
2. Mr Hamlet informed the Tribunal that a GMC Case Examiner, whilst considering an application by Dr Davidson for Voluntary Erasure on 3 February 2021, raised concerns that an exhibit to the statement of Ms C referred to a further instance in which a prescription appeared to have been presented by Dr Davidson in similar circumstances to those alleged. The prescription was for XXX. A copy of this prescription was obtained. The prescription was made out for Dr Davidson and she appeared to have presented it on or around 1 February 2019.
3. Mr Hamlet submitted that a decision was taken not to pursue this matter as an additional charge.

Submissions:

4. On behalf of the GMC, Mr Hamlet submitted that the 4th prescription rebuts the assertion made by Dr Davidson in her witness statement that she was acting purely altruistically during the relevant period. He submitted that in addition to prescribing for XXX Mr A, and XXX Ms B, Dr Davidson also prescribed XXX which can only have been for her own benefit and personal use. Mr Hamlet further submitted that although the 4th prescription is not the subject of a charge in this matter, it undermines Dr Davidson’s response to the charges and is likely to be of assistance to the Tribunal when considering impairment.
5. Mr Hamlet drew to the Tribunal’s attention Rule 17(2)(g) which states:

“the Medical Practitioners Tribunal shall receive further evidence and hear any further submissions from the parties as to whether, on the basis of any facts found proved, the practitioner’s fitness to practise is impaired;”.
6. He submitted that additional evidence at this stage usually includes testimonials, material relating to the wider context of a doctor’s practice and past history. He stated that, in the circumstances of this case, relevant material includes evidence which undermines an impression that has been given by Dr Davidson.
7. Mr Hamlet submitted that at this stage in these proceedings, whilst the status of the further prescription is limited, it is relevant and fair that the Tribunal consider it when determining impairment in this case.
8. On behalf of Dr Davidson, Mr Brassington, through a written response, opposed the application to admit evidence of the additional prescription.

9. Mr Brassington submitted that the GMC's submission is a disingenuous one and that in his view, the 4th prescription does not undermine Dr Davidson's position on the charges which have been referred.

10. Mr Brassington submitted that Dr Davidson's witness statement and her assertions regarding how she acted inappropriately are directed at the factual particulars of the Allegation and that it is not the purpose of a witness statement to deal with factual particulars not referred to a hearing by the Case Examiners, nor charged by the GMC.

11. Mr Brassington stressed that there was no allegation regarding the 4th prescription as the GMC had not brought forth such evidence, had not presented it to the Case Examiners or drafted appropriate charges. Mr Brassington stated that this was their choice and concluded that the document should not be admitted and to do so would be unfair to Dr Davidson.

Tribunal's Decision:

12. The Tribunal had regard to the questions of fairness and relevance, in order with Rule 34(1) of the Rules:

"The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law."

13. The Tribunal noted the limited status of the 4th prescription. The Tribunal also noted that when Dr Davidson referred to her altruistic motivations she was responding solely to the charges.

14. The Tribunal concluded that the 4th prescription was relevant to its consideration at the impairment stage. The Tribunal took the view that it would be of assistance in understanding the fuller context of Dr Davidson's prescribing activities during the relevant period. The Tribunal also concluded that it was fair to permit the GMC to present its case in furtherance of the overarching objective which is to protect the public and the wider public interest. The Tribunal took into account the objections raised on behalf of Dr Davidson but concluded that admission of the additional evidence would not be unfair. The Tribunal was satisfied that Dr Davidson had been put on notice of the proposed application and had been given an opportunity to respond.

15. Accordingly, The Tribunal determined to grant the application, as it considered the evidence to be relevant to this hearing and concluded that it would not cause injustice to either party.