

**Dates:** 07/01/2019 - 09/01/2019

**Medical Practitioner's name:** Dr Gareth BYRNE

**GMC reference number:** 7543690

**Primary medical qualification:** MB ChB 2017 Keele University

**Type of case**  
New - Conviction

**Outcome on impairment**  
Impaired

**Summary of outcome**

Suspension, 4 months

Immediate order imposed

**Tribunal:**

Legally Qualified Chair	Mr Richard Tutt
Lay Tribunal Member:	Mr John Elliott
Medical Tribunal Member:	Dr Alex (Alexandra) McMillan
Tribunal Clerk:	Ms Keely Crabtree

**Attendance and Representation:**

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Matthew McDonagh, Counsel, instructed by BLM Solicitors
GMC Representative:	Ms Georgina Goring, Counsel, instructed by the GMC

**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.

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

### **Overarching Objective**

Throughout the decision making process the Tribunal has borne in mind the statutory overarching objective as set out in Section 1 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 & Impairment - 08/01/2019**

#### **Facts**

##### **Background**

1. Dr Byrne qualified from Keele University in 2017. Prior to the events which are the subject of the hearing he was a Foundation Year 1 doctor at the Royal Stoke Hospital.
2. The matter that has given rise to this hearing relates to Dr Byrne's conviction for two charges of assault by beating, contrary to Section 39 of the Criminal Justice Act 1988 and two charges of assaulting a police constable in the execution of his/her duty, contrary to Section 89(1) of the Police Act 1996. On 12 June 2018 at Newcastle under Lyme Magistrates' Court, Dr Byrne pleaded guilty to all four charges. He was fined £1,686.00 and ordered to pay compensation in the sum of £830 together with prosecution costs and a victim surcharge.
3. On 28 May 2018, Dr Byrne referred himself to the GMC, notifying the GMC that he had been charged with the four charges of assault. He has cooperated with the GMC's subsequent investigation.

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

4. The Allegation made against Dr Byrne is as follows:
  1. On 12 June 2018 at Newcastle under Lyme Magistrates Court you were:
    - a. convicted of two counts of assault contrary to Section 39 of the Criminal Justice Act 1988; Admitted and found proved
    - b. convicted of two counts of assaulting a police officer in the execution of his/her duty contrary to Section 89 (1) of the Police Act 1996; Admitted and found proved

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- c. ordered to pay fines totalling £1,686.00. Admitted and found proved

### The Admitted Facts

5. At the outset of these proceedings, through his counsel, Dr Byrne made admissions to all elements 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 that these paragraphs and sub-paragraphs of the Allegation were found proved in their entirety because the admissions were consistent with the evidence.

6. Dr Byrne pleaded guilty at the Magistrates' Court on a full facts basis.

7. In the early hours of 26 May 2018 a party took place at an address at which Dr Byrne had lived some 18 months earlier. Dr Byrne arrived at and entered the property uninvited and in a state of extreme intoxication. Upon being asked to leave and being ushered out, he resisted.

8. One of the party guests, Mr F, was trying to eject Dr Byrne from the property when he and Dr Byrne fell to the floor. Whilst on the floor, Dr Byrne ripped Mr F's T-shirt and head-butted him three times to the bridge of his nose which caused redness and bruising. In addition, Dr Byrne tried to move Mr F's arm towards his mouth in an attempt to bite him. Dr Byrne told him that he was a doctor, saying 'Don't you know who I am'. Mr F did not require any medical treatment.

9. Another guest, Mr G, observed Mr F trying to escort Dr Byrne from the property. He saw them both on the floor, and witnessed Dr Byrne head-butting Mr F. Mr G took hold of Dr Byrne's wrists because Dr Byrne was trying to punch him. Dr Byrne then opened his mouth and made contact with Mr G's right wrist/forearm by biting him. Dr Byrne also tried to kick. Mr G did not require any medical treatment and the bite did not break any skin.

10. The police were called and two female officers, PC H and PC I, attended the address. Dr Byrne was being restrained at the time. PC H hand cuffed Dr Byrne to the front and noted that when he spoke, his words were very slurred and his eyes were glazed. Dr Byrne's lips appeared stained purple and he struggled to get to his feet and to follow instructions. He smelt strongly of alcohol.

11. Dr Byrne was assisted to the rear of the police vehicle some 10 yards away. He was unsteady on his feet and was struggling to hold his own body weight. Dr Byrne struggled to sit in the vehicle.

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12. PC H returned to the address and noted a rip to the collar of Mr F's T-shirt and could see a purple mark on the bridge of his nose. She also observed a slight mark consistent with a bite mark on Mr G's right arm around the wrist. Dr Byrne was then arrested for the two common assaults within the house.

13. Dr Byrne was initially compliant in the police car, sitting in the rear with PC I. On the way to the police station the officers spoke to Dr Byrne and at times he was hard to understand and was not making any sense. He told them he was a doctor. He also told PC I that he had consumed '2 lots' of alcohol. Within 5-7 minutes of leaving the address the officers and Dr Byrne arrived at the police station. At that point Dr Byrne lunged towards PC I and she felt a punch or strike to her left cheek, instantly feeling pain. This was completely unexpected and it shocked her. PC I was fearful for both her and her colleague's safety. PC H immediately parked the car.

14. PC I restrained Dr Byrne. He started to shout and to call her a 'fucking slut' and other derogatory terms. PC I arrested Dr Byrne for assaulting a police constable. Both officers attempted to remove him from the police vehicle but he resisted. Ultimately the officers managed to get him out of the vehicle and onto the ground. Dr Byrne then took hold of PC H's right forearm and pulled it forcibly towards his mouth, opening and closing his mouth so that she could hear his jaw biting. PC H managed to pull Dr Byrne's head away. Dr Byrne then used his knees to kick her twice to the back with some force causing her instant pain in the lower back. Dr Byrne continued to lash out with his legs and was repeatedly told to stop resisting.

15. Dr Byrne continued to be aggressive and verbally abusive. PC I and PC H had to be assisted by further officers. When Dr Byrne was being booked into custody his behaviour continued to be erratic and very unpredictable. Having been calm for 10-15 minutes Dr Byrne suddenly tensed up and kicked out at officers and had to be taken to the floor and have his shoes removed. One custody officer shouted at Dr Byrne that he should stop trying to bite him.

16. Dr Byrne was taken to a cell without the booking-in procedure being completed. When he was asked by the Custody Sergeant how much alcohol he had consumed Dr Byrne stated that he had drunk three and a half pints of lager.

17. PC H's engagement ring was damaged in the course of the incident and PC I had a red mark to her left cheek for a few hours. PC H stated in her witness statement 'I am concerned that BYRNE is in a position of responsibility and has some degree of involvement in the care of patients when his behaviour is such as he demonstrated tonight. I would expect someone in his position to behave in a respectable manner even under the influence of alcohol.'

18. PC I stated in her witness statement 'This incident has left me feeling much more fearful for my personal safety and shocked that someone in such a profession

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as BYRNE should behave in that way. Due to BYRNE being of a larger stature than me, I felt intimidated. He is of a much larger build and height than myself. I am also very concerned that he has such a responsible role and contact with members of the public, given his erratic and unpredictable behaviour. His behaviour was completely unacceptable and a absolute disgust to the profession.'

19. Dr Byrne was interviewed later that day in the presence of a solicitor. He stated that he was a doctor at Stoke hospital and that he had been to a pub with a colleague after a long week at work. Dr Byrne ate and drank at the pub and then continued to drink in the bar area. Dr Byrne said that he had drunk just under two bottles of wine himself and that on a sobriety scale of 1-10 he put himself at 10 (paralytic and incoherent).

20. Dr Byrne stated that he had no recollection of events after he left the pub until he woke up in a police cell. He said that the reason he could not remember the incident was purely down to excessive alcohol and that he was extremely remorseful and willing to pay compensation to his victims.

21. Much of the incident involving the police officers was captured on body worn video footage which was shown to Dr Byrne in his interview with the police.

### **Impairment**

22. With no facts remaining in dispute, the Tribunal 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, Dr Byrne's fitness to practise is currently impaired by reason of his conviction.

### **Documentary Evidence**

23. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included, but was not limited to, Dr Byrne's self-referral form, the Memorandum of Conviction, the police case summary, and the witness statements of PC H and PC I.

### **Submissions**

24. On behalf of the GMC, Ms Goring submitted that Dr Byrne's fitness to practise is impaired by reason of his criminal conviction. Ms Goring opened the case to the Tribunal by reference to the documentation. She drew particular attention to the uncontested Memorandum of Conviction detailing Dr Byrne's convictions and sentence and the police case summary.

25. Ms Goring submitted that Dr Byrne had abused the public trust and by his conduct had violated a fundamental tenet of the medical profession. She submitted

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that a finding of impairment was necessary to reaffirm the standards expected and to maintain public confidence in the medical profession.

26. On behalf of Dr Byrne Mr McDonagh provided the Tribunal with bundles D1 and D2 which included a reflective statement, letters and testimonials and CPD documents. He did not make any positive submissions on impairment.

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

27. The decision on impairment is a matter for the Tribunal's judgment alone. The Tribunal has given careful consideration to all of the evidence that has been adduced during the course of these proceedings. The Tribunal has borne in mind all three limbs of the statutory overarching objective: 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 medical profession.

28. The Tribunal also considered the first three criteria for impairment articulated by Dame Janet Smith in the fifth Shipman report and whether Dr Byrne:

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

29. The Tribunal must determine whether Dr Byrne's fitness to practise is impaired at the present time; looking to the future, taking into account his conduct at the time of the events together with any relevant factors that have arisen since then, such as any insight and/or remediation.

### **The Tribunal's Determination on Impairment**

30. The Tribunal deliberated carefully on all of the evidence and the circumstances of Dr Byrne's conviction. The Tribunal finds that the matters that gave rise to Dr Byrne's convictions would undoubtedly be of serious concern to the public.

31. The Tribunal read and considered D1 and D2. The Tribunal noted that Dr Byrne has no previous convictions or cautions or disciplinary findings of any kind. The Tribunal also noted the testimonials from colleagues, friends and his partner which confirmed that Dr Byrne's behaviour on the 26 May 2018 was completely out of character.

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32. The Tribunal reminded itself of the standards required of doctors by reference to Good medical practice 2013 (GMP). Paragraph 1 requires that good doctors should 'act with integrity and within the law'.

33. Upon giving consideration to Dame Janet Smith's criteria for impairment the Tribunal determined that, through his criminal behaviour in the early hours of 26 May 2018, Dr Byrne brought the medical profession into disrepute and breached one of its fundamental tenets: that good doctors should act with integrity and within the law.

34. Given the seriousness of Dr Byrne's criminal behaviour the Tribunal determined that a finding of impairment was necessary to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the medical profession.

35. The Tribunal has therefore determined that Dr Byrne's fitness to practise is currently impaired by reason of his conviction.

### **Determination on Sanction - 09/01/2019**

1. Having determined that Dr Byrne's fitness to practise is impaired by reason of his conviction, 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 Outcome of Applications Made during the Sanction Stage**

2. Mr McDonagh, on behalf of Dr Byrne, made an application under Rule 34(13) and (14), of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules') for Dr A to give evidence via telephone link. The GMC did not oppose Mr McDonagh's application. The Tribunal granted the application in the interests of justice.

### **The Evidence**

3. The Tribunal has taken into account all of the documentary evidence received during the earlier stages of the hearing where it is relevant to reaching a decision on sanction.

### **Documentary Evidence**

4. The Tribunal received further evidence on behalf of Dr Byrne:

- A letter from Dr A

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- An E-mail from Ms B

### Witness Evidence

5. The Tribunal heard oral evidence on behalf of Dr Byrne from:

- Dr Byrne himself;
- Dr C, Clinical Lead for Gastroenterology at University Hospitals of North Midlands NHS Trust, in person;
- Ms D, Staff Nurse from the trauma and orthopaedic department at the Royal Stoke University Hospital, in person;
- Dr A, Consultant in Intensive Care Medicine and the Responsible Officer for the University Hospital North Midlands NHS Trust, by telephone.

### Dr Byrne's evidence

6. Dr Byrne provided the Tribunal with a reflective statement which he said he had not found easy to write. Within the reflective statement, Dr Byrne takes full responsibility for his actions and the impact these had had on the individuals involved. He sincerely regrets his actions and does not look to excuse them in any way. He felt guilty about his absence from work and the added stress and difficulty it would have caused his colleagues. He recognised the negative impact of his criminal behaviour on the Trust and the medical profession as a whole. He has been teaching at his old medical school and has encouraged students to take a holistic approach. He had to teach a session about professionalism and what is expected of a doctor. XXX. He has learned to become more assertive and to say no when he was already overwhelmed. He has developed his social support network. He exercises and paints. He has improved his work-life balance and recognises his personal limits. XXX.

7. Dr Byrne gave oral evidence that on 26 May 2018 he was halfway through the third of three four-month rotations in his Foundation Year 1. Immediately post-arrest and charge he notified his supervisors at the Trust and the GMC. He was suspended by an Interim Orders Tribunal (IOT) in June 2018 and remains suspended. He has no recollection of the events in the early hours of 26 May 2018 between being in the bar area of the pub and waking up in a police cell. He had never previously suffered from total memory loss after drinking. That night he had drunk far in excess of what he would normally drink.

8. Although he did not seek to excuse his actions, on being questioned by the Tribunal on the circumstances leading up to the events that night, Dr Byrne said it was the Friday night of a bank holiday weekend and he wasn't due back at work until the Tuesday. He had had a particularly difficult week at work. They were short-

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staffed with four juniors rather than six. He had dealt with two particularly unwell patients that week. In this rotation he had also been dealing with more on calls than he was used to. His support network was diminished because his partner was abroad in Sri Lanka on her medical elective and some of his own family members were unwell.

9. Dr Byrne confirmed that he does still drink, but not often. He said that he was ashamed of his behaviour that night. It fell well short of expected standards and would never be repeated. Dr Byrne confirmed that the letters of apology he wrote to the victims were voluntary. He wanted to let them know he was genuinely sorry.

10. Dr Byrne said that his period of suspension had highlighted to him the privilege which he enjoyed, working as a doctor. Having been suspended, he had been keen to maintain his links with the medical profession and he was very grateful for the opportunity to teach part-time. He said the University and the Trust had believed in him and taken a risk. He found teaching the session on professionalism, and standards of behaviour expected from doctors, particularly difficult given the situation he was in. He was open and honest with his students about his suspension. Dr Byrne said he had been humbled by and is immensely grateful for the support he has continued to enjoy from his partner, his friends and the Trust.

11. XXX. He now recognised that he had been working more hours than he should have been and had been staying later than he needed to and was drained. He said that he has learned that sometimes saying no could in fact let him help people more.

### Dr C's evidence

12. Dr C confirmed his opinion of Dr Byrne as an excellent junior doctor who was very caring and compassionate. During Dr Byrne's rotation on gastroenterology the feedback on him from all levels was exemplary. Dr Byrne was regarded as one of the stars of the foundation programme. Dr C was impressed by his knowledge, his approach to patients and his interaction with the wider multi-disciplinary team. With respect to the events of 26 May 2018, Dr C said he had been impressed by Dr Byrne's increasing insight over time. Dr Byrne had reflected deeply and sincerely, had looked at the root causes of why the situation had arisen XXX. Dr C was of the opinion that Dr Byrne had learned a difficult and salutary lesson and suggested the risk of him reoffending was now very low indeed. Dr C confirmed support at the Trust from those in senior positions for Dr Byrne. He was a capable and skilful doctor who had made a very awful mistake.

### Staff Nurse Ms D's evidence

13. Staff Nurse Ms D regarded Dr Byrne as a 'brilliant doctor' who was efficient, listened to the nursing staff and was effective. He had made an impression on the

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nursing staff because he built relationships with the team, nurses and patients. She said Dr Byrne was a doctor who would go the extra mile. Nurses were relieved if he was on shift.

### Dr A's evidence

14. Dr A confirmed he had first met Dr Byrne as a third-year medical student during an attachment module in intensive care. Thereafter Dr Byrne had come back to the Intensive Care Unit as a Foundation Year 1 junior doctor. He said he thought very highly of Dr Byrne and still has high hopes for him. Dr A confirmed that if Dr Byrne avoided long-term suspension he and his senior colleagues at the Trust would very much support Dr Byrne's re-introduction into clinical practice.

### **Submissions**

15. On behalf of the GMC, Ms Goring submitted that Dr Byrne's registration should be subject to a period of suspension. She drew the Tribunal's attention to a number of paragraphs of Sanctions Guidance (SG), which included paragraphs 14, 56 and 97.

16. Ms Goring referred the Tribunal to paragraph 14 of the SG that:

"The main reason for imposing sanctions is to protect the public. This is the statutory overarching objective, which includes to:

- a. protect and promote the health, safety and wellbeing of the public
- b. promote and maintain public confidence in the medical profession
- c. promote and maintain proper professional standards and conduct for the members of the profession."

17. She drew the Tribunal's attention to paragraph 56 d which states:

"Tribunals are also likely to take more serious action where certain conduct arises in a doctor's personal life, such as (this list is not exhaustive):

- d. misconduct involving violence or offences of a sexual nature."

18. Ms Goring submitted that Dr Byrne's actions represented a significant departure from GMP and there were no exceptional circumstances in his case to

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justify taking no action. She suggested that conditions on Dr Byrne's registration would be unworkable, and in any event would be inappropriate as they would not send a sufficient message to the profession and the wider public.

19. Ms Goring submitted that due to the seriousness of Dr Byrne's misconduct his registration should be suspended. She highlighted that he had assaulted four people in an episode of serious and sustained violence whilst under the influence of alcohol. However, she acknowledged his guilty pleas and admissions and his high levels of remorse. Ms Goring expressly made no submissions as to length of suspension.

20. On behalf of Dr Byrne, Mr McDonagh submitted that rarely could a doctor at the start of his career have made such a powerful and favourable impression with his senior colleagues, his peers and the nursing staff. He submitted Dr Byrne's behaviour on 26 May 2018 represented an isolated act of madness. He was intoxicated. His actions were out of character but could not be excused. Mr McDonagh submitted there were two questions for the Tribunal to consider. First, whether Dr Byrne's behaviour was such that he could no longer remain on the medical register. Secondly, if Dr Byrne could remain on the medical register, the length of any suspension period.

21. Mr McDonagh accepted that offences of violence can lead to erasure from the medical register. However, in this case no serious harm had been caused and the offences with which Dr Byrne had been charged had no ingredient of specific intent. He submitted that the public at large would not be appalled by Dr Byrne's continued registration. This was an isolated one-off offence. Dr Byrne had demonstrated insight and genuine heartfelt remorse. He was of previous good character and of good standing within the medical profession. He submitted that Dr Byrne had made genuine efforts to address his issues and had gone as far as he can to ensure that there would be no repetition. Mr McDonagh highlighted the favourable views of Dr Byrne expressed by the Trust.

22. In relation to suspension Mr McDonagh reminded the Tribunal that Dr Byrne had already been suspended for seven months by an IOT, which should play some part in the balancing exercise. Mr McDonagh reminded the Tribunal that if Dr Byrne were to be suspended beyond April 2019 he would be unable to finish the final rotation of his Foundation Year 1. This would mean he would fall two years behind his cohort. He submitted that such an outcome would be draconian, disproportionate and unnecessary. Mr McDonagh submitted that a two-month period of suspension would be proportionate in all the circumstances.

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

23. The decision as to the appropriate sanction, if any, is a matter for this Tribunal exercising its own judgment. The Tribunal has had regard to the

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submissions of Ms Goring for the GMC and Mr McDonagh for Dr Byrne together with its findings at the impairment stage.

24. In reaching its decision, the Tribunal has given careful consideration to SG generally. It has borne in mind that the main reason for imposing sanctions is to protect the public pursuant to the overarching objective. Sanctions are not imposed to punish or to discipline doctors, but they may have a punitive effect.

25. The Tribunal has borne in mind that in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive. It should also have regard to the principle of proportionality, weighing the interests of the public against those of the doctor.

26. The Tribunal considered and balanced the aggravating and mitigating factors in this case.

### **Aggravating factors**

27. The Tribunal identified following aggravating factors:

- Serious nature of the convictions, involving violence and verbal abuse
- Four victims, including two public servants
- Three distinct episodes of violence over a sustained period
- Biting or attempted biting in each episode
- Continued violence after both the first and the second arrest

### **Mitigating factors**

- There was no significant injury to the victims, no medical treatment was required
- Common assault represents the lowest form of assault on the criminal spectrum
- Dr Byrne entered prompt guilty pleas at court and made admissions to the Tribunal
- Remorse as demonstrated in Dr Byrne's voluntary letters of apology to the victims
- Insight
- Remediation
- XXX
- Good character
- Testimonials
- Dr Byrne found relevant work teaching in a medical field
- Dr Byrne's openness with his supervisors and his prompt notification of the GMC

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### **No action**

28. The Tribunal first considered whether to conclude Dr Byrne's case by taking no action with regard to his registration. It determined that there were no exceptional circumstances in Dr Byrne's case that would justify taking no action. This is a course to be taken only in rare cases. It would not satisfy the second and third limbs of the overarching objective.

### **Conditions**

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

30. The Tribunal determined that conditions would not be workable, neither would they be appropriate. In the circumstances of this case conditions would not satisfy the second and third limbs of the overarching objective.

### **Suspension**

31. The Tribunal then considered whether suspending Dr Byrne's registration would be appropriate and proportionate. In doing so it considered, amongst others, paragraphs 91-100 of SG. It found the following paragraphs to be of particular relevance:

91 "Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbecoming a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention."

92 "...A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession)."

93 "Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions"

97 "Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.

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- 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.
- e. No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.
- f. No evidence of repetition of similar behaviour since incident.
- g. The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour."

100 " The following factors will be relevant when determining the length of suspension:

- a. the risk to patient safety/public protection
- b. the seriousness of the findings and any mitigating or aggravating factors."

32. The Tribunal has determined to suspend Dr Byrne's registration. Suspension has a deterrent effect and can be used to send a signal out to the doctor, the profession and public about what is regarded as behaviour unbecoming a registered doctor.

33. Dr Byrne's criminal behaviour on 26 May 2018 represented a serious breach of GMP, such that action must be taken to protect members of the public and maintain public confidence in the medical profession. However, in the particular circumstances of this case, the Tribunal is satisfied that although serious, Dr Byrne's conduct did fall short of being fundamentally incompatible with continued registration and therefore erasure from the medical register would not be in the public interest.

34. In reaching its determination, having considered the aggravating features set out above, the Tribunal paid particular regard to the following mitigating features pertaining to Dr Byrne's convictions. Dr Byrne has no previous or subsequent convictions or cautions. No significant injury was caused to any of the victims and none of them required medical treatment, as reflected by the charges in the Magistrates' Court. Dr Byrne was extremely remorseful when interviewed by the

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police. He subsequently entered prompt guilty pleas at the Magistrates' Court and was dealt with by way of a fine and orders of compensation.

35. The Tribunal paid particular regard to the following matters pertaining to Dr Byrne's general mitigation. Dr Byrne has no previous or subsequent disciplinary matters recorded against him. The Tribunal determined that Dr Byrne had developed good insight. This was demonstrated by his prompt guilty pleas at the Magistrates' Court, his prompt notification of his supervisors and the GMC, his admissions before this Tribunal, his reflective statement, his evidence to the Tribunal, the oral evidence of Dr C and a number of his references. The Tribunal determined Dr Byrne has demonstrated effective remediation. He has reflected deeply on his actions. XXX. He has built up his support network. He exercises and paints and has improved his work-life balance. XXX. The Tribunal was impressed by the continued support Dr Byrne enjoys from his senior colleagues, his peers, nursing staff and from his partner and friends, as reflected both in the oral evidence and the references. The Tribunal noted that whilst suspended Dr Byrne had found relevant teaching work and had taught students a session on professionalism and standards of behaviour expected from doctors. The Tribunal was satisfied that the likelihood of Dr Byrne reoffending is low.

36. Given the seriousness of Dr Byrne's criminal behaviour and balancing the aggravating and mitigating features set out above, the Tribunal has determined that Dr Byrne's registration should be suspended for a period of four months. This period of suspension will have a deterrent effect and will send out a signal to Dr Byrne, the profession and public about what is regarded as behaviour unbecoming a registered doctor. It will promote and maintain public confidence in the medical profession and will promote and maintain proper professional standards and conduct for members of the profession.

37. In determining to suspend Dr Byrne's registration for four months the Tribunal had regard to the principle of proportionality and weighed the interests of the public against those of Dr Byrne. The Tribunal took into account the fact that Dr Byrne was suspended by an Interim Orders Tribunal in mid-June 2018, albeit this is not akin to being on remand in a criminal case. The Tribunal understands that a 4-month period of suspension will mean that Dr Byrne will need to return to a Foundation Year 1 post from August 2019, as set out in Professor E's letter dated 26 October 2018 and confirmed by Dr Byrne when he gave evidence. In all the circumstances of the case the Tribunal determined that a four-month period of suspension was the least restrictive sanction it could impose.

38. The Tribunal has determined that given the levels of insight and remediation Dr Byrne has shown, together with the fact that he will be returning to a Foundation Year 1 post, a review hearing is not required.

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### **Determination on Immediate Order - 09/01/2019**

1. Having determined to suspend Dr Byrne's registration for four months the Tribunal has considered, in accordance with Section 38 of the Medical Act 1983, whether Dr Byrne's registration should be subject to an immediate order.

#### **Submissions**

2. Ms Goring, on behalf of the GMC submitted that an immediate order of suspension is necessary in the public interest. She drew the Tribunal's attention to paragraph 172 of SG:

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

3. On behalf of Dr Byrne, Mr McDonagh made no submissions. He expressly did not submit that the Tribunal should not make an immediate order.

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

4. The Tribunal has determined to impose an immediate order because it is in the public interest and in the best interests of the doctor who has been suspended hitherto.

5. This means that Dr Byrne's registration will be subject to suspension from today when notification is deemed to have been served. The substantive direction, as already announced, will take effect 28 days from today, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

6. The interim order currently imposed on Dr Byrne's registration is hereby revoked.

7. That concludes this case.

#### **Confirmed**

**Date** 09 January 2019

Mr Richard Tutt, Chair