

**Record of Determinations –
Medical Practitioners Tribunal**

PUBLIC RECORD



Dates: 26/11/2018 - 28/11/2018

Medical Practitioner's name: Dr Gurjeet JUTLEY

GMC reference number: 6135188

Primary medical qualification: BM 2006 University of Southampton

Type of case

New - Conviction / Caution

Outcome on impairment

Impaired

Summary of outcome

Suspension, 3 months.

Tribunal:

Legally Qualified Chair	Mr Tim Smith
Lay Tribunal Member:	Ms Deborah Spring
Medical Tribunal Member:	Mr John Hayward
Tribunal Clerk:	Mr Rowan Barrett

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr David Morris, Counsel, instructed by MPS
GMC Representative:	Ms Rebecca Vanstone, 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.

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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 and Impairment - 27/11/2018

Background

1. Dr Jutley qualified in 2006 and at the time of the events was practising as a Consultant Ophthalmologist at the John Radcliffe Hospital in Oxford.
2. On 30 October 2017, Dr Jutley stole a pair of cufflinks and four ties from the Hugo Boss store at Heathrow airport. Dr Jutley was due to board a flight to Armenia, but was apprehended and cautioned by police for the offence of theft.

The Allegation and the Doctor's Response

3. The Allegation made against Dr Jutley is as follows:

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

1. On 30 October 2017 at Heathrow Police Station you accepted a caution for theft of ties and cuff links from a shop to the value of approximately £370.00, belonging to Hugo Boss contrary to section 1(1) and 7 of the Theft Act 1968. **Admitted and found proved**

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

Documentary Evidence

4. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included, but was not limited to:
 - A record of caution, dated 30 October 2017

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- A police case summary, dated 29 March 2018
- Police statement of Ms A, dated 30 October 2017

The Tribunal's Approach

5. 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 Jutley 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.

The Tribunal's Overall Determination on the Facts

6. The Tribunal has determined the facts as follows:

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

2. On 30 October 2017 at Heathrow Police Station you accepted a caution for theft of ties and cuff links from a shop to the value of approximately £370.00, belonging to Hugo Boss contrary to section 1(1) and 7 of the Theft Act 1968. **Admitted and found proved**

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

IMPAIRMENT

7. 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 Jutley's fitness to practise is impaired by reason of a caution for a criminal offence.

The Evidence

8. The Tribunal has taken into account all the evidence received during the hearing, both oral and documentary. The Tribunal received a witness statement provided by Dr Jutley. Dr Jutley gave oral evidence at the hearing.

9. The Tribunal also received several testimonials from colleagues and patients in support of Dr Jutley, all of which it has read.

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10. The Tribunal received XXX and a further reflective statement from Dr Jutley, dated March 2018.

Submissions

11. On behalf of the GMC, Ms Vanstone submitted that Dr Jutley's fitness to practise was impaired. She told the Tribunal that Dr Jutley had explained at length the impact of his actions on himself, but had only acknowledged that it had a detrimental impact on the public's trust in the medical profession after being asked several questions about this. She further submitted that, as Dr Jutley had repeatedly said in evidence that he 'could not exclude' that he had taken the items with intent, he therefore had not fully accepted that his actions had been dishonest.

12. Ms Vanstone submitted that public confidence in the medical profession would be undermined were the Tribunal not to find that Dr Jutley's fitness to practise was impaired.

13. On behalf of Dr Jutley, Mr Morris submitted that Dr Jutley's actions had been clearly 'irrational' and 'bizarre', with no obvious motive, as he had no need of the items and could easily have paid for them. Further, he submitted that Dr Jutley's crime had been crudely executed, as after taking the items he gave the store his mobile phone number, in order for them to let him know when the coat he was buying was ready, and then returned to the store to collect it. Mr Morris submitted that Dr Jutley's behaviour 'maximised the chance that he would be caught'.

14. XXX.

15. Mr Morris submitted that Dr Jutley had recognised the gravity of what he had done and took immediate steps to remediate, by self referring to the GMC on the day of the offence, and subsequently reflecting on the seriousness of his actions and the underlying reasons for it. Mr Morris acknowledged that Dr Jutley's response when asked in evidence about dishonesty was 'less than unequivocal', but told the Tribunal that this reflection had been adequately demonstrated in Dr Jutley's written statements.

The Relevant Legal Principles

16. In considering the issue of impairment, the Tribunal must adopt a two stage process. Firstly, the Tribunal must decide whether a statutory ground under section

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35C(2) of the Medical Act 1983 ('the Act') has been demonstrated, in this case a criminal conviction or caution in the British Isles for a criminal offence. Secondly, the Tribunal must decide, if it has been demonstrated, whether the doctor's fitness to practice is currently impaired.

17. The Tribunal had regard to the principle set out in the case of **R(Trivedi) v GMC 1996 Civ 503**, that where there has been a conviction or caution a registrant may not reopen and contest the facts behind that conviction or caution.

18. 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.

19. If the Tribunal is satisfied as to stage one of the two stage process, it must then consider the second stage of the process and determine whether Dr Jutley's fitness to practise is impaired as a result of that caution. In so doing, the Tribunal has to assess the current position, looking forward, not back. However, as the then Master of the Rolls Sir Anthony Clark observed in the case of **Meadows 2006 EWCA 1390**:

In order to form a view of the fitness of a person to practise today, it is evident that the panel will have to take account of the way in which the person concerned has acted or failed to act in the past.

20. The Tribunal noted the decision in **GMC v Nwachuku 2017 EWHC 2085** that it will be an unusual case where dishonesty is not found to impair fitness to practise, although it does not follow that every case of dishonesty results in impairment, see **Professional Standards Authority v GMC and Uppal 2015 EWHC 1304**.

The Tribunal's Determination on Impairment

21. Given the admission made by Dr Jutley, the Tribunal has concluded that stage one of the two stage process is satisfied.

22. The Tribunal considered whether, as a result of his caution, Dr Jutley's fitness to practise is currently impaired.

The Offence

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23. The Tribunal accepted that Dr Jutley's offence was an impulsive act, as opposed to a matter that was pre-planned or premeditated.

24. The Tribunal accepted Dr Jutley's evidence that he was experiencing an accumulation of personal difficulties at the time of his offence. However, the Tribunal noted that on the Saturday and Sunday prior to the offence, Dr Jutley had worked both days on his NHS contract. He indicated he felt fully confident to undertake his work at that time.

25. Dr Jutley told the Tribunal that, on the day of the offence, he had just received a telephone call with some very upsetting news relating to XXX, and this had led to 'despair, distress and confusion.' However, the Tribunal is not satisfied that this high level of stress sufficiently explains Dr Jutley's actions on this day.

26. The Tribunal noted that when Dr Jutley was challenged by the police, he stated he had taken the cufflinks without paying and handed them to the police. However, he did not admit to also having taken some ties. On being searched, he did admit having taken them. It considers that, on the balance of probabilities, this was likely to suggest an attempt to conceal having stolen more than one item.

27. The total value of the goods was considerable, amounting to some £370. There was potential benefit and financial gain had Dr Jutley succeeded in the theft in that he would have acquired valuable items. The store staff would also have been left with a stock deficiency to account for.

28. The Tribunal noted that at interview Dr Jutley made full and frank admissions.

Insight and remediation

29. The Tribunal has had careful regard to Dr Jutley's written statements, particularly the supporting documentation dated 17 November 2017, in which he describes feeling 'deeply ashamed and apologetic' for his actions. He went on to explain the pressures he was under at the time and to assert that the offence was totally out of character. He set out how he intended to avoid repetition of his offending and the coping strategies that he was introducing into his life.

30. However, the Tribunal was concerned about the lack of insight that Dr Jutley displayed during oral evidence. Even making allowance for his nervousness as a witness, he was reluctant to fully accept that he had done anything intentionally

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wrong. On more than one occasion, when asked if he considered his actions to be dishonest, he stated 'I cannot rule out intent'. After a number of questions he did eventually accept that he had been dishonest. Further, the Tribunal noted that much of his evidence related to the effect of the theft on himself and he had to be prompted to explain how he thought public confidence in the profession would have been impacted by his behaviour. This was in contrast to Dr Jutley's written statements in which Dr Jutley had appeared to demonstrate a higher level of insight into his wrongdoing.

31. XXX.

32. XXX.

33. XXX.

34. XXX.

35. Further, the Tribunal accepted there was evidence of remediation but noted that it was difficult to remediate dishonesty.

The Tribunal's determination on impairment

36. The Tribunal had regard to *Good Medical Practice* ('GMP'), and determined that the conduct which led to Dr Jutley's caution was in contravention of the guidance set out in GMP specifically in relation to the duties of a doctor registered with the General Medical Council:

'Be honest and open and act with integrity'

It also considered that he had breached one of the fundamental tenets of the medical profession, specifically in relation to paragraph 65 of GMP:

'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.'

Patients expect their doctors to be honest and trustworthy, and through his dishonest conduct which resulted in a caution for the offence of theft, Dr Jutley betrayed this trust.

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37. The Tribunal reminded itself of the overarching objective. There is no evidence to suggest that Dr Jutley poses a risk to patients. However, where there has been a caution, the key issue for the Tribunal is promoting and maintaining public confidence in the profession and promoting and maintaining proper standards for members of that profession.

38. This outweighs arguments concerning Dr Jutley's lack of risk to others, and in a caution case, attempts to remediate may carry less weight than, for example, a case of deficient professional performance as outlined in **Yeong v GMC 2009 EWHC 1923**. The Tribunal finds that those considerations do outweigh the issue of risk and remediation. The Tribunal has to consider how public confidence in the medical profession would be affected if it was found that Dr Jutley, a consultant in the NHS who had stolen goods worth £370 from a high- class retailer, was not impaired. The Tribunal has therefore concluded that the need to uphold proper standards and public confidence in the medical profession would be undermined if no finding of impairment was made.

39. The Tribunal has therefore determined that Dr Jutley's fitness to practice is impaired by reason of his caution.

Determination on Sanction - 28/11/2018

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

Submissions

2. On behalf of the GMC, Ms Vanstone submitted that the appropriate sanction in this case would be a period of suspension. She referred the Tribunal to paragraphs 56 (conduct in a doctor's personal life), 70 (exceptional circumstances) and 93 (appropriateness of suspension) of the Sanctions Guidance. She submitted that the circumstances were not exceptional, and that it would therefore not be appropriate for the Tribunal to take no action. She further submitted that undertakings or conditions would be inappropriate and unworkable in all the circumstances of this case.

3. On Dr Jutley's behalf, Mr Morris told the Tribunal that Dr Jutley accepted that a period of suspension was the only appropriate sanction. He submitted that the Tribunal could be sure that there was no realistic prospect of repetition of his behaviour, despite

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its reservations about Dr Jutley's level of insight into his offending. He submitted that Dr Jutley had put in place good strategies to deal with stress XXX, and submitted that Dr Jutley's 'moral compass was completely awry on that particular day'.

The Relevant Legal Principles

4. The Tribunal at all times had regard to the statutory overarching objective. It considered all three limbs of this objective, which are the need to protect and promote the health, safety and wellbeing of the public; to promote and maintain public confidence in the medical profession; and to promote and maintain proper professional standards and conduct for members of the profession.

5. The Tribunal bore in mind that the purpose of a sanction is not to be punitive, but it is to protect patients and the wider public interest. The Tribunal noted, however, that sanctions may have a punitive effect.

6. **Bolton v The Law Society 1994 1 WLR 512**, set out the principle that the profession is more important than the individual. The consequences of a sanction on the registrant did not make a sanction wrong if it was otherwise right.

7. The Tribunal was aware that in looking at a case of dishonesty it may consider a nuanced approach. There may be different forms of dishonesty, from the most serious, which completely destroys trust and confidence, to others which undermine them to a greater or lesser extent. **Atkinson v GMC [2009] EWHC 3636** sets out that a lesser sanction could be imposed where the dishonesty in question was out of character, or isolated in its duration or range, and permitting the doctor to return to practice would not damage the reputation of the profession.

8. The Tribunal has considered all relevant parts of the Sanctions Guidance. It considered the sanctions available, starting with the least restrictive and working upwards to the most appropriate and proportionate sanction. It weighed up the interests of public confidence in the profession against those of the doctor.

Mitigating/Aggravating Factors

9. The Tribunal considered the below to be mitigating factors present in Dr Jutley's case:

- This was a single act, which has not since been repeated

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- It was not premeditated, systemic or long term
- It did not occur in the course of Dr Jutley's professional practice
- Dr Jutley made full and frank admissions to the police in accepting the caution
- He made timely and full admissions to the GMC
- Dr Jutley posed no risk to patients
- Dr Jutley was under severe personal stress at the time of the events
- Dr Jutley had taken steps to remediate the circumstances that had led to the personal stress and had shown considerable but not complete insight
- Dr Jutley had expressed remorse and apologised for his behaviour from an early stage

10. The Tribunal also had regard to the following aggravating factors:

- Dr Jutley's caution was for an offence of dishonesty
- The items stolen were of a high value
- Dr Jutley initially denied having stolen four ties when questioned by police

The Tribunal's Determination on Sanction

No action

11. The Tribunal first considered whether to conclude Dr Jutley's case by taking no action. The Tribunal noted that such a decision would only be appropriate in exceptional circumstances. Exceptional circumstances are unusual, special or uncommon, so such cases are very rare. The Tribunal does not find that this case fell into that category of exceptional circumstances.

Undertakings

12. No undertakings were proposed by Dr Jutley, and therefore the Tribunal did not consider that option.

Conditions

13. The Tribunal then considered imposing conditions on the doctor's registration. The Tribunal noted that conditions were more likely to be used when there were health issues and/or to remedy any deficiencies or knowledge of English. The Tribunal had regard to paragraph 81 of the Sanctions Guidance and determined that conditions were not appropriate.

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Suspension

14. The Tribunal then examined suspension, and noted paragraphs 91, 92, 93 and 97(a) of the Sanctions Guidance. Paragraph 92 indicates suspension would be an appropriate response in cases where the misconduct was so serious, action was required. In this case the Tribunal determined that Dr Jutley's caution for an offence of dishonesty was so serious as to fall within this category. The Tribunal therefore concluded that a period of suspension from the medical register was the appropriate sanction in Dr Jutley's case, given that, whilst there was a serious breach of Good Medical Practice, the behaviour leading to the caution was not fundamentally incompatible with continued registration.

15. In determining the appropriate length of the period of suspension, the Tribunal took into account paragraph 100 of the Sanctions Guidance, and noted that there was no risk to patient safety. The Tribunal noted that this was not a premeditated or sustained act of dishonesty. It was a single incident, during a period when Dr Jutley was suffering from personal stresses. Whilst Dr Jutley had departed from the principles set out in Good Medical Practice, he has since taken steps to minimise the risk of recurrence, has been open and honest with his employers and his regulator from a very early stage and has taken steps to remediate. The Tribunal determined that a period of three months suspension was therefore appropriate and proportionate.

16. Given that the Tribunal has found that this was an aberration and that Dr Jutley is of previous good character, the Tribunal considers that there is minimal risk of recurrence. For these reasons, the Tribunal has decided that it is not necessary to direct a review.

Determination on Immediate Order - 28/11/2018

1. Having determined to suspend Dr Jutley's registration for three months the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Jutley's registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Ms Vanstone told the Tribunal that the GMC did not consider an immediate order was necessary.

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3. On behalf of Dr Jutley, Mr Morris submitted that this was not a case in which there was any risk to patient safety or where an immediate order would be necessary in order to uphold public confidence in the profession. He submitted that the imposition of an immediate order would be unnecessary and disproportionate.

The Tribunal's Determination

4. In making its decision the Tribunal exercised its own judgement. It took account of the Sanctions Guidance including paragraph 172 as follows:

'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.'

5. In all the circumstances, the Tribunal determined not to impose an immediate order of suspension on Dr Jutley's registration. It concluded that there was no risk to patients and was satisfied that the public interest was met without the imposition of an immediate order in the intervening appeal period.

6. This means that Dr Jutley's registration will be suspended 28 days from today, if Dr Jutley does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

7. There is no interim order to revoke.

8. That concludes the case.

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Confirmed

Date 28 November 2018

Mr Tim Smith, Chair