

## PUBLIC RECORD

Date: 18/11/2022

Medical Practitioner's name: Dr Jacqueline Conway

GMC reference number: 3261088

Primary medical qualification: MB BS 1987 University of London

Type of case	Outcome on impairment
XXX	XXX
Review - Misconduct	Impaired

**Summary of outcome**

Suspension, 12 months.  
Review hearing directed

**Tribunal:**

Legally Qualified Chair	Mr Paul Moulder
Lay Tribunal Member:	Mrs Emma Gilberthorpe
Medical Tribunal Member:	Dr Nagarajah Theva
Tribunal Clerk:	Mrs Olivia Gamble

**Attendance and Representation:**

Medical Practitioner:	Not present and not represented
GMC Representative:	Ms Jennifer Devans-Tamakloe, 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 Impairment - 18/11/2022

1. This determination will be read in private. However, as this case concerns Dr Conway's misconduct, a redacted version will be published at the close of the hearing with those matters relating to XXX removed.
2. At this review hearing the Tribunal has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr Conway's fitness to practise remains impaired by reason of misconduct XXX.

## The Outcome of Applications Made During the Impairment Stage

3. The Tribunal granted an application by Ms Devans-Tamakloe, Counsel, on behalf of the GMC, made pursuant to Rule 41 of the Rules, for the public to be excluded from the proceedings where matters relating to XXX are to be discussed.
4. The Tribunal accepted Ms Devans-Tamakloe's submissions, on behalf of the GMC, made pursuant to Rules 20 and 40 of the Rules, that notice of this hearing had properly been served on Dr Conway, and granted the application, made pursuant to Rule 31 of the Rules, that this hearing should proceed in her absence. The Tribunal's full decision on these applications is included at Annex A.

## Background

5. Dr Conway qualified in 1987 and became a member of the Royal College of Psychiatrists in 1992. Prior to the events which are the subject of the hearing, Dr Conway was working as a General Psychiatrist. XXX.

6. Dr Conway's case was first considered at a hearing which took place in October 2019. At that hearing, Dr Conway admitted, and the Tribunal found proved that:

- Between 15 October 2015 and 3 November 2015, she worked as a Specialty Doctor in Psychiatry at South Westminster Assessment and Brief Team when she did not hold a licence to practise in the UK;
- At 16:38 on 27 September 2016, she sent an email to Dr A which contained inappropriate and offensive comments;
- XXX.

7. The October 2019 Tribunal found that Dr Conway's actions in working whilst not licensed to practise amounted to serious misconduct and that her approach to her licence to practise was '*cavalier*'. It considered that Dr Conway did not fully recognise the potential ramifications for patient care of treating patients while not licensed to practise. The October 2019 Tribunal also considered that Dr Conway's conduct, in sending the email to Dr A at 16:38 on 27 September 2016 which contained inappropriate and offensive comments, amounted to serious misconduct. Accordingly, the October 2019 Tribunal determined that Dr Conway's fitness to practise was impaired by reason of misconduct.

8. XXX.

9. The October 2019 Tribunal determined to impose conditions on Dr Conway's registration for a period of 12 months. It considered that this was necessary in order to satisfy each of the three limbs of the overarching objective.

10. Dr Conway's case was reviewed, on the papers, by a Legally Qualified Chair ('LQC') on 27 October 2020. Dr Conway and the GMC agreed that her registration should be subject to a further period of conditions for 12 months. The October 2020 LQC was satisfied that the proposed conditions would be proportionate and sufficient to protect the public and the public interest.

11. XXX.

12. The October 2020 LQC was also satisfied that Dr Conway's fitness to practise remained impaired by reason of misconduct. The LQC concluded that, whilst Dr Conway had

developed some insight into her misconduct, her insight was not fully developed. There was also little evidence of attempts by Dr Conway at remediation. The LQC noted, in particular:

- Dr Conway accepted that her fitness to practise remained impaired by reason of misconduct;
- XXX;
- Dr Conway’s reflective statement, whilst expressing some insight into issues relating to her probity and conduct, was limited;
- There was limited evidence of Dr Conway’s attempts to remediate her misconduct, beyond participation in the professional boundaries course;
- XXX.

13. In determining that Dr Conway’s period of conditional registration should be extended for a further period of 12 months, the LQC took into account:

- XXX
- The finding that Dr Conway did not yet have full insight into her misconduct; and
- The Agreement Form in which the GMC and Dr Conway agreed that her fitness to practise remained impaired by reason of XXX misconduct and that the conditions imposed on Dr Conway’s registration should be extended for a further period of 12 months from the date on which they would otherwise expire.

14. Dr Conway’s case was reviewed again on 4 November 2021. The 2021 Tribunal determined that Dr Conway’s fitness to practise remained impaired by reason of misconduct XXX.

15. The 2021 Tribunal carefully considered the conditions that were imposed on Dr Conway’s registration, and discussed potential alternative conditions. However, since Dr Conway had relinquished her licence to practise and therefore could not work as a doctor, the 2021 Tribunal decided it would not be possible to formulate workable conditions to address all of the concerns regarding Dr Conway’s fitness to practise.

16. Therefore, the 2021 Tribunal determined that suspending Dr Conway’s registration would be the appropriate action to take. In considering the period of suspension, the

Tribunal determined that 12 months would be appropriate. It considered that this would allow time for Dr Conway to consider her options in terms of whether she wishes to apply for voluntary erasure or the possibility of returning to practice. The Tribunal noted that, should Dr Conway wish to return to practise in the future and restore her licence to practise, it would be open to her to seek an early review.

17. The 2021 Tribunal determined to direct a review of Dr Conway's case. The Tribunal clarified that at the review hearing, the onus would be on Dr Conway to demonstrate how she has remediated and developed insight. The Tribunal stated that it may assist the reviewing Tribunal if Dr Conway provides an update confirming whether she intends to return to practise and, if so, to provide:

- A reflective statement addressing her misconduct;
- Evidence of any ongoing CPD;
- XXX;
- Any other information that Dr Conway considers will assist.

#### Today's Review Tribunal

18. The Tribunal now has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr Conway's fitness to practise remains impaired by reason of misconduct XXX.

#### **The Evidence**

19. The Tribunal has taken into account all the evidence received, including, but not limited to:

- Determinations of the previous Tribunals;
- MPT info request;
- XXX;
- XXX;
- Email from Dr Conway submitting information regarding Professional Boundaries Course;

- Dr Conway’s most recent reflective statement;
- An email from Dr Conway attaching some feedback from a patient.

### Submissions of Ms Devans-Tamakloe, on behalf of the GMC

20. On behalf of the GMC, Ms Devans-Tamakloe submitted that XXX but stated that the GMC are impartial in respect of Dr Conway’s impairment by reason of her misconduct.

21. XXX.

### The Relevant Legal Principles

22. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal’s judgement alone. This Tribunal is aware that it is for the doctor to satisfy it that she would be safe to return to unrestricted practise.

23. This Tribunal must determine whether Dr Conway’s fitness to practise is impaired today, taking into account her conduct and XXX 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.

24. The Tribunal bore in mind that it is for the doctor to demonstrate to the Tribunal that her fitness to practise is no longer impaired. It took account of paragraphs 163 and 164 of the *Sanctions Guidance* (November 2020 edition) (‘the SG’), which state:

*‘163 It is important that no doctor is allowed to resume unrestricted practice following a period of conditional registration or suspension unless the tribunal considers that they are safe to do so.’*

*164 In some misconduct cases it may be self-evident that, following a short suspension, there will be no value in a review hearing. However, in most cases where a period of suspension is imposed, and in all cases where conditions have been imposed, the tribunal*

*will need to be reassured that the doctor is fit to resume practice – either unrestricted or with conditions or further conditions. A review hearing is therefore likely to be necessary, so that the tribunal can consider whether the doctor has shown all of the following (by producing objective evidence):*

*a they fully appreciate the gravity of the offence*

*b they have not reoffended*

*c they have maintained their skills and knowledge*

*d patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.'*

25. The Tribunal took into account the case of *Abrahaem v GMC* [2008] EWHC 183, in which the court stated that, at a review, there is a persuasive burden on the practitioner to demonstrate that they have acknowledged why past professional performance was deficient and that they had sufficiently addressed the past impairments.

26. The Tribunal bore in mind the judgment of the Court of Appeal in *GOC v Clarke* [2018] EWCA Civ 1463 and that the issue was Dr Conway's 'fitness to practise'. Accordingly, the matter of an intention no longer to practise did not bear on the question of her fitness (see in particular paragraphs 27, 28 of the judgment).

## The Tribunal's Determination on Impairment

### Misconduct

27. The Tribunal had regard to the determination of the 2021 Tribunal and the 2020 LQC. It considered the comments of the 2020 LQC in relation to Dr Conway's limited insight into issues relating to her probity and conduct and the limited evidence of her attempts to remediate her misconduct.

28. It noted the 2020 LQC's comments that:

*'I concluded that, whilst Dr Conway has developed some insight into her misconduct, her insight was not fully developed. In addition, there was little evidence before me of attempts by Dr Conway at remediation.'*

29. The Tribunal noted that Dr Conway has taken the decision to relinquish her licence to practise and has stated that she does not intend to work as a doctor again.

30. The Tribunal considered Dr Conway's most recent reflective statement. It noted that there are some signs of developing insight within it but the Tribunal did not consider the statement to go far enough in this regard.

31. The Tribunal noted that practising without a licence is an extremely serious matter. The Tribunal considered that Dr Conway has not provided enough reflection in relation to how her actions affecting public confidence in the profession or how her actions could have put patient safety at risk.

32. The Tribunal has not been provided with enough further evidence to demonstrate an increased level of insight into her misconduct or to satisfy it that any further steps towards remediation have been undertaken. The Tribunal have also received no evidence to show that Dr Conway's medical knowledge and skills have been kept up-to-date.

33. In these circumstances, the Tribunal determined that Dr Conway's fitness to practise remains impaired by reason of misconduct.

XXX.

#### **Determination on Sanction - 18/11/2022**

34. Having determined that Dr Conway's fitness to practise is impaired by reason of misconduct XXX, the Tribunal now has to decide in accordance with Rule 22(1)(h) of the Rules on the appropriate sanction, if any, to impose.

#### **The Evidence**

2. The Tribunal has taken into account the background to the case and the evidence received during the earlier stage of the hearing where relevant to reaching a decision on what action, if any, it should take with regard to Dr Conway's registration.



36. The Tribunal did not receive any further evidence at this stage.

### **Submissions of Ms Devans-Tamakloe, on behalf of the GMC**

37. On behalf of the GMC, Ms Devans-Tamakloe submitted that the appropriate sanction at this stage in the case of Dr Conway, was one of suspension.

38. Ms Devans-Tamakloe submitted that Dr Conway has been resolute in refusing to undertake further CPD given that she has retired and she has relinquished her licence to practice but she has not taken the appropriate steps to remove herself from the medical register.

39. Ms Devans-Tamakloe submitted that in light of the continued disengagement with the GMC and no additional evidence to demonstrate that the Tribunal can be satisfied that the concerns have been addressed, a further period of suspension is appropriate.

40. Ms Devans-Tamakloe submitted that in the absence of evidence that Dr Conway has fully developed insight or shown remediation in respect of her misconduct, no lesser sanction would be sufficient.

41. Ms Devans-Tamakloe submitted that a period of suspension would serve to protect patients and the wider public interest whilst marking the seriousness of Dr Conway's misconduct. Ms Devans-Tamakloe further submitted that a further period of suspension would not stop Dr Conway from XXX.

42. Ms Devans-Tamakloe stated that the GMC did not consider there were any mitigating factors at this stage in proceedings but noted that Dr Conway's lack of insight, failure to engage with her regulator, previous finding of impairment and lack of remorse did aggravate the case. Ms Devans-Tamakloe concluded that given the circumstances, suspension is the appropriate sanction.

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

43. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement.

44. In reaching its decision, the Tribunal has taken account of the SG and relevant provisions of *Good Medical Practice* (2013 Edition) ('GMP'). It has borne in mind that the purpose of a sanction is to protect patients, maintain public confidence in the profession, and meet the wider public interest. It recognised that even though it is not its purpose to be punitive, sanction may have a punitive effect.

45. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Conway's interests with the public interest. It has taken account of the overarching objective, which includes the protection of the public, the maintenance of public confidence in the profession, and the promotion and maintenance of proper professional standards and conduct for members of the profession.

46. The Tribunal has already given a detailed determination on impairment and has taken those matters into account during its deliberations on sanction.

47. In relation to this review, the Tribunal has considered its powers as set out in Section 35D(5) of The Medical Act 1983.

#### No action

48. The Tribunal first considered whether to conclude the case by allowing the current order of conditions to lapse, or revoking that order, and taking no further action.

49. The Tribunal was of the view that, given its finding that Dr Conway's fitness to practise remains impaired by reason of misconduct XXX, it would be neither appropriate, nor in the interests of the public, to conclude the case by taking no action. There are no exceptional circumstances in this case which would justify taking no action.

#### Conditions

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

51. The Tribunal considered that since Dr Conway has relinquished her licence to practise and therefore cannot currently work as a doctor, it would not be possible to formulate workable conditions to address all of the concerns regarding Dr Conway's fitness to practise. The Tribunal bore in mind that Dr Conway has chosen not to co-operate with the GMC over XXX, which caused it to not be satisfied that she would comply with conditions which would require oversight by the GMC.

52. The Tribunal therefore determined that imposing a period of conditional registration would not be appropriate in this case.

#### Suspension

53. The Tribunal next considered whether extending the period of suspension on Dr Conway's registration would be appropriate.

54. The Tribunal had regard to paragraphs 91 and 92 of the SG, which set out situations in which suspension may be the appropriate course:

*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 unbefitting 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 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. 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).*

55. The Tribunal considered that action was necessary to protect the public, because it had found that Dr Conway lacked insight into her misconduct. In addition, it had concluded that XXX, which also necessitated taking appropriate steps to protect the public. The Tribunal also considered that further suspension would serve to maintain public confidence in the profession and to maintain professional standards.

56. During its deliberations on suspension, the Tribunal considered the further sanction of erasure in response to Dr Conway's impairment due to misconduct. However, it determined that although it found that Dr Conway's insight is not sufficient, it did find that she had developing insight. The Tribunal decided that at this stage in these proceedings, a sanction of erasure would be inappropriate and disproportionate.

57. The Tribunal decided that conditional registration was not appropriate and erasure was disproportionate. In light of its findings on impairment which necessitated action, the Tribunal was satisfied that suspending Dr Conway's registration would be the appropriate and proportionate action to take.

58. In considering the period of suspension, the Tribunal determined that 12 months would be the appropriate. It considered that this would allow time for Dr Conway to address the concerns raised in her case and demonstrate that she has remediated and developed insight. It would also allow Dr Conway time to deal with XXX.

59. The Tribunal determined to direct a review of Dr Conway's case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Conway to demonstrate how she has remediated and developed insight. It therefore may assist the reviewing Tribunal if Dr Conway provides an update confirming whether she intends to return to practise and, if so, to provide:

- A further reflective statement addressing her misconduct;
- Evidence of any ongoing CPD;

- XXX.

60. Dr Conway will also be able to provide any other information that she considers will assist.

61. Accordingly, the Tribunal direct that the current period of suspension shall be extended for a further period of 12 months from the time when it would otherwise expire.

62. Unless Dr Conway exercises her right of appeal, the further period of suspension will take effect 28 days from the date on which written notice of this decision is deemed to have been served upon her. The suspension currently imposed on Dr Conway's registration shall continue to have effect until the appeal period has concluded. If Dr Conway decides to exercise her right of appeal, the period of suspension currently imposed on her registration shall continue to have effect until the appeal has been decided. A note explaining Dr Conway's right of appeal will be sent to her.

63. That concludes this case.

ANNEX A – 18/11/2022

**Determination on Service and Proceeding in Absence**

Service

64. Dr Conway 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.

65. Ms Jennifer Devans-Tamakloe, Counsel, on behalf of the GMC, provided the Tribunal with various documents regarding service of Notice of the Hearing of Dr Conway. This included:

- A screenshot of Dr Conway's registered home address and email address;
- An email from the GMC to Dr Conway including the GMC information letter and draft hearing bundle – dated 10 October 2022;
- An email response from Dr Conway confirming receipt of the information letter by email – dated 10 October 2022;
- An email response from Dr Conway to the MPTS confirming receipt of the Notice of Hearing – dated 10 October 2022.

66. Ms Devans-Tamakloe submitted that in the GMC's view, service has been affected and Dr Conway has voluntarily absented herself from today's proceedings. Ms Devans-Tamakloe further submitted that adjourning the hearing today will not resolve matters. She stated that Dr Conway has not sought an adjournment and therefore has effectively waived her right to attend. Ms Devans-Tamakloe concluded that the Tribunal should be satisfied that it can proceed in her absence.

67. The Tribunal had regard to the documents before it and the submissions made by Ms Devans-Tamakloe and was satisfied that notice of this hearing had been served in accordance with Rules 20 and 40.

Proceeding in Absence

68. Having been satisfied that notice was properly served upon Dr Conway, 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.

69. The Tribunal has evidence before it that Dr Conway was aware of the hearing commencing on 18 November 2022. The Tribunal had sight of an email from the doctor dated 2 November 2022 in which she stated that she would not be attending the hearing. The Tribunal determined that Dr Conway has chosen to voluntarily absent herself from today's proceedings. Furthermore, it has not received any indication that Dr Conway has requested an adjournment in order to engage at a later date.

70. The Tribunal concluded that it is in the public interest and in the interests of justice to proceed with this hearing today.

71. Accordingly, the Tribunal determined that it was fair and reasonable to proceed in Dr Conway's absence.