

Dates: 21/10/2019 - 25/10/2019

Medical Practitioner's name: Dr Jacqueline CONWAY
GMC reference number: 3261088
Primary medical qualification: MB BS 1987 University of London
Type of case
New - Misconduct
XXX
Outcome on impairment
Impaired
XXX

Summary of outcome

Conditions, 12 months.
Review hearing directed
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mr Geoffrey Payne
Lay Tribunal Member:	Mrs Anna Crawley
Medical Tribunal Member:	Dr Michael Morton

Tribunal Clerk:	Mr Andrew Ormsby
-----------------	------------------

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Ms Susan Kitzing, Counsel, instructed by GMC Legal
GMC Representative:	Mr Stephen McCaffrey, 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.

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 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 - 23/10/2019

Background

1. Dr Conway graduated from the University of London 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, she was working as a General Psychiatrist. XXX. Dr Conway returned to work in 1997, practicing under supervision initially. In 2002 she began working as a senior registrar at St Georges Hospital. She obtained a Consultant post in 2007 but resigned from the post in 2008, which she said was due to problems with the management. Dr Conway completed an MSc in Psychiatric Research between 2009 and 2010, and since then she has been working as a staff grade doctor in different roles. Dr Conway was employed as a doctor at The Priory between October 2013 and June 2015. She had an appraisal in May 2014 but did not have an appraisal in 2015. Dr Conway handed in her resignation to the Priory at the beginning of June 2015. It was felt by The Priory that Dr Conway was not making efforts towards trying to achieve her revalidation before the end of her employment and a notice of non-engagement was submitted to the GMC on 30 June 2015. Dr Conway then obtained a new position working for Central and North West London NHS Trust ('CNWL') in July 2015 until the index events. At the time of those events, Dr Conway was registered with the locum agency, ID Medical, and began a placement at South Westminster Assessment and Treatment Team as an agency Specialty doctor on 22 June 2015.

2. The GMC sent Dr Conway a letter on 11 September 2015 informing her that her licence to practice would be withdrawn on 16 October 2015. A further letter was sent on 16 October 2015 informing Dr Conway that her licence to practice had been withdrawn. Dr Conway spoke by telephone to the GMC on 16 October 2015. Dr Conway was advised to stop practicing immediately and to make her employer aware of her situation. Dr Conway was advised to begin the restoration process, and was given instructions on how to complete the form. Dr Conway spoke by telephone to the GMC on 3 November 2015. Dr Conway was informed that the GMC had received the documentation needed to restore her licence to practice, but that she also needed to complete the application form. Dr Conway was informed by the operator that she could not see patients at that time without a licence to practice. Dr Conway informed the operator that she had been working since the 16 October when her licence to practice was withdrawn. Dr Conway informed her team on 3 November 2015 that she could not continue working because

Record of Determinations – Medical Practitioners Tribunal

her licence to practice had been withdrawn. Dr Conway was subsequently restored to the register in December 2015.

3. The Allegation that has led to Dr Conway's hearing can be summarised as follows. Firstly, it is said by the GMC that she worked as a Specialty Doctor between the 15 October 2015 and the 3 November 2015, a period of twelve days, when she did not have a licence to practice. Secondly, it is alleged that, when applying for a particular Specialty post, she made false declarations in that she asserted she was not the subject of fitness to practise proceedings and had not been removed from the register or had conditions or undertakings placed on her registration. Thirdly, it is alleged that there were false declarations of a similar nature on a pre-employment declaration form. The GMC case is that those false declarations were dishonest.

4. It is also alleged that, in September 2016, Dr Conway sent an email to Dr A which contained inappropriate comments. XXX.

The Outcome of Applications Made during the Facts Stage

Application for the hearing to be held in private

5. At the outset of the hearing the Legally Qualified Chair ('LQC') invited parties to make the Tribunal aware of when matters concerning XXX were going to be addressed so that it could go into private session. On day two of the hearing the LQC invited parties to consider if they were happy for the entirety of the hearing to be held in private as matters relating to XXX and alleged misconduct were so entwined as to be impossible to separate. Both Ms Kitzing and Mr McCaffrey agreed to this course of action.

Application for evidence to be heard via telephone link

6. On day two of the hearing Ms Kitzing on behalf of the General Medical Council ('GMC'), made an application for GMC expert evidence to be heard via telephone link under Rule 34(13) of the General Medical Council (Fitness to Practise) Rules 2004 ('the Rules'). She submitted that she had believed that telephone links had been ordered by MPTS Case Management prior to the hearing but later discovered that they had not. Mr McCaffrey on behalf of Dr Conway had no objection to the application. The Tribunal determined it would be in the interest of justice to do so and therefore acceded to the application.

The Allegation and the Doctor's Response

1. Between 15 October 2015 and 3 November 2015 you worked as a Specialty Doctor in Psychiatry at South Westminster Assessment and Brief Treatment

Record of Determinations – Medical Practitioners Tribunal

Team when you did not hold a licence to practise in the UK. **Admitted and Found Proved**

2. In March 2016, you submitted an application form for a Speciality Doctor post with Central & North West London Trust ('the Application') in which you made false declarations, in that you answered 'No' to the following questions:
 - a. 'Are you currently the subject of a fitness to practise investigation or proceedings by a licensing or regulatory body in the UK or in any other country?'; **Admitted and Found Proved**
 - b. 'Have you ever been removed from the register or have conditions or undertakings been made on your registration by a fitness to practise committee or the licensing or regulatory body in the UK or in any other country?'. **Admitted and Found Proved**
3. On 30 March 2016 you signed a pre-employment declaration form in connection with the Application in which you made false declarations, in that you answered 'No' to the following questions:
 - a. 'Have you ever been disqualified from the practice of a profession, or required to practice subject to specified limitations following fitness to practice proceedings, by a regulatory or licensing body in the United Kingdom or in any other country?'; **Admitted and Found Proved**
 - b. 'Are you currently the subject of any investigation or fitness to practise proceedings by any licensing or regulatory body in the United Kingdom or in any other country?'; **Admitted and Found Proved**
 - c. 'Do you know of any other matters in your background which might cause your reliability or suitability for employment to be called into question?'. **Admitted and Found Proved**
4. Your actions as described at paragraphs 2-3 were dishonest. **To be determined**
5. At 16.38 hrs on 27 September 2016 you sent an email to Dr A which contained inappropriate and offensive comments. **Admitted and Found Proved**
6. XXX
7. XXX

Record of Determinations – Medical Practitioners Tribunal

8. XXXX

And that by reason of the matters set out above your fitness to practise is impaired because of your:

- a. misconduct in respect of paragraphs 1-5; **To be determined**
- b. XXX

7. At the outset of these proceedings, through her counsel, Mr McCaffrey, Dr Conway made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out in accordance with Rule 17(2)(d) of 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.

Factual Witness Evidence

8. The Tribunal received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Mr A, Revalidation Operations Manager at the GMC, 3 August 2018;
- Dr P, Associate Medical Director for Revalidation and Governance at CNWL, 4 June 2018.

9. Dr Conway provided her own witness statement, dated 17 October 2019. She also gave oral evidence at the hearing.

Expert Witness Evidence

10. The Tribunal also received evidence from three expert witnesses.

11. XXX

12. XXX

13. XXX

14. XXX

Documentary Evidence

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

- Letter and email from the GMC to Dr Conway to advise that it was minded to her withdraw licence to practise dated 7 July 2015;

Record of Determinations – Medical Practitioners Tribunal

- Written representations from Dr Conway dated 7 July 2015;
- Letter from the GMC to Dr Conway to confirm decision of withdrawal of licence to practice dated 11 September 2015;
- Letter and email from the GMC to Dr Conway to confirm that her licence to practise was withdrawn dated 16 October 2015;
- Telephone note between the GMC and Dr Conway dated 16 October 2015;
- Email from employer confirming dates Dr Conway had worked without having a licence to practise dated 11 November 2015;
- Minutes from meeting with Dr Conway, Dr P and Ms F dated 14 November 2019;
- Email to the GMC from Priory Group attaching a letter to the GMC from Priory Group dated 19 January 2016;
- Email from Dr Conway to Dr P dated 27 September 2016;
- Email to the GMC from Central and North West London NHS Foundation Trust attaching a letter to the GMC from Central and North West London NHS Foundation Trust (Dr P) dated 27 January 2016;
- XXX
- XXX
- Dr Conway's Rule 7 responses dated 8 February 2018;
- XXX
- XXX
- Dr Conway's response to the GMC witness statement of Mr A dated 3 September 2019;
- XXX
- XXX
- XXX
- XXX
- Dr Jacqueline Conway's Witness Statement dated 17 October 2019;
- Interim Clinical Supervisor Report Dr D, Central and North West London NHS Trust, dated 6 September 2019;
- Letter from Dr G, XXX, Central and North West London NHS Trust, dated 18 September 2019 (sent 3 October 2019).

The Tribunal's Approach

16. 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 each outstanding element the Allegation. Dr Conway is not required 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.

17. The Tribunal applied the test for dishonesty as set out in *Ivey v Genting Casinos (UK) Limited [2017] UKSC 67*. That test is as follows:

Record of Determinations – Medical Practitioners Tribunal

74. 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.

18. The Tribunal therefore set out to ascertain the actual state of Dr Conway's knowledge or genuinely held belief as to the relevant facts at the material time. Having done so, the Tribunal further considered whether that state of mind was dishonest by the standards of ordinary, decent people.

The Tribunal's Analysis of the Evidence and Findings

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

20. The Tribunal first dealt with a number of matters that are common to each of the outstanding paragraphs of the Allegation.

21. The Tribunal found as a matter of fact, following a careful and objective consideration of the correspondence and contents of the two telephone calls between Dr Conway and the GMC, that Dr Conway was informed in clear terms in the latter half of 2015 that her licence to practice was at risk, and, later was withdrawn. The impact of those matters on XXX is, however, a different matter and one to which the Tribunal subsequently returned.

22. The Tribunal found that Dr Conway did not receive the letter dated 11 September 2015 which informed her that she must no longer practise in the UK. The reasons are, firstly, that she did not respond to it, which stands in stark contrast to other correspondence she received and, secondly that there is no evidence that it was emailed to her. It follows that the first time Dr Conway was informed of the withdrawal of her licence to practise was 16 October 2015 when she received a letter to that effect and contacted the GMC immediately.

23. It is common ground that Dr Conway was restored to the register in December 2015.

24. XXX

Record of Determinations – Medical Practitioners Tribunal

25. XXX

26. In the light of its general findings the Tribunal went on to consider the outstanding paragraphs of the Allegation.

Dishonesty in relation to paragraph 2 a

2. *'In March 2016, you submitted an application form for a Speciality Doctor post with Central & North West London Trust ('the Application') in which you made false declarations, in that you answered 'No' to the following questions:*

a. *'Are you currently the subject of a fitness to practise investigation or proceedings by a licensing or regulatory body in the UK or in any other country?'* **Found not proved**

27. In the judgement of the Tribunal, the statement referred to in paragraph 2 a was answered incorrectly but without an intention to deceive on the part of Dr Conway. There is no evidence that she actually knew that she was under any form of investigation at the time. That XXX cannot be dishonest according to the standards of ordinary reasonable people and accordingly the Tribunal the found that paragraph 4 in relation to 2 a was not proved.

Dishonesty in relation to paragraph 2 b

2. *In March 2016, you submitted an application form for a Speciality Doctor post with Central & North West London Trust ('the Application') in which you made false declarations, in that you answered 'No' to the following questions:*

b. *'Have you ever been removed from the register or have conditions or undertakings been made on your registration by a fitness to practise committee or the licensing or regulatory body in the UK or in any other country?'* **Found not proved**

28. In the judgement of the Tribunal, the evidence is that Dr Conway approached this part of the form without taking the trouble to read it properly. As such, Dr Conway's conduct in relation to it was negligent at worst but it was not dishonest in that there was no subjective intention to deceive. Dr Conway's approach fell significantly short of what was required in relation to a form of this nature on an objective level but it was not dishonest by the standards of ordinary reasonable people. The letter from the GMC dated 16 October 2015 informed Dr Conway that her licence to practise was withdrawn, but importantly, that her name remained on the medical register. Accordingly the Tribunal considered that paragraph 4 in relation to paragraph 2b was not proved.

Record of Determinations – Medical Practitioners Tribunal

Dishonesty in relation to paragraph 3 a

'3. On 30 March 2016 you signed a pre-employment declaration form in connection with the Application in which you made false declarations, in that you answered 'No' to the following questions:

a. 'Have you ever been disqualified from the practice of a profession, or required to practice subject to specified limitations following fitness to practice proceedings, by a regulatory or licensing body in the United Kingdom or in any other country?' **Found not proved**

29. Dr Conway's case in relation to paragraph 3 a was that she did not think she needed to declare the revalidation issues that had arisen the previous autumn. They should have been declared. In the judgement of the Tribunal, this is the paragraph of the Allegation upon which, in relation to dishonesty, the evidence against Dr Conway is the strongest. However, and not without some hesitation, in the light of the expert evidence and the findings of the Tribunal generally in relation to Dr Conway's negligent approach as to declarations on forms, the Tribunal concludes that the incorrect answer she gave to the question at paragraph 3 a was not given with the intention to deceive. That is not dishonest according to the standards of ordinary reasonable people. Accordingly, the Tribunal determined that paragraph 4 in relation to paragraph 3 a was not proved.

Dishonesty in relation to paragraph 3 b

'3. On 30 March 2016 you signed a pre-employment declaration form in connection with the Application in which you made false declarations, in that you answered 'No' to the following questions:

b. 'Are you currently the subject of any investigation or fitness to practise proceedings by any licensing or regulatory body in the United Kingdom or in any other country?' **Found not proved**

30. The Tribunal found paragraph 4 in relation to paragraph 3 b not proved for the reasons set out in relation to paragraph 2 b above.

Dishonesty in relation to paragraph 3 c

'3. On 30 March 2016 you signed a pre-employment declaration form in connection with the Application in which you made false declarations, in that you answered 'No' to the following questions:

Record of Determinations – Medical Practitioners Tribunal

- c. *'Do you know of any other matters in your background which might cause your reliability or suitability for employment to be called into question?'* **Found not proved**

31. In the judgement of the Tribunal the question referred to in paragraph 3 c is far more general than the others that feature in the Allegation. At the time that she answered it, Dr Conway had already had her licence to practise restored. Whilst the answer that she gave was not the one that was required, in the light of the XXX and the findings of the Tribunal generally in relation to paragraph 4 of the Allegation, the Tribunal determined that the answer given was not advanced with the intention to deceive. That subjective XXX cannot be dishonest as per the standards of ordinary reasonable people. Accordingly the Tribunal found paragraph 4 not proved in relation to paragraph 3 c.

The Tribunal's Overall Determination on the Facts

1. Between 15 October 2015 and 3 November 2015 you worked as a Specialty Doctor in Psychiatry at South Westminster Assessment and Brief Treatment Team when you did not hold a licence to practise in the UK. **Admitted and Found Proved**
2. In March 2016, you submitted an application form for a Speciality Doctor post with Central & North West London Trust ('the Application') in which you made false declarations, in that you answered 'No' to the following questions:
 - a. 'Are you currently the subject of a fitness to practise investigation or proceedings by a licensing or regulatory body in the UK or in any other country?'; **Admitted and Found Proved**
 - b. 'Have you ever been removed from the register or have conditions or undertakings been made on your registration by a fitness to practise committee or the licensing or regulatory body in the UK or in any other country?'. **Admitted and Found Proved**
3. On 30 March 2016 you signed a pre-employment declaration form in connection with the Application in which you made false declarations, in that you answered 'No' to the following questions:
 - a. 'Have you ever been disqualified from the practice of a profession, or required to practice subject to specified limitations following fitness to practice proceedings, by a regulatory or licensing body in the United Kingdom or in any other country?'; **Admitted and Found Proved**

Record of Determinations – Medical Practitioners Tribunal

- b. 'Are you currently the subject of any investigation or fitness to practise proceedings by any licensing or regulatory body in the United Kingdom or in any other country?'; **Admitted and Found Proved**
 - c. 'Do you know of any other matters in your background which might cause your reliability or suitability for employment to be called into question?'. **Admitted and Found Proved**
4. Your actions as described at paragraphs 2-3 were dishonest. **Found not proved**
5. At 16.38 hrs on 27 September 2016 you sent an email to Dr A which contained inappropriate and offensive comments. **Admitted and Found Proved**
6. XXX
7. XXX
8. XXX

And that by reason of the matters set out above your fitness to practise is impaired because of your:

- a. misconduct in respect of paragraphs 1-5; **To be determined**
- b. XXX

Determination on Impairment - 25/10/2019

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

The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.

Submissions on behalf of the GMC

3. Ms Kitzing submitted that Dr Conway's fitness to practise is impaired XXX by reason of misconduct XXX.

Record of Determinations – Medical Practitioners Tribunal

4. Ms Kitzing referred the Tribunal to the relevant paragraphs of the Good Medical Practice (2013) and Sanctions Guidance (2018) and submitted that all three limbs of the overarching objective were engaged.

5. Ms Kitzing referred to the well known test in *Grant v NMC* [2011] EWHC 927 (Admin) with regards to identifying whether there is current impairment.

6. XXX

7. In relation to impairment by reason of misconduct, two issues arise for consideration. Firstly, the fact that Dr Conway worked without a licence and, secondly, that she sent an offensive email to Dr A. Ms Kitzing submitted that, whilst Dr Conway viewed the matter of working for a period of time without a license as an administrative matter, complying with the regulatory regime is vital and of central importance to the medical profession.

8. Ms Kitzing also submitted that Dr Conway's email sent to Dr A was clearly a matter of serious misconduct and that Dr Conway has not shown full insight into such inappropriate behaviour, as evidenced by her questioning why Dr A would send this email to the GMC.

Submissions on behalf of Dr Conway

9. Mr McCaffrey invited the Tribunal to draw back from a finding of serious misconduct.

10. In relation to the matter of practising without a license, he submitted that a distinction should be drawn between someone practising without a licence because of tardiness and someone practising without a licence because of dishonesty. He stated that Dr Conway's conduct did not even reach the level of tardiness as she had actively attempted to contact the GMC regarding regulatory matters. As such, he queried whether it amounted to serious misconduct.

11. With regards to the email sent to Dr A, Mr McCaffrey submitted that Dr Conway had apologised, deeply regretted the email, and that it was a one-off incident. He also stated that her evidence, although not always attractive, was an honest attempt to explain her conduct in relation to the said email. Mr McCaffrey submitted that she was merely being frank and was not seeking to justify her behaviour but was rather trying her best to show her insight. In this context Mr McCaffrey relied on the expert report of Professor C which noted Dr Conway's style of communication and over-use of sarcasm.

12. XXX

The Relevant Legal Principles

Record of Determinations – Medical Practitioners Tribunal

13. 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.

14. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted in relation to misconduct: first, whether the facts as found proved amounted to misconduct which was serious and then, if so, whether as a result of that serious misconduct, Dr Conway's fitness to practise is impaired.

15. The Tribunal must determine whether Dr Conway's fitness to practise is impaired today, taking into account Dr Conway'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 must also have regard to the overarching objective.

The Tribunal's Determination on Impairment

Misconduct in relation to Paragraph 1 of the Allegation: Working without a licence to Practise

16. The Tribunal first considered whether the facts found proved amounted to misconduct in relation to Dr Conway working as a Specialty Doctor in Psychiatry between 15 October 2015 and 3 November 2015 when she did not hold a licence to practise in the UK. In determining whether Dr Conway's conduct amounted to misconduct and whether it was serious the Tribunal had full regard to the overarching objective.

17. Although Dr Conway had acknowledged that working for a period of time whilst not licenced to practise was a serious issue, in the judgement of the Tribunal she had demonstrated only very limited insight into the full seriousness and potential ramifications of doing so. In the course of her evidence Dr Conway sought to draw what was, in the view of the Tribunal, a false distinction between what she characterised as administrative issues, or "*bits of paper*" and patient care. In fact it is imperative for the sake of patient care that all doctors are correctly licensed to practise. The Tribunal considered that Dr Conway had yet to recognise fully the potential ramifications for patient care of treating patients while not licenced to practise. The Tribunal was concerned that Dr Conway characterised the process in her case as being "*ridiculous*" and an exercise in "*going round and round*".

18. The Tribunal acknowledged its previous findings that Dr Conway was not dishonest in completing the forms referred in paragraphs 2 and 3 of the Allegation. Nevertheless, the lack of dishonesty does not negate the conclusion of the Tribunal that her approach towards her licence to practise was cavalier. Although not dishonest, it was still misconduct and still serious. The Tribunal noted that the forms were completed some months after the conclusion of the twelve days in which Dr

Record of Determinations – Medical Practitioners Tribunal

Conway worked without a licence to practise. By that time her licence had been restored. The findings of the Tribunal in relation to those twelve days are based on her lack of understanding of the seriousness of revalidation and her attitude as to the process itself. The Tribunal further notes that Dr Conway herself accepted that the matter was serious in her evidence.

Misconduct in relation to paragraphs 2 and 3 of the Allegation: the completion of two forms

19. Neither party invited the Tribunal to find impairment in relation to paragraphs 2 and 3 of the Allegation.

Misconduct in relation to paragraph 5 of the Allegation: the email to Dr A

20. The Tribunal 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 on her part.

21. The Tribunal noted that Dr Conway had some prior contact with Dr A but did not consider this to be any excuse for sending an email of this nature. The Tribunal was particularly concerned that this email was sent on a work computer to a professional colleague who was dealing with a regulatory matter.

22. In the judgement of the Tribunal, Dr Conway demonstrated a lack of insight into the seriousness of sending an email of that nature. Her principal concern in evidence was to ask rhetorically why the recipient had sent it to the GMC. That attitude was not an attractive one. The email itself contained unpleasant and offensive content. The Tribunal does not accept Dr Conway's assertion that there is a parity between using the descriptor "*red head*" to describe a person and using the phrase "*(vile) zionist*".

23. The Tribunal has concluded that Dr Conway's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct.

XXX

24. XXX

25. XXX

26. XXX

27. XXX

Record of Determinations – Medical Practitioners Tribunal

28. XXX

Impairment by reason of misconduct

29. The Tribunal having determined that the facts found proved amounted to serious misconduct, went on to consider whether, as a result of that serious misconduct, Dr Conway's fitness to practise is currently impaired.

30. The Tribunal reminded itself of the statutory overarching objective of the General Medical Council, which involves the pursuit of the following objectives as set out in s1 (1A) and (1B) Medical Act 1983 (the 1983 Act) as amended:

- *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 the profession.*

31. The Tribunal considered that the issue of working without a licence to practise between 15 October 2015 and 3 November 2015 engaged all three limbs of the overarching objective.

32. The Tribunal considered that fellow professionals and the public would find Dr Conway's cavalier approach to regulatory matters to be deplorable.

33. The Tribunal was of the view that Dr Conway had not shown sufficient insight into the necessity of dealing with regulatory matters in a thorough and serious matter as evidenced by her view that the matter was "*ridiculous*".

34. The Tribunal determined that Dr Conway did not yet fully understand the seriousness of her conduct and it considered that Dr Conway still had some way to go in developing full insight. As a result, the risk of repetition remains.

35. In relation to the email sent to Dr A which contained inappropriate and offensive comments, the Tribunal was mindful of Dr Conway's statement in which she admits, in hindsight, that she "*should never have sent it*". However, that apology must be weighed against, firstly, her protestation that it was merely sent to a friend, secondly, her querying why it was sent to the GMC and, thirdly, her attempts to minimise the offensive nature of the content.

36. The Tribunal considered that Dr Conway's conduct in sending the 27 September 2016 email to Dr A engaged limbs 2 and 3 of the overarching objective, namely:

Record of Determinations – Medical Practitioners Tribunal

- *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.*

37. The Tribunal has therefore determined that Dr Conway's fitness to practice is impaired by reason of misconduct XXX.

38. The Tribunal does not find Dr Conway's fitness to practise to be impaired by reason of the matters set out in paragraphs 2 and 3 of the Allegation.

Determination on Sanction - 25/10/2019

1. Having determined that Dr Conway's fitness to practise is impaired by reason of XXX 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.

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

Submissions on behalf of the GMC

3. On behalf of the GMC, Ms Kitzing submitted that the appropriate sanction in this case should be one of suspension, given the findings of the Tribunal in relation to serious misconduct.

4. Ms Kitzing submitted that the imposition of conditions on Dr Conway's registration would fall short of what is necessary to protect the reputation of the profession. She argued that there could be a residual risk of repetition of the misconduct, particularly given Dr Conway's lack of insight.

5. Ms Kitzing submitted to the Tribunal that the sanction of suspension is appropriate to protect the integrity of the profession, particularly in circumstances where there is limited insight and to provide a deterrent effect that emphasises the importance of complying with the regulatory regime.

6. Ms Kitzing emphasised the importance of maintaining public confidence in the profession and referred the Tribunal to the relevant paragraphs of the Sanctions Guidance (2018) ('SG').

Submissions on behalf of Dr Conway

7. Mr McCaffrey submitted that to take no action would be inappropriate, however, to suspend Dr Conway would also be inappropriate.

Record of Determinations – Medical Practitioners Tribunal

8. Mr McCaffrey submitted that suspension would remove her from the regulatory environment and increase difficulties for her at a subsequent review hearing. XXX.
9. He submitted that the matters in question date back several years and were “*one-off*” incidents, there has been no repetition, and that it must be borne in mind by the Tribunal that Dr Conway is a doctor who is good at her job.
10. Mr McCaffrey submitted that, while there are clear concerns, these concerns could be factored in to any conditions imposed on her registration with a subsequent review hearing directed. This could give Dr Conway the opportunity to reflect on the issues raised in this hearing process.
11. Mr McCaffrey submitted that there was a difficult interplay between Dr Conway’s misconduct, which was “*clearly wrong and unpalatable*”, and XXX. He submitted and that this case was not a straightforward one.

The Tribunal’s Approach to Sanction

12. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement.
13. In reaching its decision, the Tribunal has taken account of the SG and GMP. It has borne in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although it may have a punitive effect.
14. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Conway’s interests with the public interest. It has also taken into account its statutory overarching objective.
15. The Tribunal has already given detailed determinations on facts and impairment and has taken those matters into account during its deliberations on sanction.

The Tribunal’s Determination on Sanction

16. The Tribunal identified the following mitigating factors in relation to the email that Dr Conway sent to Dr A:
 - There has been no repetition of Dr Conway expressing the sort of views that appear in the email;
 - There is no evidence that the attitudes displayed in the email permeated into Dr Conway’s dealings with patients and colleagues in any other context.
17. The Tribunal identified the following aggravating factor:

Record of Determinations – Medical Practitioners Tribunal

- Dr Conway has displayed limited insight into the inappropriate nature of the email and instead questioned why Dr A had forwarded it to the GMC.

18. The Tribunal identified the following mitigating factors in relation to the issue of Dr Conway practising without a licence:

- Dr Conway was unlicensed for a relatively short period of twelve days;
- There is evidence that Dr Conway did make efforts to supply revalidation information and completed the necessary formalities;
- There is no evidence of any further issues regarding her license to practice;
- It cannot be said that she acted dishonestly at any stage;
- She has, throughout the relevant period, suffered from cognitive impairment.

19. The Tribunal identified the following aggravating factor:

- Dr Conway displayed a very poor attitude towards the regulatory regime in the course of giving evidence.

20. The Tribunal considered each sanction in ascending order of seriousness starting with the least restrictive.

No Action

21. In reaching its decision as to the appropriate sanction, if any, to impose in this case, the Tribunal first considered whether to conclude the case by taking no action.

22. The Tribunal determined that there were no exceptional circumstances to justify taking no action in this case and that to do so would be insufficient.

Conditions

23. 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.

24. The issue for the Tribunal to consider was whether conditions would be sufficient to meet the public interest concerns arising out of the serious misconduct XXX impairment that it has found. The major point of concern for the Tribunal was the attitude that Dr Conway displayed in her evidence as set out in the determination of Tribunal at the impairment stage.

25. However, in the judgement of the Tribunal, there were a number of factors to set against that. Firstly, allowances must be made for XXX. Secondly, the matters at issue in this case are now historic, dating back several years to 2015 and 2016, and there has

Record of Determinations – Medical Practitioners Tribunal

been no repetition of any issue in relation to Dr Conway's license to practise and no indication that there have been further instances of Dr Conway expressing the sort of offensive views apparent in the email within her medical practise. That, in itself, is evidence of some insight, as are the admissions made in the course of the hearing. Thirdly, there are no findings of dishonesty on Dr Conway's part.

26. The Tribunal notes the concern expressed by Dr D in her letter dated 6 September 2019 as to Dr Conway's apparent non-compliance with a condition imposed by the Interim Orders Tribunal. However, it also notes Dr D's opinion that Dr Conway will comply with conditions in the future and that there should be no change to her conditions at this time. The apparent breach appears to have involved Dr Conway attending the Coroner's Court. It is likely that a witness in Dr Conway's position has little discretion not to attend if required but the matter should have been dealt with formally by the IOT. However, the Tribunal also notes Dr D's statement that there have been no complaints or concerns raised against Dr Conway in the meantime. In the circumstances of this case, XXX, the Tribunal does not consider any previous non-compliance in the circumstances described to be a barrier to the imposition of conditions at this stage.

27. The Tribunal considered that the ultimate question was whether the public interest requires suspension or whether it could sufficiently be met by the imposition of conditions. Closely allied to that was whether adequate insight and remediation on the part of Dr Conway could only be achieved with a period of suspension.

28. Although the judgment was a very finely balanced one, the Tribunal was persuaded that the imposition of conditions could meet the XXX serious misconduct identified in this case.

29. XXX

30. Secondly, in the case of the serious misconduct, the Tribunal determined that a requirement that Dr Conway identify and engage with a mentor, and that she be required to engage with a review at which a future Tribunal could consider the question of her attitude towards the regulatory regime, coupled with the declaratory effect of the judgement of the Tribunal on impairment, would suffice.

31. The Tribunal determined that imposing conditions on Dr Conway's registration was necessary to satisfy each of the three limbs of the overarching objective.

- *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 the profession.*

Record of Determinations – Medical Practitioners Tribunal

32. Although there may be an argument that suspension would be required in relation to the second and third limbs, the Tribunal was satisfied, in the particular circumstances of the case, that conditions would also suffice.

33. The Tribunal determined to impose the following conditions for a period of twelve months:

1. She must personally ensure the GMC is notified of the following information within seven calendar days of the date these conditions become effective:
 - a the details of her current post, including:
 - i her job title
 - ii her job location
 - iii her responsible officer (or their nominated deputy)
 - b the contact details of her employer and any contracting body, including her direct line manager
 - c any organisation where she has practising privileges and/or admitting rights
 - d any training programmes she is in
 - e of the organisation on whose medical performers list she is included
 - f of the contact details of any out of hours service she is registered with
2. She must personally ensure the GMC is notified:
 - a of any post she accepts, before starting it
 - b that all relevant people have been notified of her conditions, in accordance with condition 4
 - c if any formal disciplinary proceedings against her are started by her employer and/or contracting body, within seven calendar days of being formally notified of such proceedings

Record of Determinations – Medical Practitioners Tribunal

- d if any of her posts, practising privileges, or admitting rights have been suspended or terminated by her employer before the agreed date within seven calendar days of being notified of the termination
 - e if she applies for a post outside the UK.
3. She must allow the GMC to exchange information with any person involved in monitoring her compliance with her conditions.
4. She must personally ensure the following persons are notified of the conditions listed at 1 to 8:
- a her responsible officer (or their nominated deputy)
 - b the responsible officer of the following organisations:
 - i her place(s) of work, and any prospective place of work (at the time of application)
 - ii all of her contracting bodies and any prospective contracting body (prior to entering a contract)
 - iii any organisation where she has, or has applied for, practising privileges and/or admitting rights (at the time of application)
 - iv any out of hours service she is registered with
 - v if any of the organisations listed at (i to iv) does not have a responsible officer, she must notify the person with responsibility for overall clinical governance within that organisation. If she is unable to identify that person, she must contact the GMC for advice before working for that organisation.
 - c the approval lead of her regional Section 12 approval tribunal (if applicable) - or Scottish equivalent
 - d her immediate line manager and senior clinician (where there is one) at her place of work, at least 24 hours before starting work (for current and new posts, including locum posts).
5. She must get the approval of the GMC before working in a non-NHS post or setting.

Record of Determinations – Medical Practitioners Tribunal

6.
 - a She must be supervised in all of her posts by a clinical supervisor, as defined in the *Glossary for undertakings and conditions*. Her clinical supervisor must be appointed by her responsible officer (or their nominated deputy).
 - b She must not work until:
 - i her responsible officer (or their nominated deputy) has appointed her clinical supervisor and approved her supervision arrangements
 - ii she has personally ensured that the GMC has been notified of the name and contact details of her clinical supervisor and her supervision arrangements.
7. She must not work:
 - a as a locum
8. She must have a mentor who is approved by her responsible officer (or their nominated deputy).

XXX

Review

34. 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 conditional registration, unless an early review is sought. A future Tribunal may be assisted by:

- A reflective statement from Dr Conway dealing with her attitude towards the regulatory regime and the importance of ensuring that all communications with colleagues are appropriate in nature;
- Reports from those involved in supervising Dr Conway as to her compliance with the regulatory regime and her attitude towards regulation generally;
- Evidence that Dr Conway has engaged with and complied with her regulatory obligations, particularly the appraisal and revalidation system.

Determination on Immediate Order - 25/10/2019

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

Submissions

Record of Determinations – Medical Practitioners Tribunal

2. Ms Kitzing made an application for the imposition of an immediate order on public interest grounds. She submitted that this was a joint application. Ms Kitzing also invited the Tribunal to revoke the current Interim Order.

3. Mr McCaffrey agreed that this was effectively a joint application.

The Tribunal's Determination

4. The Tribunal accepted the submission of both parties and determined that it was in the public interest to impose an immediate order of conditions in the same terms as the substantive direction.

5. The substantive direction for the imposition of conditions as already announced, will take effect 28 days from the date when written notice is deemed to have been served on Dr Conway. The order of immediate imposition of conditions will take effect from today. If Dr Conway lodges an appeal, the immediate order for the imposition of conditions on her register will remain in force until the appeal is determined.

6. The Tribunal determined to revoke the Interim Order currently imposed.

7. That concludes this hearing.

Confirmed

Date 25 October 2019

Mr Geoffrey Payne, Chair