

PUBLIC RECORD

Dates: 14/11/2022 - 18/11/2022

Medical Practitioner's name: Dr James FEARNLEY

GMC reference number: 7135936

Primary medical qualification: MB ChB 2011 University of Manchester

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

Summary of outcomeSuspension, 2 months.
Review hearing directed**Immediate order imposed****Tribunal:**

Legally Qualified Chair	Mrs Nessa Sharkett
Lay Tribunal Member:	Mr Zia Nabi
Medical Tribunal Member:	Dr Pavan Rao

Tribunal Clerk:	Mr John Poole
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Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Christopher Gillespie, Counsel, instructed by the MDU
GMC Representative:	Ms Georgina Goring, Counsel

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held partly in public and partly in private.

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Facts and Impairment - 17/11/2022

1. At the outset of proceedings the Tribunal determined that parts of the hearing relating to XXX be heard in private in accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 as amended ('the Rules'). As such this determination will be read in private. However, as this case also concerns Dr Fearnley's misconduct, a redacted version will be published at the close of this hearing with those matters relating to XXX removed.

Background

2. Dr Fearnley qualified as a doctor in 2011 from the University of Manchester and went on to specialise in General Practice. At the time of the events that are the subject of this hearing, he was practising as a GP Partner at Heathfield Surgery ('the Surgery'), East Sussex, where he had worked since joining as a trainee GP in 2015.

3. In summary, Dr Fearnley's case relates to an Allegation of impaired fitness to practise by reason of misconduct XXX.

4. The misconduct matter relates to an allegation that on one or more occasions, including 26 January 2021, Dr Fearnley injected the medication, as outlined at Schedule 3, whilst at work and before and/or in between patient consultations.

5. On 26 January 2021 Dr Fearnley was noted by Dr C, General Practitioner at the Surgery, to have been behaving erratically (including running about an hour late on his appointments, XXX and leaving during the morning without completing his notes). As such, Dr C decided to check on his patients notes from that day and she saw that they appeared confused and muddled, and not in line with his usual record keeping. Dr C and other members of staff therefore decided to check Dr Fearnley's clinical room where they found a large number of ampoules containing the medication as outlined at Schedule 3, along with unsheathed butterfly needles. Dr Fearnley admitted, during a meeting held the next day, that he had injected himself with the medication as outlined at Schedule 3, and that he had taken the medication XXX from the Surgery's dispensary.

6. At the suggestion of his partners, following the meeting on 27 January 2021, Dr Fearnley immediately took a period of leave from work. He subsequently referred himself to the GMC on 5 February 2021. XXX.

7. XXX

8. Following the incident on 26 January 2021, Dr Fearnley XXX. He is currently working part time as a GP at St. Andrew’s Medical Centre in Tunbridge Wells, where he began working in April 2022.

The Outcome of Applications Made during the Facts Stage

9. The Tribunal refused an application made by Mr Gillespie, counsel, on behalf of Dr Fearnley, for the entirety of the hearing to be held in private in accordance with Rule 41(2) of the Rules. Its determination is included at Annex A.

10. The Tribunal granted an application made by Ms Goring, counsel, on behalf of the GMC, to amend the Allegation in accordance with Rule 17(6) of the Rules. The Tribunal’s determination is included at Annex B.

The Allegation and the Doctor’s Response

11. The Allegation made against Dr Fearnley is as follows:

1. On one or more occasion, including 26 January 2021, you injected XXX the medication as set out in Schedule 3:

Amended in accordance with Rule 17(6)

a. whilst at work; **Admitted and found proved**

b. before and/or in between patient consultations. **Admitted and found proved**

2. XXX

3. XXX

The Facts

12. At the outset of these proceedings, through his counsel, Mr Gillespie, Dr Fearnley admitted to the entirety of the Allegation, as amended, as set out above, 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 of the Allegation as admitted and found proved.

Impairment

13. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts found proved, Dr Fearnley's fitness to practise is impaired by reason of misconduct XXX.

Evidence

14. The Tribunal has taken into account all the evidence received. This included but was not limited to:

- The note of the meeting with Dr Fearnley on 27 January 2021 in regard to the incident on 26 January 2021;
- Dr Fearnley's self-referral to the GMC on 5 February 2021 and Dr C's referral to the GMC 10 February 2021
- Practice diary entries from 26 January 2021 and anonymised medical records 26 February 2021
- XXX
- XXX
- XXX
- XXX
- XXX
- Dr Fearnley's 2022 Appraisal, dated 4 October 2022
- XXX
- Various supporting testimonials
- A statement from Dr Fearnley's Responsible Officer, Dr F, 6 October 2022
- An email from Dr E, Dr Fearnley's clinical supervisor, 15 November 2022

15. XXX

16. Dr Fearnley provided his own witness statement and also gave oral evidence at the hearing.

Submissions

Submissions on behalf of the GMC

17. In summary, Ms Goring submitted that Dr Fearnley's fitness to practise was impaired by reason of misconduct XXX.

18. At the outset of her submissions, Ms Goring reminded the Tribunal that there is no burden or standard of proof at this stage and that the question of impairment is a matter for the Tribunal's judgement alone.

19. In regard to misconduct, Ms Goring advised the Tribunal of the two-step process to follow. The Tribunal must first consider whether the facts found proved amount to misconduct and if so, whether Dr Fearnley's fitness to practise is impaired by reason of the misconduct. She also reminded the Tribunal of the guidance in the case of *Roylance v GMC (No.2) [2000] 1 AC 311*, namely that misconduct has been defined as:

'a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'

And that:

'the standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances'.

20. Ms Goring submitted that the behaviour that underpins paragraph 1 of the Allegation can properly be described as serious misconduct as:

- It involved the self-administering of medications whilst working as a GP.
- There was a clear risk of harm to multiple patients.
- It was not an isolated incident and was taking place on a regular basis for a period of around six months.
- The medication and the XXX required to administer the medications were taken from NHS stocks.

21. Ms Goring submitted that Dr Fearnley's actions amount to misconduct. She invited the Tribunal to have regard to Good medical practice (GMP), and submitted that the following paragraph had been breached:

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

22. In regard to impairment by reason of misconduct, Ms Goring invited the Tribunal to consider the test set out in the case of *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin ('Grant')* which posed four questions to consider when determining whether a doctor's fitness to practise is impaired:

'a) Has the doctor in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm;

b) Has the doctor in the past brought and/or is liable in the future to bring the profession into disrepute;

c) Has the doctor in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession.

d) Whether the doctor has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

23. In regard to the first question; Ms Goring submitted that this was clearly engaged and that Dr Fearnley's actions had the potential to place patients at unwarranted risk of harm. She submitted that from Dr Fearnley's own evidence, he accepts that XXX and that mistakes could have been made.

24. In regard to the second question; Ms Goring submitted that Dr Fearnley's actions brought the medical profession into disrepute. She submitted that public confidence in the profession would be significantly undermined if a finding of impairment was not made given the circumstances of Dr Fearnley's behaviour.

25. In regard to the third question; Ms Goring submitted that Dr Fearnley had breached a fundamental tenet of the profession, namely the tenet that doctors should make the care of their patients their first concern. As for the fourth question, she submitted that this was not relevant in this case.

26. XXX

27. XXX

28. XXX

29. XXX

Submissions on behalf of Dr Fearnley

30. Mr Gillespie submitted that misconduct was conceded by Dr Fearnley as well as impairment of fitness to practise by reason of misconduct XXX.

31. XXX

32. Mr Gillespie submitted that the misconduct in this case is clearly linked with XXX

33. XXX

34. XXX

35. XXX

36. In regard to insight, Mr Gillespie submitted that that it was inaccurate to suggest that Dr Fearnley's insight was limited in regard to the misconduct. He submitted that Dr Fearnley was under no illusions as to the potential harm his actions could have posed to patients. He

submitted that Dr Fearnley fully recognises the damage his actions have had on the reputation of the profession. Further, that he has considered widely and deeply the reasons for his behaviour and the effect that it has had on other people. Nevertheless, Mr Gillespie accepted that Dr Fearnley's resilience and insight have not been fully tested as he has only been working since April and in a very structured and safe setting.

37. Mr Gillespie also brought to the Tribunal's attention that Dr Fearnley's appraiser and clinical supervisor have no concerns surrounding his practice and nothing has arisen since he returned to practice in April 2022.

The Tribunal's Approach

38. The Tribunal now has to decide whether, on the basis of the facts which it has found proved, Dr Fearnley's fitness to practise is impaired by reason of misconduct XXX.

39. 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.

40. The Tribunal further reminded itself of the overarching objective as set out in the Medical Act 1983.

41. In relation to misconduct, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct and then whether the finding of that misconduct could lead to a finding of impairment.

42. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the Fifth Shipman Report, as adopted by the High Court in *Grant*. It considered whether its findings of fact showed that Dr Fearnley's fitness to practise is impaired in the sense that he:

'a. Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

b. Has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c. Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

43. The Tribunal must determine whether Dr Fearnley's fitness to practise is impaired today, taking into account his 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. XXX.

44. The Tribunal must consider Dr Fearnley's level of insight and his attempts to remediate the concerns. It must also have regard to the testimonials offered in his support and attach appropriate weight to them.

The Tribunal's Determination on Impairment

Impairment by reason of misconduct

45. The Tribunal considered whether Dr Fearnley's fitness to practise is impaired by reason of misconduct.

46. The Tribunal first considered whether Dr Fearnley's actions as outlined at paragraph 1 of the Allegation amount to misconduct. It considered whether Dr Fearnley's actions in injecting himself with the medication on one or more occasion, including on 26 January 2021, whilst at work and before and/or in between patient consultations, amounts to misconduct.

47. The Tribunal was satisfied that Dr Fearnley's actions fall so far short of the standard expected of a medical practitioner as to amount to misconduct. In his own evidence, Dr Fearnley stated that the medication XXX for injecting the medications were obtained without authority from the Surgery dispensary. He also accepted that his taking of the medication whilst at work, had the potential to and may have affected his judgement and thereby put patients at risk. Indeed, the Tribunal had regard to the patients notes completed by Dr Fearnley on 26 January 2021 and agreed that they appeared to be confused and muddled which in the absence of any other explanation, is indicative of a serious lapse of concentration on Dr Fearnley's part. The Tribunal was also mindful that this was not an isolated incident XXX.

48. In the circumstances, the Tribunal was satisfied that the misconduct was serious and it agreed with Ms Goring's submission that paragraph 65 of GMP had been breached.

49. The Tribunal then considered whether Dr Fearnley's fitness to practise is impaired by reason of his misconduct. In so doing it had regard to the first three questions of the test in *Grant*: it accepted the fourth question was not applicable.

50. The Tribunal determined that Dr Fearnley's actions had the potential to put patients at unwarranted risk of harm. It noted that on the day in question, Dr Fearnley saw in excess of 20 patients and was not making wholly comprehensible notes which could have affected their ongoing care. Whilst there is no evidence of harm being caused to any patients, the potential for harm was significant.

51. The Tribunal determined that Dr Fearnley's actions have brought the medical profession into disrepute. It also considered that Dr Fearnley had breached a fundamental

tenet of the profession. He breached paragraph 65 of GMP and also paragraph 1 of GMP which states that *'Patients need good doctors. Good doctors make the care of their patients their first concern...'* Dr Fearnley clearly failed to make the care of his patients his first concern.

52. The Tribunal considered Dr Fearnley's misconduct is capable of remediation XXX.

53. The Tribunal considered that whilst Dr Fearnley has some insight into his misconduct it is not complete. It considered that XXX and he has not fully reflected on the impact of his misconduct on the profession and wider public interest. The Tribunal was of the view that his witness statement did not fully address this and during oral evidence, Dr Fearnley, whilst admitting that what he did was wrong, did not appear to fully understand the impact of his actions.

54. In all the circumstances, the Tribunal determined that a finding of impairment by reason of misconduct was necessary in order to uphold the overarching objective.

XXX

55. XXX

56. XXX.

57. XXX

58. XXX

59. XXX

60. XXX

61. XXX

62. XXX

63. XXX.

Determination on Sanction - 18/11/2022

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

The Evidence

65. 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

66. On behalf of the GMC, Ms Goring submitted that the appropriate sanction in Dr Fearnley's case was a short period of suspension and that a review should be directed. She submitted that this was the only sanction which would fully address the public confidence issues in this case.

67. Ms Goring drew the Tribunal's attention to the relevant parts of the Sanctions Guidance (November 2020 edition) (SG) which outline the approach to follow. She reminded the Tribunal of the reasons for imposing sanctions, which is to uphold the overarching objective, and stressed that the reputation of the profession as a whole is more important than the interests of any individual doctor.

68. Ms Goring submitted that taking no action is only applicable in exceptional circumstances which do not apply in this case.

69. Ms Goring submitted XXX. However, she submitted that given the serious misconduct present, conditions would be insufficient to protect the public interest, especially given the limited insight demonstrated by Dr Fearnley into the misconduct aspect of the case. She submitted that conditions would not send a sufficient message to the profession and the wider public.

70. Ms Goring submitted that the following factors tip this case to one where suspension is the most appropriate and proportionate sanction:

- The misconduct was serious;
- The taking of the XXX persisted for a significant period of time;
- The Tribunal found that the misconduct placed multiple patients at unwarranted risk of harm and had the potential to cause significant harm;
- The Tribunal found the medication affected Dr Fearnley's judgement;
- XXX.

71. Ms Goring submitted that Dr Fearnley's case fell squarely within paragraphs 92 and 97a of the SG:

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).

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

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

72. Ms Goring also invited the Tribunal to have regard to the aggravating and mitigating features present in Dr Fearnley's case but highlighted, in particular, the aggravating features. She referred the Tribunal to paragraphs XXX and XXX of the SG:

XXX

Submissions on behalf of Dr Fearnley

73. Mr Gillespie submitted that conditions are the appropriate and proportionate response to the issues in Dr Fearnley's case. He submitted that the entire process and the Tribunal's findings of impairment have the necessary declaratory effect and are sufficient to uphold professional standards and maintain confidence in the profession.

74. Mr Gillespie stressed the link between XXX. He submitted that Dr Fearnley has changed considerably since the events came to light in January 2021. XXX.

75. Mr Gillespie reminded the Tribunal that it had found Dr Fearnley's misconduct capable of remediation and that the risk of repetition is closely linked to XXX. Further, it had been encouraged by the progress Dr Fearnley has made. Mr Gillespie submitted that Dr Fearnley XXX, made full admissions, and has not sought to justify his conduct or diffuse the blame. He submitted that Dr Fearnley is developing insight XXX. He submitted that it has been a big learning curve for Dr Fearnley XXX.

76. XXX. Mr Gillespie submitted that Dr Fearnley would welcome conditions and the opportunity to demonstrate that with the appropriate support he can be a good doctor.

77. Mr Gillespie highlighted the mitigating factors in this case. He submitted that Dr Fearnley has shown full acceptance of the concerns and undertaken remediation which, thus far, has been successful. He submitted that Dr Fearnley has apologised, expressed regret and

shown some insight. He also referred the Tribunal to the testimonials XXX and the email from Dr E, which give an idea of Dr Fearnley's development.

78. Mr Gillespie submitted that conditions are plainly appropriate in this case. He reminded the Tribunal of the guidance in the SG that conditions are likely to be workable where a doctor has insight and is likely to respond positively to remediation. He submitted that the Tribunal can be satisfied that Dr Fearnley will comply with any conditions imposed. He also outlined the type of conditions that could be imposed such as in relation to XXX.

79. Mr Gillespie submitted that conditions were appropriate, proportionate, workable and measurable. He reiterated that the entire process and finding of impairment made in this case have the necessary declaratory effect. He noted Ms Goring's reference to paragraphs of the SG pertaining to suspension but submitted that 'this is not a tick box exercise' and that the wording of the guidance gives the Tribunal a degree of discretion. He submitted that the Tribunal should step back from suspension and find that there is also a public interest in allowing a good doctor to carry on working, albeit under stringent conditions.

The Tribunal's approach to Sanction

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

81. In reaching its decision, the Tribunal must take account of the SG and the overarching objective to protect and promote the health, safety and wellbeing of the public, promote and maintain public confidence in the profession and promote and maintain proper professional standards and conduct. The Tribunal should start by considering the least restrictive sanction before moving, in ascending order of severity, onto the other available sanctions. The Tribunal has borne in mind that the purpose of a sanction is not to be punitive (although it may have a punitive effect), but to protect patients and the wider public interest.

82. The LQC advised that the Tribunal should also consider proportionality by weighing the public interest against the interests of the Doctor.

The Tribunal's Determination on Sanction

83. Before considering what action to take in respect of Dr Fearnley's registration, the Tribunal considered and balanced the aggravating and mitigating factors in this case.

84. The Tribunal considered the seriousness of the misconduct to be an aggravating factor. Dr Fearnley injected himself with medication whilst at work and this affected his judgement and had the potential to put patients at risk of unwarranted harm. The medication was also taken from the Surgery's dispensary without authorisation. His use of the XXX. The Tribunal was of the view that his insight into misconduct was limited and still developing.

85. As for mitigating factors, XXX. He has voluntarily engaged with the process of remediation XXX.

No action

86. In reaching its decision as to the appropriate sanction, the Tribunal first considered whether to conclude the case by taking no action.

87. The Tribunal bore in mind that following a finding of impairment of a doctor's fitness to practise, to take no action is only justified in exceptional circumstances. Such circumstances are unusual, special or uncommon, and therefore rare.

88. The Tribunal determined that there were no exceptional circumstances in Dr Fearnley's case to justify taking no action. It considered that to take no action would be wholly inappropriate.

Conditions

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

90. The Tribunal considered the relevant paragraphs of the SG. XXX. However, it was mindful of the fact that Dr Fearnley's fitness to practice was found to be impaired by reason of XXX misconduct. As such, it considered whether conditions would be appropriate and proportionate given the gravamen of the misconduct in this case.

91. Given the aggravating factors outlined above, and that Dr Fearnley's insight into the misconduct is developing and not yet complete, the Tribunal determined that conditions at this juncture, would be insufficient to uphold the overarching objective.

Suspension

92. The Tribunal then went on to consider whether imposing a period of suspension on Dr Fearnley's registration would be appropriate and proportionate.

93. The Tribunal agreed with Ms Goring's submission that paragraphs XXX and XXX of the SG were engaged. The Tribunal also bore in mind that suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbecoming a registered doctor.

94. The Tribunal was satisfied that suspension was the appropriate and proportionate sanction. It considered that it was the only sanction which would properly mark the misconduct in this case.

95. In reaching this decision, the Tribunal was mindful that this was misconduct of a most serious nature which had the potential to put multiple patients at risk of significant harm. The public can expect that a doctor would not conduct themselves in this way and to do so, amounts to conduct unbecoming of a doctor and a breach of trust. XXX.

96. Whilst the Tribunal agreed that there is public interest in Dr Fearnley practising with the appropriate support structure in place, it determined that at this stage, a period of suspension is necessary to promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for the members of the profession.

97. The Tribunal considered that a period of two month's suspension will sufficiently mark the seriousness of the misconduct and send a clear message to Dr Fearnley, the profession and the public about what is regarded as behaviour unbecoming a registered doctor. It will also allow Dr Fearnley to develop his insight further.

98. The Tribunal determined to direct a review. A reviewing Tribunal or LQC (if it is to be reviewed on the papers) may be assisted by:

- A further reflective statement from Dr Fearnley with a particular focus on the misconduct and its effect on public confidence in the profession;
- XXX;
- Any other evidence Dr Fearnley considers will assist.

Determination on Immediate Order - 18/11/2022

99. Having determined that Dr Fearnley's registration be suspended for a period of two months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Fearnley's registration should be subject to an immediate order.

Submissions

100. On behalf of the GMC, Ms Goring submitted that in light of the Tribunal's findings, an immediate order is necessary.

101. Ms Goring referred the Tribunal to paragraph 172 of the SG which provides:

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

which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.

102. Ms Goring submitted that the public interest limb was made out in this case. She invited the Tribunal to make an interim order of suspension and to revoke the interim order of conditions currently in place on Dr Fearnley's registration.

103. On behalf of Dr Fearnley, Mr Gillespie submitted that an immediate order was not necessary. He drew the Tribunal's attention to paragraph 173 of the SG which provides:

173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.

104. Mr Gillespie submitted that unless the Tribunal determined that an immediate order was necessary for patient safety, it should only be otherwise made in compelling circumstances.

105. Mr Gillespie submitted that the sanction of two months suspension protects public confidence in the medical profession and that adding to it was unnecessary. He told the Tribunal that Dr Fearnley XXX will be without any salary for two months. He submitted that an immediate order would be disproportionate and there are no compelling grounds to impose one.

The Tribunal's Determination

106. In reaching its decision, the Tribunal considered the relevant paragraphs of the SG in regard to immediate orders.

107. The Tribunal determined that an immediate order was necessary and consistent with its reasoning in relation to impairment and sanction. It considered that an immediate order was necessary in the best interests of the doctor, patient safety and the public interest.

108. In reaching its decision the Tribunal bore in mind that its revocation of the interim order without an immediate order being in place would place Dr Fearnley in a position where he would be free to practice without restriction and without the necessary safeguards provided by conditions that have been identified to provide a safe environment in which he could work. This would create a significant potential for him to repeat his misconduct which would pose a risk to patient safety. XXX. The Tribunal determined that to place the doctor in an environment where he is free to practice without restrictions in the circumstances of this case would be contrary to his best interests. XXX. For these reasons, the Tribunal determined that it was in the best interests of Dr Fearnley, patient safety and the public interest to impose an immediate order.

109. This means that Dr Fearnley's registration will be suspended from today. The substantive direction will take effect 28 days from the date on which written notification of this decision is deemed to have been served, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

110. The interim order is hereby revoked.

111. That concludes the case.

ANNEX A – 14/11/2022

Application for the hearing to be held in private

112. At the outset of the hearing, Mr Gillespie, Counsel, on behalf of Dr Fearnley, made an application for the hearing to be held entirely in private in accordance with Rule 41(2) of the Rules.

113. Both counsel provided written skeleton arguments in relation to the application and also made oral submissions.

Submissions on behalf of Dr Fearnley

114. In summary, Mr Gillespie submitted that the misconduct and XXX are inextricably linked in Dr Fearnley's case and that the hearing should therefore be held entirely in private. Nevertheless, he caveated this by suggesting that it was open for the Tribunal to review any decision in light of the evidence it hears.

115. Mr Gillespie rehearsed the background to Dr Fearnley's case and the XXX. He submitted that it is not disputed by Dr Fearnley that XXX. He stressed that all the XXX make the link between the misconduct and XXX.

116. Mr Gillespie submitted that Dr Fearnley's case was different to other cases involving XXX and misconduct concerns. XXX. However, he submitted that in Dr Fearnley's case the misconduct is not capable of being distinguished.

117. Mr Gillespie submitted that it was not easy to draw a distinction between the misconduct XXX, and secondly, trying to make the distinction would downplay the situation and inaccurately characterise what has gone on.

118. Mr Gillespie submitted there was no complainant in this case and therefore no countervailing public interest to justify departure from the general principle that XXX.

119. Mr Gillespie also questioned whether it was practical and pragmatic to be moving in and out of public and private session as the hearing progressed. He submitted that effectively, most of the hearing would be in private save for the GMC opening and that would not give a fair representation of the real situation.

GMC submissions

120. Ms Goring opposed the application. She submitted that there was a clear public interest in the misconduct matters being heard in public and the public interest outweighs Dr Fearnley's interests.

121. Ms Goring reminded the Tribunal of the principles contained in the *GMC Publication and disclosure policy: Fitness to practise* document published and the *MPTS publication and disclosure: Information sheet*, namely: that publication is informed by the following principles:

- Commitment to transparency about processes and decisions and being open about the action taken in response to serious concerns about doctors in the interests of the public and medical profession.
- Taking a proportionate response to what information is shared

122. Ms Goring submitted that the misconduct element in this case is clearly in the public interest and therefore should be heard in public. She submitted that Dr Fearnley is alleged to have injected medication whilst at work and before or in between patient consultations, and this could have affected patient safety.

123. Ms Goring accepted that there was some crossover in the misconduct XXX allegations that Dr Fearnley faces, however, she submitted that the Tribunal and parties are well rehearsed in moving in and out of public/private session. Nevertheless, she submitted that the GMC was content for the entirety of Dr Fearnley's evidence to be heard in private.

The Tribunal's decision

124. The Tribunal had regard to the submissions made by parties, both oral and in writing, and carefully balanced Dr Fearnley's interests with the public interest, in determining whether to exclude members of the public from the entirety of the hearing in accordance with Rule 41(2) of the Rules.

125. The Tribunal had regard to the nature of the misconduct alleged which involves the taking of medication from the Surgery's dispensary and self-injecting it whilst at work, on one or more occasions, before and or in between patient consultations. There is evidence that due to taking these medications, Dr Fearnley was unable to make comprehensible notes in the records of the patients he was seeing on the day in question, and it does not appear to be an isolated incident. Such conduct does have the potential to put patient safety at risk and the Tribunal considered that public interest in these matters being heard in public, outweighs Dr Fearnley's.

126. Accordingly, the Tribunal refused Mr Gillespie's application. It was satisfied that the hearing can be managed pragmatically and it can go into public and private session as appropriate.

ANNEX B – 14/11/2022

Application to amend the Allegation

127. On behalf of the GMC, Ms Goring made an application to amend the Allegation in accordance with Rule 17(6) of the Rules. XXX. She submitted that paragraph 1 of the Allegation should therefore be amended as follows:

1. *On one or more occasion, including 26 January 2021, you injected the medication as set out in Schedule 3 ...*

128. Ms Goring submitted that this amendment would XXX.

129. On behalf of Dr Fearnley, Mr Gillespie did not oppose the application XXX.

The Tribunal's Decision

130. The Tribunal had regard to Rule 17(6) of the Rules which provides that

'Where, at any time, it appears to the Medical Practitioners Tribunal that—

*(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and
(b) the amendment can be made without injustice,*

it may, after hearing the parties, amend the allegation in appropriate terms.'

131. The Tribunal was satisfied that the amendment could be made without injustice to either party. Accordingly, it granted Ms Goring's application to amend the Allegation as proposed.

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Schedule 3

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