

**Record of Determinations –
Medical Practitioners Tribunal**

PUBLIC RECORD



Dates: 27 to 28 February 2019

Medical Practitioner's name: Dr Kirsten Teresa Elizabeth GUEST

GMC reference number: 4520230

Primary medical qualification: BM 1998 University of Southampton

Type of case **Outcome on impairment**

Restoration following disciplinary erasure

Summary of outcome

Restoration application refused.

No further applications allowed for 12 months from last application.

Tribunal:

Legally Qualified Chair:	Ms Linda Lee
Lay Tribunal Member:	Mr Peter Brown
Medical Tribunal Member:	Dr Joanne Topping

Tribunal Clerk:	Ms Esther Morton
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Attendance and Representation:

Medical Practitioner:	Present and not represented
GMC Representative:	Mr Charles Garside, QC, instructed by GMC Legal

Attendance of Press / Public

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

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DETERMINATION ON RESTORATION - 28/02/2019

1. The Tribunal has referred to Mrs Guest as 'Dr Guest' throughout this determination. It heard that Dr Guest prefers to go by Mrs Guest in her daily life and in her role as a Physician's Associate ('PA').
2. Dr Guest has applied to the General Medical Council ('GMC') for the restoration of her name to the Medical Register following her erasure for disciplinary reasons in April 2013.
3. The Tribunal has considered Dr Guest's application in accordance with the provisions set out in Section 41 of the Medical Act 1983, as amended ('the Act'), and Rule 24 of The General Medical Council (Fitness to Practise) Rules 2004, as amended ('the Rules').
4. This is Dr Guest's first application to be restored to the Medical Register.

Background

5. Between January 2010 and November 2011 Dr Guest was a salaried partner at the Duncan Street Primary Care Centre ('the Practice'), and a member of the Professional Executive Committee ('PEC') of the Wolverhampton Primary Care Trust ('PCT').
6. Dr Guest's case was heard by a Fitness to Practise Panel in April 2013 ('the 2013 Panel'). The 2013 Panel found proved that, between January 2010 and April 2011, Dr Guest submitted 11 claim forms to the PCT, purportedly to reimburse costs incurred by the Practice for arranging internal or locum cover to allow Dr Guest to attend PEC meetings.
7. The 2013 Panel found that no expenses had been incurred by the Practice in relation to Dr Guest's PEC work, and that these claims were submitted without the knowledge of the other Practice partners. It found that Dr Guest transferred these payments to her personal bank account from the Practice account, and that her conduct in so doing was both misleading and dishonest.
8. The 2013 Panel found that Dr Guest's actions in submitting false claims for personal gain breached a fundamental tenet of the medical profession, and amounted to serious misconduct. It found that her actions brought the reputation of

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the profession into disrepute, and it was concerned that Dr Guest had not shown any insight into the seriousness of her behaviour, nor – with the exception of repaying the Trust – had she taken any steps to remediate. Accordingly, the 2013 Panel found that Dr Guest’s fitness to practice was impaired by reason of her misconduct.

9. The Tribunal noted that Dr Guest did not attend and was not represented at the 2013 hearing. The 2013 Panel determined that Dr Guest’s response to the Allegation was ‘wholly inadequate’, opining:

‘The Panel is not satisfied that she does not pose a significant risk of repeating the behaviour, and whilst the Allegation related to one aspect of her professional work, it was repeated on a number of occasions over a period of time’.

10. Given the seriousness of Dr Guest’s misconduct, combined with her lack of insight, the 2013 Panel determined that the appropriate and proportionate sanction was one of erasure.

Evidence before this Tribunal

11. This Tribunal was provided with the determination of the 2013 Panel and transcripts from that hearing, as well as a copy of Dr Guest’s application for restoration.

12. The Tribunal was also provided with supporting documentation submitted on Dr Guest’s behalf, which included (but was not limited to), the following:

- A letter from Dr Guest to the GMC dated 8 August 2018 setting out how she has kept her clinical skills and knowledge up to date. This included working as a PA at Summerhill Surgery, undergoing internal appraisals at Summerhill Surgery, and doing 50+ hours of professional development per year;
- A spreadsheet detailing Dr Guest’s ongoing Personal Development Plan (‘PDP’);
- Continuing Professional Development (‘CPD’) certificates;
- Testimonials from:

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- Dr A, GP at Summerhill Surgery;
- Ms B, Registered Nurse and Manager of Hollybush House Nursing Home;
- Mrs C, Registered Nurse and Deputy Manager at Hollybush House Nursing Home;
- Ms D, Manager at Ashbourne Care Home;
- Ms E, Director and Registered Care Manager at Micron Care Home;
- Ms F, Homes Manager at Victoria Lodge.

13. In addition, Dr Guest gave oral evidence at this hearing, and was subject to cross-examination by GMC Counsel.

Submissions

GMC submissions

14. Mr Garside QC, on behalf of the GMC, informed the Tribunal that the GMC did not take any issue with regard to Dr Guest's clinical skills and knowledge, submitting that the steps she has taken to keep these up to date are entirely appropriate in the circumstances. However, Mr Garside submitted that insight remains a 'key issue' in Dr Guest's case.

15. Mr Garside submitted that Dr Guest had repeated her assertion at this hearing that she was not submitting the false claims for personal financial gain, nor was she deliberately dishonest. Mr Garside submitted that no reasonable or well-informed person could regard Dr Guest's course of action as being anything other than both dishonest and calculated to deceive, and he reminded the Tribunal that her dishonesty occurred over a prolonged period of time, with Dr Guest submitting 11 separate fraudulent claims.

16. Mr Garside submitted that Dr Guest had not taken sufficient steps to remediate this dishonesty, nor had she acquired genuine insight into the reasons for her erasure. Accordingly, Mr Garside invited the Tribunal to reject Dr Guest's application for restoration to the Medical Register.

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Dr Guest's submissions

17. Dr Guest submitted that she does now have insight into the judgment of the 2013 Panel, submitting that her actions were 'completely incorrect', and that she understood the need to uphold the reputation of the medical profession.
18. In terms of remediation, Dr Guest submitted that she has undertaken appropriate e-learning, including modules on counter fraud, being open, complaints, and conflict resolution.
19. Dr Guest informed the Tribunal that she loved working as a GP, and that she had a particular interest and qualifications in palliative care. She informed the Tribunal that, in her current role as a PA, she helps care for over 1000 patients in nursing home settings, submitting that she would like to return to helping people in a full – rather than limited – capacity. Dr Guest submitted that she gets 'great satisfaction' from helping others and from being a GP, and accordingly, she invited the Tribunal to restore her name to the medical register.

The Tribunal's Decision

20. The Tribunal reminded itself that its power to restore a practitioner to the Medical Register in accordance with Section 41 of the Act is a discretionary power. This power is to be exercised in the context of the Tribunal's primary responsibility to act in accordance with the statutory overarching objective, as set out later in this determination.
21. While the Tribunal has borne in mind the submissions made, the decision as to whether to restore Dr Guest's name to the Medical Register is a matter for this Tribunal exercising its own judgment.
22. The Tribunal first considered whether it was necessary to adjourn under Rule 24(g) to direct that Dr Guest undergo a Health, Performance, or English Language assessment. The Tribunal noted that neither party had requested any such assessment, and it determined that an assessment was neither relevant nor necessary in the circumstances of Dr Guest's case.
23. The Tribunal had regard to the guidance as to how restoration applications should be approached, as set out by the Court of Appeal in the case of *The General Medical Council v Dr Shekhar Chandra* [2018] EWCA Civ 1898 (particularly the guidance given in relation to the principles in the case of *Bolton v Law Society* [1994] 1 WLR 512).

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24. The Tribunal firstly considered the following factors:

- The circumstances that led to erasure;
- The reasons given by the previous Tribunal for the decision to direct erasure;
- Whether the doctor has any insight into the matters that led to erasure;
- What the doctor has done since their name was erased from the register;
- The steps the doctor has taken to keep their medical skills and knowledge up to date, and the steps the doctor has taken to rehabilitate themselves both professionally and socially.

The circumstances that led to Erasure and the reasons given by the previous Tribunal for the decision to direct Erasure

25. The Tribunal first considered the circumstances that led to Dr Guest's erasure from the Medical Register, as well as the reasons given by the 2013 Panel for her erasure from the Medical Register.

26. This Tribunal cannot go behind the findings of the 2013 Panel, nor can it re-hear the original allegations brought by the GMC against Dr Guest. Accordingly, this Tribunal accepted the findings of the 2013 Panel. The 2013 Panel found that Dr Guest acted dishonestly. This dishonesty was serious, and occurred over a prolonged period of time.

27. The 2013 Panel found that Dr Guest lacked insight into the severity of her misconduct and, accordingly, determined that she was at increased risk of reoffending.

28. The 2013 Panel was also concerned by Dr Guest's lack of engagement, although this Tribunal had the benefit of hearing oral evidence from Dr Guest. It accepted Dr Guest's evidence that – at the time of the 2013 hearing - she believed the outcome of the 2013 Panel to have been a '*fait accompli*'. XXX

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29. The 2013 Panel did consider whether to suspend Dr Guest from the Medical Register, but determined that erasure was the appropriate response given her lack of insight, and given the continuing risk she posed as a result of this lack of insight.

Whether the doctor has any insight into the matters that led to Erasure

30. The Tribunal considered that there was little evidence of insight in Dr Guest's initial application (dated 6 August 2018) to be restored to the Medical Register, however it determined that her insight has since developed, as evidenced by her oral evidence and her submissions given at this hearing.

31. The Tribunal found Dr Guest to be a credible witness who acknowledged past errors. In response to direct questioning, she agreed that her past actions had been dishonest. In her oral evidence Dr Guest accepted that her actions were 'fraudulent' and 'wrong', and she told the Tribunal that she would 'never put [herself] in that situation again'. Dr Guest informed the Tribunal of practical steps she would take in future to minimise risk of repetition; these steps included asking for a written expense policy from any future employer, and limiting the nature of her work, focussing on clinical work only.

32. Whilst the Tribunal was satisfied that Dr Guest has developed some insight into her past misconduct, it considered that her insight is still developing in relation to the specific reasons given by the 2013 Panel for her erasure. Dr Guest acknowledged that her past actions impacted upon the reputation of the profession, however the reasons she gave for wanting to return to clinical practice focussed more on the clinical aspect of any such return, rather than on public perception.

33. Dr Guest was enthusiastic about her work as both a GP and a PA, and the Tribunal heard that she enjoys helping people, particularly the elderly and those requiring palliative care. The testimonials received on her behalf support the fact that she is a skilled and well-regarded clinician/PA. However, Dr Guest's clinical skills have never been called into question. The Tribunal considered that returning Dr Guest's name to the Medical Register would impact upon public perception of the profession as a whole, and it did not receive much evidence focussing on this particular aspect of Dr Guest's potential restoration.

34. The Tribunal was therefore satisfied that Dr Guest has developed some insight since the 2013 hearing – and indeed since August 2018. At this hearing, the Tribunal heard that Dr Guest accepts that her past actions were fraudulent and

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dishonest, and it also heard that Dr Guest had put in place steps to minimise risk of repetition of similar misconduct in future; this is to her credit. However, it considered that her insight in relation to the wider impact her actions had on the profession and its wider reputation is still developing, and requires further reflection.

What the doctor has done since their name was erased from the register and the steps the doctor has taken to keep their medical skills and knowledge up to date, and the steps they have taken to rehabilitate themselves both professionally and socially

35. As set out above, the Tribunal had regard to the testimonials received on Dr Guest's behalf from clinical colleagues. These testimonials support the fact that she has kept her clinical skills and knowledge up to date in the period since her erasure. In addition, Dr Guest has completed a number of relevant online courses, including a course on counter-fraud and a course on openness and conflict resolution. Whilst this is to her credit, the Tribunal did not receive any evidence as to what Dr Guest has learnt from these courses and how they have personally benefitted her, for example, a reflection on her learning and how she will apply this learning in future to minimise risk of repetition.

36. In terms of rehabilitation, the Tribunal was satisfied that Dr Guest has made disclosure to her colleagues about her past misconduct, and has found work in another GP Practice that is fully aware of the reasons for her erasure. This is to her credit.

37. Having made the above findings, the Tribunal next had regard to the statutory overarching objective. It performed a balancing exercise, weighing its findings above with its obligations under the individual limbs of that objective.

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

38. The Tribunal considered that dishonesty, by its very nature, can potentially impact upon the health, safety, and wellbeing of the public. The Tribunal has found that Dr Guest's insight is still developing in relation to the wider impact her dishonesty had on the reputation of the profession, and on overall public confidence in that profession.

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39. The Tribunal found that Dr Guest has taken significant steps since the 2013 hearing, and it was satisfied that she now accepts that her actions were dishonest and fraudulent. This is to her credit. However, the Tribunal determined that her insight into the impact her actions had – and continue to have – on the reputation of the profession is still developing, and it determined that there are a number of important issues still to be addressed in relation to insight, reflection, and learning.

40. Accordingly, whilst the Tribunal accepts that Dr Guest has made significant progress since the 2013 hearing, it determined not to grant her application to be restored to the Medical Register at this time.

41. Dr Guest can reapply to be restored to the Medical Register in a year's time.

42. Any future Tribunal considering Dr Guest's application for restoration may be assisted – amongst other things - by the following:

- A written reflective statement focussing on how her misconduct impacted upon the reputation of the profession as a whole;
- A written reflection on her learning and how she has/ will apply that learning to her role as a PA/GP;
- Evidence of learning relating to professional ethics and professional behaviour, and the contents of any online courses undertaken in these areas;
- Written reports from colleagues focussing on her insight.

43. That concludes Dr Guest's case.

Confirmed

Date 28 February 2019

Ms Linda Lee, Chair