

PUBLIC RECORD

Dates: 22/12/2023

Medical Practitioner's name:	Dr Marc PATON
GMC reference number:	6101610
Primary medical qualification:	MB ChB 2004 University of Liverpool
Type of case	Outcome on impairment
Review - Misconduct	Not Impaired

Summary of outcome

Suspension revoked

Tribunal:

Legally Qualified Chair	Mrs Jayne Wheat
Lay Tribunal Member:	Ms Gail Mortimer
Medical Tribunal Member:	Dr Janet Nicholls
Tribunal Clerk:	Mx Nate Caruso-Kelly

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Nicholas Peacock, Counsel, instructed by Medical Protection Society
GMC Representative:	Mr Dale Hughes, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Impairment - 22/12/2023

1. At this review hearing the Tribunal has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr Paton's fitness to practise is impaired by reason of misconduct.

The Outcome of Applications Made during the Impairment Stage

2. The Tribunal granted Dr Paton's application, made pursuant to Rule 34 of the Rules, to admit a letter from Dr Paton's mentor, Dr C, into evidence. The GMC did not object to the admission of this document.

3. Mr Peacock, on behalf of Dr Paton, made a further application under Rule 34 of the Rules for the admission of the Stage 2 bundle which was placed before the June Tribunal. He told the Tribunal that the bundle contained Dr Paton's previous reflective statement, previous testimonials, an item of CPD, and correspondence between Dr Paton and his previous practice. Mr Peacock submitted that the previous hearing bundle is relevant as the testimonials produced for this review hearing make reference to those contained in the previous bundle. Mr Peacock submitted that it is not possible for the Tribunal to fairly assess the testimonials produced for this review hearing without seeing the previous letters. Mr Peacock further submitted that the Tribunal has a wide ambit as to which evidence it may admit at a hearing, and there is no question that this material is admissible, having been before the June Tribunal, and it must also be relevant, as the June Tribunal had considered it to be so. Mr Peacock clarified that Dr Paton does not seek to reopen the findings of the June Tribunal, which he accepts entirely, and simply seeks to put into context what he has done since.

4. On behalf of the GMC, Mr Hughes opposed the application. Mr Hughes submitted that it is a matter of principle and the primary position of the GMC that this material is not relevant to this reviewing Tribunal, which should focus on Dr Paton's current state of insight, and not seek to reopen matters already determined. Mr Hughes submitted that the June Tribunal set out the contents of the bundle in their determination, and this would assist this reviewing Tribunal. Mr Hughes submitted that the remit of a review hearing is of a more restricted nature, that is whether Dr Paton appreciates the gravity of his misconduct and poses no further risk, and it should not seek to undertake an unnecessary and cumbersome repetition of a fully determined matter. Mr Hughes did, however, acknowledge that the Tribunal may be assisted by the Stage 2 bundle, to assess the development of Dr Paton's insight and compare his position from then to now.

5. The Tribunal determined to admit Dr Paton’s previous reflective statement and the three testimonials which were referred to in the bundle prepared for this hearing. The Tribunal found that the previous testimonials were relevant, having been specifically referred to in the current bundle, and it would be fair to admit them. Further, the Tribunal found that, taking into account the purpose of a review hearing is to determine whether Dr Paton’s fitness to practise is currently impaired, Dr Paton’s previous reflective statement would be relevant to its decision today. Further, it would be fair to both the GMC and Dr Paton to give context to the updated reflective statement, as requested by the June Tribunal.

Background

6. Dr Paton qualified in 2004 at the University of Liverpool. After undertaking his postgraduate Foundation Year 1 and 2 in Liverpool, Dr Paton practised in various roles in New Zealand before completing a General Practitioner (GP) vocational training scheme in Auckland in 2008. In 2015 Dr Paton moved back to the UK and took up various locum roles. At the time of the events Dr Paton was practising as a GP at Miriam Primary Care Group, where he has worked since October 2016.

7. The facts which were admitted and found proved at Dr Paton’s substantive hearing can be summarised as: Dr Paton met a man (Patient A) via Grindr, a gay dating website, in early September 2021. On their second meeting they had agreed to meet at Patient A’s house. Due to the proximity of Patient A’s address to the Practice, Dr Paton checked the Practice database to see if Patient A was registered at the Practice. Discovering that Patient A was a patient at the Practice, Dr Paton initially declined to take things further but subsequently was won over by Patient A’s argument that they had never met professionally and that he would register at a different practice. Dr Paton proceeded to meet Patient A and he engaged in sexual activity at his house on two occasions in September 2021.

8. Patient A attended the Practice on 15 September 2021 and he and Dr Paton had a sexual encounter in Dr Paton’s clinical room. Dr Paton then proceeded to undertake a clinical consultation regarding Patient A’s mental health to justify seeing him in his room at the Practice. Dr Paton provided clinical advice and/or care to Patient A on five further occasions, 17 September 2021, 23 September 2021, 2 December 2021, 27 January 2022, 21 February 2022.

9. Subsequently, Dr Paton tried to distance himself from Patient A. Patient A contacted Dr Paton’s XXX disclosing his previous sexual encounters with Dr Paton. Patient A then made a blackmail demand for money to Dr Paton on the 12 March 2022. Following the threat of the

relationship being exposed, Dr Paton raised the matter with his senior partner at the Practice and self-referred to the GMC on 28 March 2022.

10. The June Tribunal determined that Dr Paton's fitness to practise was impaired by reason of misconduct. When considering the appropriate sanction, the June Tribunal determined that Dr Paton's actions, balanced against his insight, remediation and the relevant mitigating factors, were not fundamentally incompatible with continued registration. It therefore determined to suspend Dr Paton's registration for a period of six months, to mark the seriousness of Dr Paton's misconduct and uphold the overarching objective to maintain public confidence in the profession and uphold proper professional standards. The June Tribunal concluded that a suspension of this length would provide Dr Paton with an opportunity to demonstrate further development of his insight, further address in his therapy underlying unhelpful core beliefs, and allow him to show that he had taken steps to further reduce any risk of repetition. The June Tribunal determined that there should be a review hearing given the length of the suspension, to check that there has been no repetition, that Dr Paton has maintained his skills and knowledge and for the Tribunal to be satisfied that patients will not be put at risk by the resumption of practise.

11. The June Tribunal indicated that the reviewing Tribunal would be assisted by Dr Paton providing the following:

- Evidence from his psychotherapist as to the nature, timing, quality, duration and outcomes of his psychotherapy and an assessment of risk of repetition;
- Any relevant report from his Practice including a report from his mentor Dr E;
- An updated reflective statement;
- Evidence that he has kept his clinical knowledge and skills up to date during his suspension; and
- Any other information he thinks will assist the next Tribunal.

The Evidence

12. The Tribunal has taken into account all the evidence received, both oral and documentary.

13. Dr Paton provided a reflective statement dated November 2023, and gave oral evidence at the hearing. Dr Paton stated that the support of his colleagues has kept him going through his suspension, when at times he thought he would never be able to practice medicine again. Dr Paton explained that friends from University, who are partners at the Riverside Surgery in Rockferry, had reached out to him and said that they would employ him in the future. Dr Paton stated that despite the public humiliation following the press

coverage of the June Tribunal, he has recovered and recognises the things he has to live for, such as his family and partner. Dr Paton explained to the Tribunal that he has learnt from his psychotherapy that he is worthy of love, and the support of his family and friends during his suspension has shown that to be true. Dr Paton explained that he was unable to continue with his previous mentor, however he found a new mentor through the Local Medical Committee (LMC) and has been engaging in discussions about managing his workload when he returns to practice and building trusting relationships with colleagues. Dr Paton stated that he has undertaken CPD to keep his knowledge up to date and as part of his RCGP appraisal and intends to return to work part-time as a locum GP at the Riverside Surgery. Finally, Dr Paton stated that he has worked on his personal issues to ensure that he would never again jeopardise patient safety, put his family at risk of public humiliation, or risk going through this regulatory process again. Dr Paton told the Tribunal that he recognised he had breached the most fundamental tenets of the profession and brought the profession into disrepute.

14. The Tribunal received documentary evidence including, but not limited to, evidence of CPD courses, a report from Dr Paton's psychotherapist Mr F dated 5 December, and numerous testimonials.

Submissions

15. On behalf of the GMC, Mr Hughes submitted that the GMC is neutral on the issue of impairment.

16. On behalf of Dr Paton, Mr Peacock submitted that Dr Paton's fitness to practise is no longer impaired. Mr Peacock submitted that Dr Paton has satisfied the requests of the previous Tribunal. Mr Peacock submitted that although Dr Paton was unable to continue his mentoring with Dr E, he has sought a new mentor and provided a relevant report which shows that Dr Paton's mindset is in the right place. Mr Peacock further submitted that the Tribunal should attach significant weight to the reflective statement produced by Dr Paton and stated that it shows Dr Paton's appreciation of the gravity of the misconduct in this case. Mr Peacock submitted that the Tribunal could see the progress made since the June Tribunal. Mr Peacock reminded the Tribunal that the June Tribunal had found that it was unlikely that events would be repeated and submitted that Dr Paton's further reflections add weight to that position.

17. Finally, Mr Peacock submitted that the suspension had served its purpose. Firstly, that it has marked the seriousness of the misconduct, and secondly it has allowed Dr Paton time and space to develop further insight as to the appreciation of his misconduct and the risk of

repetition. Mr Peacock submitted that further orders against Dr Paton’s registration would, in the circumstances, serve no useful purpose.

The Relevant Legal Principles

18. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal’s judgement alone. As noted above, the previous Tribunal set out the matters that a future Tribunal may be assisted by. This Tribunal bore in mind that it is for the doctor to satisfy it that he is now fit to return to unrestricted practise (*Abrahaem v GMC* [2008] EWHC 183 (admin)).

19. This Tribunal must determine whether Dr Paton’s fitness to practise is impaired today, taking into account Dr Paton’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’s Determination on Impairment

20. The Tribunal took into account all of the evidence, along with the submissions from both parties, in considering whether Dr Paton’s fitness to practise remains impaired by reason of misconduct.

21. Whilst not prescriptive, the June Tribunal had indicated what would assist this Tribunal in its decision on current impairment. Dr Paton had demonstrated a willingness to engage with the June Tribunal’s findings and had provided relevant evidence of personal development and reflection.

22. The Tribunal first considered the evidence from Dr Paton’s psychotherapist. Mr F provided a report dated 5 December 2023. The Tribunal noted that the June Tribunal had requested an assessment of the risk of repetition, however it accepted Mr F’s statement that this was outside his professional role. The Tribunal found that Dr Paton has benefitted from his psychotherapy and developed insight into the motivations for his misconduct, as set out by Mr F:

‘Throughout the entire process of self reflection, whether it relates to the assignments in preparation for his hearing, or within his therapy sessions, Dr. Paton is fully aware that he has paid an extremely heavy price for his actions that led to his suspension. Throughout our sessions, he has demonstrated his remorse for the choice that he made and that now is a time for re-building his personal and professional life. My role

is not to offer guarantees that behaviours won't be repeated but from what I have learned from working with Dr. Paton, is that prior to this recent event, he has remained loyal to the people closest to him and has worked hard to maintain his relationships, even at their most challenging times.'

23. The Tribunal next considered the report from Dr Paton's mentor, Dr C. The Tribunal noted that Dr Paton was unable to continue his mentoring with Dr E and had been proactive in seeking another mentor. The Tribunal was provided with a letter from Dr C dated 10 November 2023, which showed that Dr Paton had been engaging in productive discussions about a return to practice and the impact of his actions on the profession.

24. The Tribunal next considered the updated reflective statement provided by Dr Paton. The Tribunal found that Dr Paton's statement shows that he fully appreciates the gravity of his misconduct and the impact it has had on Patient A, the public, and his family. The Tribunal found that although Dr Paton sets out at length the negative impact of the proceedings on him personally, he does not seek to place blame on others and accepts that these difficult situations are the result of his own wrongdoing:

'The stress of working in general practice is nowhere near the degree of stress of working in the "gig economy" for your phone to vibrate with the next job, or waiting in a fast-food restaurant for orders to be prepared while the minutes and hours tick away. Every spare moment waiting for jobs leads me to reflect on my behaviour. The monotony of taking parcels from A to B and time spent waiting around makes me miss the more challenging nature of clinical medicine. I have missed the problem solving and being able to help other people with more important problems than their dinner or shopping. I was grateful to be able to recently observe a few sessions of general practice. During this time I realised just how much I missed the interaction with patients. It is an immense privilege to be trusted with their hopes and fears. I recognise that I betrayed that trust with Patient A and to practice again means that I must restore trust with my partner, patients, colleagues, regulator and wider society.'

25. The Tribunal next considered whether Dr Paton had kept his clinical knowledge and skills up to date. The Tribunal was mindful that Dr Paton's misconduct was not related to his clinical ability; nevertheless, it found that Dr Paton had maintained his skills and knowledge, by attending CPD courses, in particular the GP Update course and by undertaking sessions of observation with colleagues in general practice.

26. In considering the risk of repetition, the Tribunal bore in mind its findings that Dr Paton has taken further steps to remediate his misconduct. He has demonstrated through his reflection that he has appreciated the gravity of his misconduct and developed sufficient insight into his misconduct. The Tribunal also bore in mind that despite the stress of the press coverage of the June Tribunal, and difficulties in his personal life, Dr Paton has not repeated the misconduct, or any similar behaviour. The Tribunal was satisfied that Dr Paton has used the time during his suspension appropriately and effectively and that the actions he has taken have reduced the risk of repetition of his misconduct to the extent that it was now highly unlikely to be repeated.

27. The Tribunal determined that Dr Paton's fitness to practise is no longer impaired by reason of misconduct, and Dr Paton is now fit to practise without restriction.

28. The Tribunal then went on to consider whether it should revoke the suspension immediately, pursuant to Section 35D(5)(d) of the Medical Act 1983.

29. Mr Peacock, on behalf of Dr Paton, submitted that the suspension should be revoked with immediate effect. Mr Hughes, on behalf of the GMC, remained neutral.

30. The Tribunal bore in mind that Dr Paton's suspension was due to expire on 10 January 2024. Given that no outstanding concerns were identified and that no further purpose would be served by maintaining this suspension, the Tribunal determined that it was in the public interest for Dr Paton to return to unrestricted practise.

31. The Tribunal therefore determined to revoke the suspension with immediate effect.

32. That concludes the case.