

PUBLIC RECORD

Date: 29/08/2023

Medical Practitioner's name: Dr Matthew WHITE

GMC reference number: 4038742

Primary medical qualification: MB ChB 1993 University of Aberdeen

Type of case

New - Misconduct

XXX

Summary of outcome

Adjourned to a new tribunal. No action in relation to IOT.

Tribunal:

Legally Qualified Chair	Mrs Oluremi Alabi
Lay Tribunal Member:	Dr Farhan Munawar
Medical Tribunal Member:	Dr Anup Singh

Tribunal Clerks:	Mr Michael Murphy (29/08/2023 – 01/09/2023) Mr Joel Taylor-Garratt (04/09/2023 – 05/09/2023)
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Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Peter Byrne, 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 service and proceeding in the doctor's absence - 29/08/2023

1. This determination will be read in private. However, as this case concerns Dr White's misconduct, a redacted version will be published at the close of the hearing XXX.
2. Dr White is neither present nor represented at these proceedings. As such, the Tribunal has considered whether notice of this hearing has been properly served upon him in accordance with Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended)(the Rules) and Schedule 4, Paragraph 8 of the Medical Act 1983 (as amended). In so doing, the Tribunal has taken into account all the information placed before it, together with submissions on behalf of the General Medical Council (GMC).
3. The Tribunal has been provided with a service bundle, containing a copy of the Notice of Allegation, dated 4 July 2023, sent by the GMC to Dr White by post. The Tribunal has been provided with a note recording delivery of this which is dated 8 July 2023. The service bundle also contained a copy of the Notice of Hearing dated 5 July 2023, which was sent by post by the MPTS to Dr White's registered address as well as by an email dated 5 July 2023. The Tribunal has taken account of the note recording delivery of the Notice of Hearing to Dr White's registered address which is dated 8 July 2023. The Tribunal also had regard to an email from Dr White, dated 5 July 2023, in which he stated

'Thank you very much for your recent correspondence and of that of your associates in different departments'.

4. Furthermore, the tribunal also had regard to an email, dated 12 July 2023, sent by Dr White wherein he said *'Yes I can confirm that I have formally instructed Mr A, Consultant at Weightmans solicitors to act on my behalf..... Can I kindly ask that you email Mr A the large bundle of documents which was sent to me via post which I received on Saturday? I cannot locate an electronic copy of the large bundle prepared for my hearing commencing 29.08.23. It is 358 pages long.'*
5. Having considered all the information, the Tribunal is satisfied that notice of this hearing had been properly served upon Dr White.
6. The Tribunal went on to consider whether to proceed with the case in Dr White's absence in accordance with Rule 31 of the Rules. In doing so, it bore in mind the GMC's submission that the case should proceed in Dr White's absence as no independent evidence has been submitted XXX.
7. In its deliberations, the Tribunal had regard to the case of *R v Jones [2003] 1AC1*. The Tribunal was aware that it has a discretion to proceed with the case in the doctor's absence, though this discretion is to be exercised with caution with the overall fairness of the proceedings in mind. The Tribunal had regard to all the circumstances including the following:
 - The nature and circumstances of the doctor's behaviour in absencing himself, in particular, whether the behaviour was voluntary and therefore waived the right to be present;
 - Whether an adjournment would resolve the matter;
 - The likely length of any such adjournment;
 - Whether the doctor, although absent, wished to be represented or whether he had waived his right to be represented;
 - Whether the doctor's representatives were able to receive instructions from him and the extent to which they could present a defence;
 - The extent of any disadvantage to the doctor in not being able to present his account of events;

- The public interest that a hearing should take place within a reasonable time;
 - The effect of any delay on the memories of witnesses;
 - XXX.
8. The Tribunal bore in mind that its discretion to proceed in the practitioner’s absence must be exercised with caution and with regard to the overall fairness of the proceedings. The Tribunal has balanced the interests of the practitioner, including fairness to him, against the public interest, including the need to protect patients.
 9. The Tribunal again had regard to the email from Dr White, dated 5 July 2023, in which he stated *‘I apologise genuinely not to have been able to participate in proceedings. I made contact with my lawyer Mr A to make plans for my defence but XXX.’*
 10. Mr Byrne submitted that the GMC was unaware of Dr White having instructed solicitors and he had earlier indicated that he was unable to instruct solicitors due to financial difficulties. The Tribunal however found that in Dr White’s email to the GMC, dated 12 July 2023, he stated *‘I can confirm that I have formally instructed [Mr A], Consultant at Weightmans solicitors to act on my behalf’*. The Tribunal had no further evidence before it to confirm that Dr White was unable to instruct solicitors due to financial challenges as earlier indicated. The Tribunal noted that Dr White had not provided contact details of his legal representative. The email on 12 July 2023 was the last correspondence from Dr White regarding legal representation.
 11. XXX.
 12. The Tribunal went on to consider Dr White’s legal representation. In his email of 12 July 2023, Dr White has stated that he has formally instructed legal representation and asked the GMC to forward the hearing bundle and correspondence to his solicitors. However, Dr White had not provided the solicitors contact details despite being asked to do so by email to him dated 13 July 2023. The Tribunal determined that it had insufficient evidence to determine if Dr White’s legal representatives although instructed were aware of today’s hearing.
 13. On the basis of the information provided, the Tribunal is not satisfied that Dr White has voluntarily waived his right to be present and represented at this hearing.

14. The Tribunal considered the nature and history of XXX and determined that there was a risk of reaching the wrong decision on the merits of the case, as well as reaching the wrong conclusion about reason for Dr White's absence without hearing submissions from him or on his behalf.
15. The Tribunal noted that the length of 6 days for the current listing which the schedule of witnesses who are to give oral evidence virtually however, the risk of a fair hearing in the absence of Dr White outweighed the risk of delay and any loss of memory of the events by the witnesses.
16. The Tribunal was made aware that Dr White is currently subject to an interim order of suspension until 9 March 2024 and as such, there would be no risk to the public if the hearing were to adjourn today. The Tribunal has therefore determined that it is in the public interest and Dr White's own interests not to proceed with the case in Dr White's absence.
17. That concludes the case.