

Dates: 17/09/2018 - 19/09/2018

Medical Practitioner's name: Dr Michael DONNELLY

GMC reference number: 1387498

Primary medical qualification: MB BCh 1976 Queens University of
Belfast

Type of case

Restoration following disciplinary erasure

Summary of outcome

Restoration application granted. Restore to Medical Register.

Tribunal:

Legally Qualified Chair	Mr Leighton Hughes
Lay Tribunal Member:	Mrs Katriona Crawley
Medical Tribunal Member:	Dr Timothy Ward

Tribunal Clerk:	Ms Jacqueline Kramer – Day 1 Mr John Poole – Day 2 & 3
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Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Ms Wendy Hewitt, Counsel, instructed by Richard Nelson LLP
GMC Representative:	Ms Rebecca Vanstone, Counsel

Attendance of Press / Public

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

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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 application for restoration - 19/09/2018

1. Dr Donnelly has applied to the General Medical Council (GMC) for the restoration of his name to the Medical Register. The Tribunal noted that this is Dr Donnelly's second application for restoration. His first application was refused in April 2015.
2. The Tribunal has considered Dr Donnelly's current application in accordance with Section 41 of the Medical Act 1983 (as amended) and Rule 24 of the GMC (Fitness to Practise) Rules 2004 (as amended).
3. In doing so, the Tribunal has taken account of all the evidence, both oral and documentary. It has also taken account of the submissions made by Ms Rebecca Vanstone, Counsel, on behalf of the GMC, and by Ms Wendy Hewitt, Counsel, on behalf of Dr Donnelly.

Background

2003 Professional Conduct Committee

4. Dr Donnelly's case was first considered by a GMC Professional Conduct Committee ('PCC') in February 2003. The PCC determined that Dr Donnelly had been guilty of professional misconduct and directed that his name be erased from the Medical Register.
5. Dr Donnelly was dismissed from his employment with the Sunderland Health Authority ('Sunderland'). He was advised by letter on 26 June 1998 that his appeal against that dismissal had been rejected.
6. In June 1998, Dr Donnelly applied for posts at the Brent and Harrow Health Authority, the Bromley Health Authority and the Shropshire Health Authority. His applications implied that he was still working at Sunderland. Dr Donnelly had failed to appropriately disclose his actual employment status and the PCC determined that his action in this regard was misleading or intended to mislead.
7. In July 1998, Dr Donnelly applied for, and obtained, a post as a trainee general practitioner with the High Street Family Practice in Barry ('Barry'). During the application

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process Dr Donnelly failed to appropriately disclose that he had been dismissed from his post at Sunderland. On 7 December 1998, Dr Donnelly's employment with Barry was terminated with effect from on or about 7 January 1999.

8. In January 1999, Dr Donnelly attended an interview for the post of trainee general practitioner at the Nuffield Practice in Witney, Oxfordshire ('Nuffield'). He failed to appropriately disclose that he had been dismissed from his post at Sunderland and that his post at Barry had been terminated. He was appointed to the post at Nuffield from February 1999, but he failed to report to the practice for scheduled periods of duty. His employment at Nuffield was terminated via a letter dated 14 May 1999.

9. Between about September 1999 and about January 2001, Dr Donnelly was employed as a prison doctor at Holme House Prison. Between about February 2000 and about May 2001, he was employed part-time as a doctor at the Northern Slimming Clinic. During this time, in or around August 1999, the GMC Interim Orders Committee made an order imposing a suspension of Dr Donnelly's registration for a period of 18 months. The order was extended by the High Court on 25 February 2002 until 28 February 2003.

10. In May, June and July 2002, Dr Donnelly applied for several posts. In the applications for these posts, he omitted relevant information about his full employment history, his GMC registration status and, in some cases, his convictions. The PCC found that this behaviour was misleading and intended to mislead.

11. The PCC determined that the actions described above were in breach of the various versions of *Good Medical Practice* (GMP) applicable during the period (GMP October 1995, GMP July 1998 and GMP May 2001), in particular the guidance that doctors 'must be honest and trustworthy' (all versions) and that 'you must not sign documents which you believe to be false or misleading'. The PCC determined that Dr Donnelly's actions above amounted to serious professional misconduct.

12. In reaching its conclusion, the PCC decided it did not need to take into account, and indeed did not take into account, certain convictions in Dr Donnelly's case. On 24 September 2001, Dr Donnelly was convicted of a breach of peace in that he persistently contacted a female and harassed her and placed her in a state of fear and alarm. He also repeatedly contacted a male friend of hers and placed him in a state of fear and alarm. He was sentenced to a two year probation order, ordered to pay the female £1,000 in compensation and placed under a five year non-harassment order.

13. On 24 May 2002, Dr Donnelly was convicted of dishonestly obtaining and attempting to obtain for himself a pecuniary advantage in that he continued to work at Holme House Prison and the Northern Slimming Clinic after his first registration was suspended on 31 August 2000. He was sentenced to a community punishment order for 240 hours and ordered to pay costs of £1,900. The judge's sentencing comments included the observation that 'you let members of your profession down'. The PCC

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expressed the view that the convictions 'taken by themselves would also equate to serious professional misconduct.

14. Dr Donnelly appealed against the decision of the PCC. However, on 2 October 2003, that appeal was dismissed.

2015 Fitness to Practise Panel

15. Dr Donnelly's first application for restoration was considered by a Fitness to Practise Panel in April 2015 (the 2015 Panel). The 2015 Panel acknowledged that Dr Donnelly's insight had undergone some tangible development; it was satisfied that he now accepted full responsibility for his behaviour, and that he had acknowledged that he alone had to accept the responsibility for his misconduct.

16. However, the 2015 Panel had particular concerns about the degree to which Dr Donnelly's insight had developed, and about how far his rehabilitation could be said to have been established. It was concerned about the following elements of Dr Donnelly's application:

- He did not put evidence before the 2015 Panel to the effect that his probity had been put to the test since 2003, and that he had successfully upheld the standards of integrity expected of a doctor.
- Whilst he gave some indications as to the networks of support he could draw upon in any crisis having implications for his integrity, his evidence was discursive and gave little assurance that he had reflected upon this in a precautionary way or in any significant depth.
- He offered no testimonials relating to his employments between 2003 and 2009. The testimonials he did submit did not make reference to his integrity since 2003.

17. The 2015 Panel was also concerned with regards to Dr Donnelly's insight. A CV which he presented in evidence contained a number of deficiencies – this had also been the subject of findings against him in 2003. Although the 2015 Panel did not consider that Dr Donnelly intended any dishonesty in his evidence, it was concerned by what he said about self-presentation in seeking employment, and was not wholly satisfied that he could be relied upon to act with scrupulous attention to probity over such matters.

18. With regards to Dr Donnelly's skills and capabilities, he did not give the 2015 Panel a clear picture of the way in which he had approached the career implications of his erasure. Although the 2015 Panel recognised the commendable efforts he had made to keep his knowledge of public health up to date, it was concerned that these did not display an evidently coherent structure.

19. The 2015 Panel recognised that Dr Donnelly sought to give a thoroughgoing account of the degree to which he had learnt and changed since 2003. However, it noted that he did not comment on how the public might view his misconduct and on

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how the Panel might be persuaded that his application for restoration rested on cogent evidence as to his rehabilitation. It was not satisfied that his rehabilitation and insight had reached the point at which it could properly direct that an order for his restoration to the Register be made, whilst sustaining its obligation to uphold the public interest. His application for restoration was therefore not granted.

Evidence before the current Tribunal

20. In addition to the determinations and transcripts of the previous PCC and Panel, this Tribunal took account of all of the documentary evidence provided, which includes:

- Application for restoration, dated 22 January 2018;
- Dr Donnelly's reflections
- Testimonials
- Evidence of Continuing Professional Development ('CPD')
- Updated CV
- Personal Development Plan ('PDP')

21. In Dr Donnelly's reflective statement, he stated that he fully accepted the reasons given by the 2015 Panel for refusing his application for restoration.

22. Dr Donnelly stated that he understood the importance of an accurate CV and that he must be transparent and upfront about his past career. He stated that this transparency outweighed his desire to get a job.

23. Dr Donnelly also explained that he actively participated and attended the Doctor's Support Group and explained how he has benefitted from these meetings and will continue to attend even if his name is restored to the Register.

24. The reflective statement also detailed how he has endeavoured to get involved in public health issues locally and nationally, in order to contribute to his community and utilise his public health knowledge and skills.

25. Moreover, Dr Donnelly detailed how, since the last hearing, he has attended a number of training courses and continued to prepare reflections on these to record what he has learned and how it may impact on his professional life in the future. Dr Donnelly also stated that he is realistic about his prospects of actually practising as a doctor should he be restored, and that he would limit any applications to public health positions.

26. In addition to his reflective statement, Dr Donnelly gave oral evidence to the Tribunal. He told the Tribunal that he is now 70 years of age and that he began working as a doctor in 1976 and had an unblemished career until the events which led to his erasure from the medical register. Dr Donnelly told the Tribunal about the

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circumstances of his misconduct and stated that he had let the situation get on top of him. He also stated that he had exercised poor judgement at the time. He told the Tribunal that he had been through a considerable period of reflection and rehabilitation. He stated that the misconduct had all been of his own doing and that his repeated dishonesty over four years amounted to more than just a serious error. Dr Donnelly stated, at the present time, his financial and personal situation does not impinge upon his life. He told the Tribunal that he has learned and reflected upon the GMC's processes and has reflected on his behaviour in the light of *Good Medical Practice*.

27. Dr Donnelly told the Tribunal that, since his last application for restoration to the medical register, he had developed his understanding that members of public and patients put their health and lives in the hands of doctors who they trust and 'the worst thing is for them to feel that their doctor cannot be trusted'. He stated that he now recognised that it is important for a doctor to demonstrate probity and honesty throughout their lives.

28. Dr Donnelly informed the Tribunal that since his erasure he had discussed applying for a non-medical post at Northumberland Health Authority, with the Director of Public Health. He had been candid about his erasure from the medical register and, in light of his background, he decided not to continue with his application. He also stated that he had been employed by a newspaper to carry out statistical analysis and had worked delivering pizza; there had been no questions about his probity in either of those roles.

29. Dr Donnelly stated that he had been extensively involved in a Doctors' Support Group since his erasure in an attempt to address his faults. He stated that he continues to attend this group once every two months where he now helps other doctors who are facing disciplinary action. He stated that he reads the *British Medical Journal* each week and that he has made attempts to upskill in the area of public health. He told the Tribunal that where he lives health problems such as multiple sclerosis are prevalent. He had attended public meetings and offered his opinion to assist the community. Whilst he did not inform participants at the meeting that he had been erased from the medical register, he said that he would have made it clear, had he been asked.

30. Dr Donnelly told the Tribunal that it was his aspiration to be restored to the medical register so that he could work in public health over the next five years and, in so doing, use the skills he has developed. He stated that he had met with the local director of public health in County Durham who had helped him to develop a PDP based on the three major pillars of public health practice. He had also undertaken a clinical attachment in public health medicine in Stockport which was five days per week for five months, where directors of public health and other specialists had helped develop his skills and knowledge base. He also stated that he regularly attended clinical meetings at his local hospital.

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31. Dr Donnelly told the Tribunal that he would never repeat his misconduct. He stated that he had learned from the disciplinary process and accepted that the rationale for his erasure from the medical register was correct.

32. In relation to the evidence which he gave to the previous restoration Panel, Dr Donnelly stated that he had been foolish to revisit the decision made by the GMC in 2003. He also addressed the issue of having submitted in evidence at that Tribunal a partly inaccurate CV. He stated that, due to demands on his time, his CV had been the last thing he had submitted, when it should have been the first.

Submissions

33. In summary, Ms Vanstone, on behalf of the GMC, submitted that Dr Donnelly's application for restoration should be refused.

34. Ms Vanstone invited the Tribunal to have regard to the public interest and consider Dr Donnelly's insight and remediation. She reminded the Tribunal of 2003 PCC findings and that Dr Donnelly's conduct had represented persistent and repeated dishonesty over a period of four years.

35. Ms Vanstone submitted that notwithstanding the lapse of time, Dr Donnelly's insight and remediation are still insufficiently developed for him to be restored to the Medical Register. She noted that Dr Donnelly had described his conduct as errors of judgment. She submitted that while this may reflect his conduct in regard to Dr A, it did not in regard to the repeated and persistent dishonesty over four years.

36. Ms Vanstone invited the Tribunal to consider how Dr Donnelly would behave in the future if faced with similar stresses and challenges. She submitted that it would no doubt be difficult for Dr Donnelly to find a post and that there would be difficult times when his probity will be tested.

37. Ms Vanstone also submitted that Dr Donnelly showed a lack of insight in providing an opinion at a public meeting regarding defibrillators when he was no longer registered as a doctor. She also submitted that, while in his reflective statement he stated he recognised the effect of his conduct on the people around him, he did not explain what it was or what it might have been.

38. Ms Vanstone submitted that, while Dr Donnelly told the Tribunal he now sees 'the logic' of GMP, his conduct should not have required a deep reading of GMP, as his conduct had breached fundamental tenets of being a doctor.

39. In summary, Ms Hewitt, on behalf of Dr Donnelly, reminded the Tribunal that prior to Dr Donnelly's misconduct, there had been a twenty-five year unblemished

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career, and another fifteen year period since being erased in which Dr Donnelly has done nothing improper whatsoever.

40. Ms Hewitt submitted that Dr Donnelly's misconduct was not a four year period of sustained dishonesty, but two discrete periods of time in which he had been dishonest. She submitted that Dr Donnelly has reflected long and hard and been open with those around him.

41. With regard to Dr Donnelly having given an opinion at a public meeting, she submitted that this was not sinister; rather, it was evidence of Dr Donnelly trying to use what he knows as a force for good in his local community. She submitted that his opinion was based on a knowledge of epidemiology, rather than medicine, and that this knowledge was not the sole province of medical practitioners. She submitted that this should go to his credit in terms of insight and that he should be commended for this rather than have it held against him.

42. Ms Hewitt submitted that Dr Donnelly's regular attendance at a Doctors' Support Group was evidence of his remediation and insight. She submitted that at these meetings he has been open and honest and also provided an ear to others and offered support. Ms Hewitt submitted that Dr Donnelly had been attending these meetings for well over a decade despite him having to travel long distances. She submitted that this showed a genuine attempt by Dr Donnelly to understand what he had done and to gain insight.

43. Ms Hewitt submitted that given everything Dr Donnelly has done, the Tribunal can be satisfied that he really understands where he had fallen short and that he can now be trusted. She submitted that it was proportionate to allow Dr Donnelly's application for restoration and that, if there was ever going to be a time for restoration, that time is now.

The Tribunal's Approach

44. The Tribunal bore in mind the advice given by the Legally Qualified Chair. This included him reminding the Tribunal that an applicant is not to be restored to the Register unless, in the Tribunal's judgement, the doctor is fit to return to unrestricted medical practice. He referred the Tribunal to *Guidance for doctors on restoration following erasure by a medical practitioners tribunal (2013)* ('the Guidance') and the factors which the Tribunal must take into account when considering Dr Donnelly's application.

45. In reaching its decision in respect of Dr Donnelly's application, the Tribunal gave careful consideration to all of the circumstances of his case. These included, the circumstances which led to his erasure, the determination of the previous PCC and the 2015 Panel, together with his application for restoration dated 22 January 2018. It considered any development of his insight, any remedial action he has undertaken since

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his erasure, including steps taken to keep his knowledge and skills up to date, and the evidence he has given and the representations he has made to the Tribunal.

46. Throughout its deliberations, the Tribunal has taken account of the statutory overarching objective of protecting the public, which includes protecting the health, safety and wellbeing of the public, maintaining public confidence in the profession, and promoting and maintaining proper professional standards and conduct for members of the profession. The Tribunal has also borne in mind its duty to apply the principle of proportionality, weighing the interests of the public with Dr Donnelly's interests. It also had regard to the fifteen year period since Dr Donnelly's erasure.

47. The Tribunal bore in mind that, should it determine to restore Dr Donnelly's name to the Medical Register, there is no provision for this to be on the basis of anything other than unrestricted registration. The onus of persuading the Tribunal that he is fit to practise and that his name should be restored to the Medical Register is on Dr Donnelly.

48. The Tribunal has considered all the evidence provided by Dr Donnelly to demonstrate the steps he has taken to remedy his wrongdoings and to keep his medical knowledge up-to-date.

The Tribunal's Decision

49. The Tribunal had regard to Dr Donnelly's original misconduct and the circumstances that led to his erasure. While the Tribunal acknowledged the findings of the PCC in 2003 and those of the 2015 Panel, this Tribunal was not bound by them. The Tribunal could not and did not take the view that an erased doctor may never make a satisfactory case for Restoration.

50. The Tribunal adopted and confirmed the findings of the 2015 Panel that Dr Donnelly felt sincere remorse for what he had done and accepted full responsibility for his behaviour.

51. The Tribunal found Dr Donnelly to be a candid, forthright and honest witness who answered searching questions in a straightforward manner. It also considered that his most recent reflective statement demonstrated a significant change in his attitude and showed he had reflected at length on all the findings made by the 2015 Panel. The Tribunal was satisfied that Dr Donnelly had successfully addressed all of the residual concerns of the 2015 Panel.

52. The Tribunal noted the efforts Dr Donnelly has made to seek out people who can give him guidance, such as his engagement with Professor C and Dr B of Public Health England. The Tribunal noted that he had taken on board the advice provided. It also noted the number of clinical meetings that Dr Donnelly has attended. The Tribunal was of the view that Dr Donnelly has shown considerable commitment to

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public health and has done everything that he can to keep his knowledge up to date with public health issues.

53. The Tribunal noted the 2015 Panel's finding that there was no evidence that Dr Donnelly's probity had been put to the test since 2003. This Tribunal accepted Dr Donnelly's evidence that there have been situations since the 2003 hearing where his probity could have been tested and where he has acted appropriately.

54. The 2015 Panel considered at the time that the evidence of a network of support which Dr Donnelly could draw upon during a crisis was discursive and gave little assurance. However, this Tribunal considers the evidence of a network of support to be strong. In particular it noted Dr Donnelly's regular and proactive engagement with the Doctor's Support Group. It was particularly impressed by the testimonial of Dr E, President of the Doctors Support Group, in particular the following paragraphs:

'Michael is a major contributor to our discussions relating to new and returning attendees at our meetings. He regularly promotes the idea that it is for the individual develop insight into their issues with management. He is always positive, supportive and constructive, virtues that make him a popular member of our group.

Michael has kept up to date with his medical knowledge by reading and attending clinical meetings and conferences. At our meetings, he regularly demonstrates his knowledge on medical matters in general and about our medical contract issues.

From the outset, Michael has been open about the problems that were associated with his erasure from the medical register and it is apparent that he has made every effort to be returned to the register.

There can be no doubt that Michael deeply regrets his activities that led to his erasure from the Medical Register. He has dedicated himself for more than ten years to being given the opportunity to be a credit once again to the medical profession. His efforts to make himself fit to return to the registered are extraordinary and I wholeheartedly offer my support.'

55. The 2015 Panel also had concerns regarding Dr Donnelly's insight, in particular with regard to the deficient CV produced at that hearing. This Tribunal however, has no concerns with regard to the CV presented to it and found it to be comprehensive. The Tribunal accepted it as accurate.

56. This Tribunal considered that, in both Dr Donnelly's oral evidence and his reflective piece, he has shown highly developed insight. It noted that when asked about the practical implication of being restored to the register and obtaining a

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licence to practice, as well as his understanding of the current regulatory framework, Dr Donnelly had shown a clear interest in, and understanding of what he had to do.

57. The Tribunal noted the 2015 Panel's recognition that Dr Donnelly had made 'commendable efforts' to keep his knowledge of public health up-to-date, although it was concerned that these did not display an evidently coherent structure. This Tribunal was of the view that the PDP and up-to-date CPD before it, did display that Dr Donnelly had a coherent structure to his learning and career goals. It also noted that Dr Donnelly had proactively sought out a Director of public health to help him with this.

58. Having considered the transcripts from the hearings in 2003 and 2015, the Tribunal considered that it was presented with an entirely different character to the person before the PCC in 2003. It considered that in the last three years, Dr Donnelly's insight has matured significantly, and he has taken meaningful steps to remediate and recognise the impact his actions had on the public, Dr A, and the wider public interest. The Tribunal felt confident that it could accept Dr Donnelly's assurance that he is now committed to upholding the principles set out in *Good medical practice* in the future.

59. Accordingly, the Tribunal was satisfied that Dr Donnelly's insight and remediation were now sufficiently developed that it was fair and proportionate to grant his application that his name be restored to the Medical Register. The Tribunal bore in mind that no concerns have ever been raised in relation to Dr Donnelly's clinical skills and it found Dr Donnelly posed no risk to the public. It excluded the risk of future dishonesty by Dr Donnelly. The Tribunal was satisfied that the public interest has been served by the long period he has been out of practice and considered that it would now best be served by Dr Donnelly returning to work.

60. The Tribunal did note its power to adjourn the hearing and give a direction for Dr Donnelly to undergo an assessment of his performance in accordance with Rule 24(2)(g). However, it was satisfied that in light of its findings, and on the entirety of the evidence, it was neither necessary nor proportionate.

Confirmed

Date 19 September 2018

Mr Leighton Hughes, Chair