

## PUBLIC RECORD

Dates: 14/06/2021 - 16/06/2021

Medical Practitioner's name: Dr Patrick CLARKE

GMC reference number: 3264548

Primary medical qualification: MB ChB 1987 University of Liverpool

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

**Summary of outcome**  
Suspension, 3 months

**Tribunal:**

Medical Tribunal Member (Chair)	Mr Tim Smith
Medical Tribunal Members:	Dr David Mabin Dr Helen McCormack
Tribunal Clerk:	Ms Fiona Johnston

**Attendance and Representation:**

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Richard Smith, Counsel, instructed by Medical Protection Society
GMC Representative:	Mr David Birrell, 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.

### 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 - 15/06/2021

1. Dr Clarke qualified as a doctor in Liverpool in 1987. At the time of the events which are the subject of this hearing, he was working as a Consultant pain clinician based at Gloucestershire and Worcestershire Royal Hospitals. He also held a position as National Lead Clinician for Musculoskeletal Medicine at Virgin care Ltd.
2. On 1 September 2016 in Palma de Majorca, Spain, Dr Clarke was convicted of the offence of domestic and gender-based violence, grievous bodily harm/family abuse; and sentenced to carry out 40 days community service. Dr Clarke also failed promptly to notify the General Medical Council that he had been convicted of the criminal offence.
3. In March 2018 Dr Clarke was made aware that following a DBS check, the conviction in Spain was shown on his record. On 12 April 2018 Dr Clarke informed the GMC that on 1 September 2016, had been convicted of assault at Court Number 1 for Violence Against Women in Palma de Majorca, Spain ('the Court'). Dr Clarke also informed the GMC that he had been sentenced to a community service order.

### The Allegation and the Doctor's Response

4. The Allegation made against Dr Clarke is as follows:
  1. On 1 September 2016 at the Court Number 1 for Violence Against Women in Palma de Majorca, Spain, you were:
    - a. convicted of the offence of domestic and gender-based violence, grievous bodily harm/family abuse; **Admitted and found proved**
    - b. sentenced to:

- i. carry out 40 days community service or work; **Admitted and found proved**
  - ii. prohibition from holding or carrying weapons for 16 months; **Admitted and found proved**
  - iii. prohibition from entering into contact by approaching certain persons through whatever means for 4 months; **Admitted and found proved**
  - iv. prohibition from entering into contact by communicating with certain persons through whatever means for 4 months. **Admitted and found proved**
2. The offence outlined in paragraph 1a, if committed in England and Wales, would constitute a criminal offence. **Admitted and found proved**
3. You failed to notify the General Medical Council without delay that you had been convicted of the criminal offence detailed in paragraph 1a. **Admitted and found proved**

And that by reason of the matters set out above, your fitness to practise is impaired because of:

- a. your conviction, in relation to paragraphs 1-2; **To be determined**
- b. your misconduct, in relation to paragraph 3. **To be determined**

### The Admitted Facts

5. At the outset of these proceedings, through his counsel Mr Richard Smith, Dr Clarke admitted the entirety of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

### The Facts to be Determined

6. In light of Dr Clarke's response to the Allegation made against him, there are no further facts to be determined. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out

before, Dr Clarke’s fitness to practise is impaired by reason of misconduct and/or a conviction for a criminal offence.

### The Tribunal’s Determination on Impairment

#### The Evidence

7. Dr Clarke gave oral evidence at this stage of the hearing.

#### Documentary Evidence

8. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:

- Spanish Conviction Document, dated 1 September 2016;
- English translation of document;
- Avon and Somerset Constabulary Police;
- Record, dated 29 May 2019;
- ACRO Criminal Record print;
- Dr Clarke’s self referral, dated 12 April 2018;
- Witness statement of Dr Clarke, dated 19 March 2021;
- Various testimonial evidence;
- Patient feedback report, dated 30 January 2021;
- Various patient thank you letters.

#### Submissions

9. Mr Birrell stated that Dr Clarke’s fitness to practise is impaired by reason of his conviction and misconduct. Mr Birrell referred the Tribunal to the relevant paragraphs of Good Medical Practice (2013 edition) (‘GMP’) and in particular paragraphs 1, 65 and 75.

*1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues,<sup>1</sup> are honest and trustworthy, and act with integrity and within the law*

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

*75 You must tell us without delay if, anywhere in the world:*

*a ...*

*b you have been charged with or found guilty of a criminal offence'*

10. He submitted that offences of violence are serious and offences relating to domestic violence, in particular, are more serious. He submitted that this incident was serious as it happened in the middle of the day at the hotel near at the pool. By Dr Clarke's own admission the attack was a prolonged incident that lasted 2 to 3 minutes. It was witnessed by members of the public, one of whom called the police.

11. Mr Birrell submitted that it is a matter for the Tribunal if it accepts Dr Clarke's explanation for failing to notify the GMC promptly of his conviction. He submitted that Dr Clarke's actions have brought the medical profession into disrepute. He added that public confidence would be diminished, and professional standards would be undermined if the Tribunal concluded that it was anything other than serious.

12. With regards to Dr Clarke's remediation he submitted that the courses Dr Clarke had undertaken were only completed 5 years after the incident and after having taken legal advice. Dr Clarke could have attended a domestic violence course but had not done so.

13. Therefore, Mr Birrell concluded that Dr Clarke's fitness to practise is currently impaired by reason of misconduct.

14. Mr Smith, Counsel, submitted that Dr Clarke accepts that the matters raised in the Allegation were serious and, in the circumstances, they justify a finding of misconduct.

15. Mr Smith stated that the question is whether Dr Clarke is currently impaired by reason of his misconduct and Mr Smith said that he is not. Further, Mr Smith submitted that it is clear that Dr Clarke's failure to notify the GMC arose from his lack of understanding that his offence was a criminal matter but he accepts the error of failing to do so.

16. He submitted that this is a doctor who prior to these events had no record of violence. It was relevant to look at the full circumstances and the provocation that led Dr Clarke to behave as he did. He submitted that he will never repeat his actions or find himself in the situation again given the work he has done with his counsellor to identify the triggers. Dr Clarke is mortified by his actions. Dr Clarke had put his head in the sand and didn't want to consider the implications of his actions and hoped it would go away.

17. He submitted that the judge in Palma told Dr Clarke that this was a civil matter. He submitted that Spain has a civil law system in contrast to our common law system and by telling Dr Clarke that it was a civil matter led Dr Clarke down the wrong path. However, Dr Clarke accepts if he had thought about it at the time then he would have realised it was a criminal conviction and should have reported it.

18. Mr Smith submitted that Dr Clarke's evidence, admissions and acceptance of misconduct before the Tribunal, demonstrated his full insight and understanding of his

failures which are unlikely to be repeated. Mr Smith submitted that Dr Clarke accepts that his failures were serious. Mr Smith concluded that where a doctor has taken significant steps to remedy the failure, which Dr Clarke had, the reputation of the profession is appropriately protected by his actions. Further, he said that whilst this is a failure that amounts to misconduct, it is not a failure that results in a finding of current impairment by reason of Dr Clarke's misconduct.

### The Relevant Legal Principles

19. The Tribunal is concerned with two matters, namely, Dr Clarke's admitted conviction and sentence of the Court on 1 September 2016 for a criminal offence and his admitted failure to notify the GMC without delay of being charged and convicted for that offence.

20. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision on impairment is a matter for the Tribunal's judgement alone.

21. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted in relation to misconduct. The first stage involved considering whether or not the facts as found proved amounted to misconduct, and also considering whether or not the misconduct was serious. The second stage involved considering whether the finding of that misconduct which was serious, could lead to a finding of impairment.

22. The Tribunal must determine whether Dr Clarke's fitness to practise is impaired today, taking into account Dr Clarke'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.

### Failure to report the conviction

23. The Tribunal first considered whether Dr Clarke's delay in notifying the GMC of his conviction amounted to misconduct which was serious. In considering whether Dr Clarke's actions amounted to misconduct the Tribunal had specific regard to GMP, and the evidence given at both stages of the hearing.

24. The Tribunal had regard to the following paragraph of GMP:

*'75 You must tell us without delay if, anywhere in the world:*

*a ...*

*b you have been charged with or found guilty of a criminal offence'*

25. The Tribunal determined that Dr Clarke's actions were a breach of paragraph 75(b) of GMP. It determined that this was misconduct. The Tribunal has borne in mind Mr Smith's submissions that Dr Clarke's failure to notify the GMC sooner arose as a result of misunderstanding that it was a civil matter. Dr Clarke himself does not put forward these matters as an excuse and he accepts the failure to notify the GMC was his failure and no one else's. He did not notify the GMC of his conviction until 12 April 2018, nearly 18 months after he pleaded guilty and was convicted. Dr Clarke candidly admitted that his failure to notify the GMC without delay that he had been charged or convicted was serious misconduct. He could offer no explanation other than to say he had 'buried his head in the sand' and that he thought the proceedings were not of a criminal nature as he had been told by the judge in Spain that it was a civil matter. However, he had a copy of the court documents and although they were in Spanish, he took no steps to have them translated or even to use an alternative internet translation service. It was obvious even to a non-Spanish speaker that words such as 'criminal' should have put him on notice to investigate further. The reality was that Dr Clarke hoped matters were forgotten and only realised the error of that conclusion when the Spanish conviction appeared on his DBS check. It was only thereafter that he took prompt action to notify the GMC.

### Impairment

26. The Tribunal went on to consider whether Dr Clarke's fitness to practise is currently impaired by reason of his misconduct in connection with paragraph 3 of the Allegation.

27. In order to form a view regarding Dr Clarke's current fitness to practise, it is evident that the Tribunal may take account of the way in which he has acted in the past, or may be expected to act in the future.

28. The Tribunal was mindful that Dr Clarke, at the outset of these proceedings, admitted paragraph 3 of the Allegation, indeed all the facts in the Allegation. The Tribunal did find that he is genuinely sorry. The Tribunal took account of Dr Clarke's evidence and his explanations of why he failed to notify the GMC without delay that he had been charged and convicted of the offence. The Tribunal took account of the steps Dr Clarke has taken by way of remediation, his level of insight, the likelihood of any repetition, the absence of risk of harm to patients, and the reputation of the medical profession.

29. The Tribunal noted the steps Dr Clarke has taken by way of remediation, namely, his attendance at a one-to-one medical ethics course and a conflict resolution course, his reflective writings, XXX. However, without wishing to belittle any of the steps Dr Clarke has taken by way of remediation, it is apparent that these steps, other than XXX, were only put into place this year only on advice of his lawyer, 5 years after his appearance at the Court, and more than 3 years after Dr Clarke referred himself to the GMC. Although Dr Clarke talked about XXX the full extent and nature of XXX were not clear to the Tribunal.

30. The Tribunal has not seen any sufficient evidence of remediation, only the steps he has taken in the last few months. Dr Clarke is on a journey of remediation which is not yet

complete. Dr Clarke has had plenty of time and opportunities to seek support and to participate in more relevant courses such as anger management. The Tribunal expected to see more evidence that he had reflected on his actions and in particular the impact of his behaviour in undermining the public's confidence in the medical profession.

31. Moreover, the Tribunal considered that whilst Dr Clarke has some insight, it is not fully developed. The Tribunal was concerned by his lack of understanding of the seriousness of his misconduct. The Tribunal did not find it plausible that Dr Clarke did not know what was contained in the legal document signed by him after his conviction or have any thought about having it translated. He failed to declare and discuss matters at his appraisals and with his Responsible officer after his conviction and prior to his DBS check. If Dr Clarke had discussed this matter at appraisals and with his Responsible Officer, it would have strengthened his position with regard to remediation and insight.

32. The Tribunal considered that Dr Clarke's answer about what his patients would think of his conviction was inadequate in that he was aware his patients would be shocked but he had not considered that his actions might undermine the trust that they might have in him as a doctor.

33. The Tribunal considered the risk of repetition to be very low. The Tribunal has borne in mind that there were no prior disciplinary matters and there has been no repetition since the events of 2016 and his appearance in the Court five years ago. In the opinion of the Tribunal, it extremely unlikely that he would repeat his behaviour were he in a similar situation again.

34. In considering current impairment the Tribunal is obliged to consider the GMC's overarching statutory objective:

- a. to protect, promote and maintain the health, safety and wellbeing of the public;
- b. to maintain public confidence in the profession;
- c. to promote and maintain proper professional standards and conduct for members of the profession.

35. Whilst the Tribunal does not consider Dr Clarke presents a risk to patients or the public, it nevertheless considers that his fitness to practise is impaired by reason of misconduct.

36. The conduct of Dr Clarke in respect of his conviction of domestic violence and his failure to notify the GMC promptly would be regarded as reprehensible by fellow professionals. Having regard for the need to maintain public confidence in the profession and promote and maintain proper professional standards, the Tribunal finds Dr Clarke's fitness to practise is currently impaired by reason of misconduct.

### Impairment - Conviction

37. The Tribunal noted its findings that Dr Clarke pleaded guilty and was convicted of assault and was sentenced to a community service order for 40 days on 6 September 2016. It had sight of the Spanish certificate of conviction. The conviction was misconduct and serious.

38. The Tribunal determined that Dr Clarke's conviction breached the following paragraphs of GMP, which is a fundamental tenet of the medical profession:

*'1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and ... and act with integrity and within the law.'*

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

39. The Tribunal considered the circumstances which had provoked the criminal offence were particularly upsetting for Dr Clarke. However, the Tribunal determined that in the absence of any exceptional circumstances, Dr Clarke's actions fell below the standards expected of a medical practitioner, particularly as injury was caused to another person.

40. The Tribunal noted that doctors occupy a position of trust and that their professional role necessarily requires high standards of personal conduct and behaviour at all times. The public have a legitimate expectation that a doctor will abide by the law and avoid any involvement in behaviour which contributes, or may contribute, to the cause of harm to others. The Tribunal concluded that the need to uphold proper professional standards and public confidence would be undermined if a finding of impairment were not made in relation to paragraphs 1 to 2 of the Allegation. This is for all the reasons mentioned above and those advanced by Mr Birrell in his submissions. The conviction here is simply too serious to warrant any conclusion other than Dr Clarke's fitness to practise is impaired.

41. The Tribunal has therefore determined that Dr Clarke's fitness to practise is impaired by reason of misconduct and a conviction.

### Determination on Sanction - 16/06/2021

42. Having determined that Dr Clarke's fitness to practise is impaired by reason of a conviction and misconduct, 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

43. The Tribunal has taken into account all the evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

### Submissions

44. On behalf of the GMC, Mr Birrell submitted that the appropriate and proportionate response to Dr Clarke's conviction and his misconduct is one of suspension. Mr Birrell reminded the Tribunal of the serious nature of both the assault and the failure to promptly declare the conviction to the GMC. He referred the Tribunal to the Sanctions Guidance (the SG).

45. Mr Birrell referred to the relevant paragraphs on mitigating and aggravating factors in this case in the SG. He stated that the Tribunal may find some of the following to be in Dr Clarke's favour including; his good character, no previous Fitness to Practise matters, the positive testimonials, his full admissions and the lapse of time since the misconduct. Mr Birrell highlighted the aggravating factors in the case. He submitted that this is an offence of serious violence, exacerbated by the fact that the events took place in the doctor's personal life, lack of insight and that he concealed his conviction from the GMC for 18 months. He submitted that the impact on patients of any suspension is not a valid consideration as Dr Clarke has known of this case for some time and his employers have a duty to arrange care for his patients.

46. Mr Birrell submitted there are no exceptional circumstances in the sense that they are unusual, special or uncommon in this case that would justify the Tribunal taking no action.

6. Mr Birrell submitted that there are no conditions that would be appropriate or workable. He also submitted that conditions would not be proportionate, given the seriousness of the facts involved in this case. Public confidence in the profession would not be maintained and there would be a failure to uphold proper standards of conduct and behaviour in the profession.

48. For Dr Clarke, Mr Smith submitted that the testimonials and patient feedback had described Dr Clarke as a hardworking and reliable doctor. He reminded the Tribunal that this misconduct happened 5 years ago in an unhappy context. He fully accepted that it was inappropriate to act in an aggressive and violent way, but it was wholly out of character and the Tribunal have seen nothing to suggest he will repeat his behaviour. Dr Clarke has taken steps to reflect on his conduct and to remediate. He has sought help XXX and identified the triggers to control his future behaviour.

49. He submitted that there was no question of Dr Clarke's clinical practice posing any risk to the public. He is a pain specialist providing a service to vulnerable and complex patients. Such expertise is in high demand and short supply. The effect of the sanction imposed on Dr Clarke and his patients should be weighed in the balance.

50. Mr Smith accepted and agreed with Mr Birrell that this was not a case where conditions are appropriate.

51. Mr Smith submitted that the Tribunal may find that Dr Clarke's misconduct has been marked by the finding of impairment alone. He reminded the Tribunal that it found that Dr Clarke has taken steps to remediate his misconduct and that there is no risk of repetition. If the Tribunal is considering a suspension, then it should be for as short a period as possible.

### The Tribunal's Determination on Sanction

#### The Tribunal's Approach

52. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal alone, exercising its own judgement. In so doing, it has given consideration to its previous findings and the doctors impaired fitness to practise as well as the submissions made by both parties. When making its decision the Tribunal paid particular attention to the paragraphs 56 and 56d of the SG.

*56. Tribunals are also likely to take more serious action where certain conduct arises in a doctor's personal life, such as (this list is not exhaustive):*

...

*d. misconduct involving violence...'*

53. The Tribunal reminded itself that the main reason for imposing a sanction is to protect the public and that sanctions are not imposed to punish or discipline doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Clarke's interests with the public interest.

54. The Tribunal has already set out its decisions on impairment and it took those determinations into account during its deliberations on sanction. It first considered the mitigating factors and then aggravating factors in this case and then moved on to consider each sanction in ascending order of severity, starting with the least restrictive.

#### Mitigating and Aggravating Factors

55. The Tribunal carefully considered the following were mitigating factors in this case:

- Dr Clarke made full admissions from the outset of the hearing;
- The Tribunal has found that Dr Clarke has demonstrated some insight into his actions and has fully apologised;

- The Tribunal found that the impressive testimonials portrayed Dr Clarke as a good doctor and demonstrated that the risk of repetition of similar behaviour was minimal. The testimonials spoke of how out of character were the events that led to his conviction;
- The other evidence before the Tribunal also suggested that the incidents were very much out of character for Dr Clarke;
- Dr Clarke’s previous exemplary record;
- The Tribunal noted that there has been a significant lapse of time since the events took place and that the behaviour has not been repeated;
- Dr Clarke has provided some evidence of progress in remediation XXX and shown that he has developed some insight into his misconduct.

56. The Tribunal balanced the mitigating factors against the aggravating factors:

- The conviction was for an assault that led to injury;
- The assault happened in a public place and in the presence of members of the public and was reported by a member of the public to the authorities;
- By Dr Clarke’s own admission, the assault which included a slap, lasted 2 to 3 minutes;
- Dr Clarke’s 18-month delay in reporting the conviction to the GMC;
- The Tribunal found that Dr Clarke has demonstrated limited insight into the importance of disclosing the conviction to his responsible officer;
- Dr Clarke did not initially take responsibility for his actions and by his own admission *‘stuck his head in the sand’*.

57. The Tribunal did not accept Mr Birrell’s submission that the criminal sentencing guidelines were an appropriate indicator for the purpose of these proceedings. These proceedings are regulatory and not criminal and did not have identical objectives. The Tribunal was reinforced in this judgement by paragraph 117 of the SG.

*‘117 However, the tribunal should bear in mind that the sentence or sanction previously imposed is not necessarily a definitive guide to the seriousness of the offence’.*

### The Tribunal’s Approach

58. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken account of the SG. It has borne in mind that the purpose of the sanctions is not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect.

59. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Clarke’s interests with the public interest. The public interest includes, amongst

other things, the protection of patients, the maintenance of public confidence in the profession, and the declaring and upholding of proper standards of conduct and behaviour.

60. The Tribunal has already given a detailed determination on impairment and it has taken those matters into account during its deliberations on sanction.

### **No Action**

61. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Clarke's case, the Tribunal first considered whether to conclude the case by taking no action.

62. The Tribunal found that there are no exceptional circumstances capable of justifying taking no action against Dr Clarke's registration. Whilst it noted that there are no clinical concerns in this case there was nothing exceptional in the conviction or the failure to promptly disclose the conviction. The Tribunal determined that, in view of the serious nature of the Tribunal's findings on impairment, it would be neither sufficient, proportionate nor in the public interest, to conclude this case by taking no action.

63. The Tribunal was not attracted to Mr Smith's submission that the fact the doctor practised in a speciality in demand or that the country was experiencing a pandemic rendered the case exceptional. The timing of when a case comes before the Tribunal and the doctor's speciality do not in themselves amount to exceptional circumstances.

### **Conditions**

64. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Clarke's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

65. The Tribunal is of the opinion that a period of conditional registration would not adequately reflect the serious nature of Dr Clarke's misconduct, nor, in a case involving domestic violence and a failure to declare a conviction promptly, could conditions be devised that would protect the public interest and maintain public confidence in the medical profession. It also noted that both Mr Birrell and Mr Smith accepted in their submissions that conditions were not workable or appropriate.

66. Furthermore, the Tribunal considered that conditions would not send the appropriate message to Dr Clarke, the profession and public about what is regarded as behaviour unbecoming of a registered doctor. The Tribunal has, therefore, determined that it would not be sufficient to direct the imposition of conditions on Dr Clarke's registration.

### **Suspension**

67. The Tribunal went on to consider whether suspension would be a sufficient sanction in this case and gave careful consideration to the paragraphs of the SG concentrating on suspension.

68. The Tribunal had regard to paragraph 91 of the SG:

*'91 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 unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.'*

The Tribunal considered Dr Clarke conviction and failure to declare his conviction promptly to be a serious offence and determined that a period of suspension would meet its overarching objective. It would also signal that violence and a delay in fulfilling a doctor's regulatory obligations is not consistent with the standards expected from the medical profession.

69. The Tribunal had regard to paragraph 93 and 97 of the SG and considered the following paragraphs to be relevant factors in this case:

*'93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions.*

*'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.*

*...*

*f No evidence of repetition of similar behaviour since incident.'*

The Tribunal was of the opinion that, given Dr Clarke's engagement, remediation and partial insight, and the mitigation factors set out above his misconduct is not fundamentally incompatible with continued registration.

70. The Tribunal determined that Dr Clarke's misconduct was a serious breach of Good Medical Practice. However, it noted that there is no evidence of repetition of similar behaviour in the 5 years since the misconduct and considered the risk of repetition to be low.

71. The Tribunal noted that Dr Clarke admitted his misconduct, engaged and cooperated with the GMC’s investigation and made full and frank admissions at every stage of these proceedings. The Tribunal was satisfied that Dr Clarke’s expressions of remorse were genuine and that he has fully accepted his misconduct. The Tribunal considered that Dr Clarke displayed some ongoing insight, which extended into why what he did was wrong, and the steps he has taken to ensure that it does not happen again.

72. The Tribunal noted the exemplary testimonials from Dr Clarke’s colleagues (who are aware of the allegations he faced) which assessed him over a significant time, some of which give specific examples of him demonstrating the very opposite of aggression and violence. The Tribunal noted that Dr Clarke is a valuable doctor.

73. The Tribunal noted that imposing a suspension has a deterrent effect. The Tribunal is satisfied a short period of suspension will send out a signal to the doctor, the profession, and the public that violence in a domestic situation and a failure to promptly inform a regulator is unacceptable and is regarded as behaviour unbecoming of a registered doctor.

74. The Tribunal balanced the public interest and the importance of professional standards against Dr Clarke’s clinical commitments to patients. The Tribunal concluded that suspension was the proportionate and appropriate sanction, given the seriousness of Dr Clarke’s departure from the principles set out in GMP.

75. The Tribunal has recorded above that it is imposing a period of suspension in this case in the wider public interest and to maintain professional standards and not because Dr Clarke poses a risk to the public in the future. In those circumstances the Tribunal found that it could and should give appropriate weight to Dr Clarke’s full admissions, cooperation with the regulatory process and the other mitigating factors set out above. This has enabled the Tribunal to impose a period of suspension shorter than would otherwise have been appropriate.

76. The Tribunal determined to suspend Dr Clarke’s registration for a period of three months.

77. The Tribunal considered whether or not it was necessary to impose a review in this case. Paragraph 164 of the SG states that a review may be necessary where the Tribunal wish the doctor to demonstrate that:

*‘a they fully appreciate the gravity of the offence*

*b they have not reoffended*

*c they have maintained their skills and knowledge*

*d patients will not be placed at risk by resumption of practice or by the imposition of conditional registration'*

78. The Tribunal had no doubt that Dr Clarke fully appreciated the gravity of the offence. It was confident there would be no reoffending. The period of suspension was not such as to require evidence that Dr Clarke had maintained his skills and knowledge. The reason for the suspension was not related to concern about patient safety and therefore a resumption of practice would not put patients at risk. In terms of Dr Clarke's developing insight, it considered that this can be accommodated informally by means of the Trusts appraisal process without a review.

79. Therefore, the Tribunal determined no review was necessary.

#### **Determination on Immediate Order - 16/06/2021**

1. Having determined that Dr Clarke's registration should be suspended, the Tribunal has considered, in accordance with Section 38 of the Medical Act 1983, as amended, whether his registration should be subject to an immediate order of suspension.

#### **Submissions**

2. Mr Birrell, on behalf of the General Medical Council submitted that the GMC's did not seek to impose an immediate order.

3. Mr Smith on behalf of Dr Clarke, submitted that an immediate order is not necessary.

#### **The Tribunal's Determination**

4. Having considered the submissions, and in the light of all the circumstances of the case, the Tribunal has determined that, given there are no patient safety concerns in this case, it is not necessary to make an immediate order suspending Dr Clarke's registration. The Tribunal is satisfied that the substantive order of suspension is sufficient to mark the gravity of Dr Clarke's misconduct and to protect the wider public interest.

5. This means that Dr Clarke's registration will be suspended 28 days from today, unless he lodges an appeal. If Dr Clarke does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

6. There is no interim order to revoke.

7. That concludes this case.

**Confirmed**

**Date** 16 June 2021

Mr Tim Smith, Chair