

## PUBLIC RECORD

Dates: 04/01/2021 - 11/01/2021

Medical Practitioner's name: Dr Patrick CONLAN

GMC reference number: 1378825

Primary medical qualification: MB BCh 1972 National University of Ireland

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Not Impaired
New - Caution	Facts relevant to impairment found proved	Impaired

## Summary of outcome

Suspension, 1 month.

## Tribunal:

Legally Qualified Chair	Mr Neil Dalton
Medical Tribunal Member:	Dr Janet Nicholls
Medical Tribunal Member:	Dr Damian McDermott
Tribunal Clerk:	Miss Evelyn Kramer Mr Josh Dayco

## Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Ms Emma Gilsean, 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 Facts - 05/01/2021

### Background

1. Dr Conlan qualified in 1972 from the National University of Ireland. Prior to his retirement in 2013, Dr Conlan worked as a Consultant Paediatrician. Dr Conlan has not worked as a doctor since his retirement. In August 2015, the GMC withdrew Dr Conlan's licence to practise as he had not complied with regulations relevant to revalidation.
2. It is now alleged that, between 20 March 2017 and 26 November 2017, Dr Conlan issued prescriptions for Ms A, a close family member, and himself. It is further alleged that on 11 January 2018, Dr Conlan accepted a caution for a criminal offence – namely, Fraud contrary to Sections 1 and 2 of the Fraud Act 2006. This caution arose out of the private prescriptions written and issued by Dr Conlan between March and November 2017 when he did not have a licence to practise medicine and therefore could not issue prescriptions.
3. The GMC was first notified by NHS England of concerns about the private prescriptions issued by Dr Conlan on 11 December 2017.

### The Outcome of Applications Made during the Facts Stage

4. The Tribunal accepted the GMC's submissions, made pursuant to Rules 15 and 40 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that notice of this hearing had properly been served on Dr Conlan. The Tribunal granted the GMC's application, made pursuant to Rule 31 of the Rules, that this hearing should proceed in his absence. The Tribunal's full decision on this application is included at Annex A.
5. The Tribunal granted the GMC's applications, made pursuant to Rule 34(1) of the Rules to adduce further evidence. The Tribunal accepted that all the evidence to be adduced had either already been enclosed in letters issued to Dr Conlan (including a chronology and copy of the Allegation provided with the GMC Notice of Allegation Letter, dated 20

November 2020) or was email correspondence with the GMC initiated by Dr Conlan himself in December 2020. Accordingly, the Tribunal was satisfied that it was fair and relevant, and in the interests of justice, for such evidence to be put before the Tribunal. It was also satisfied that granting the application did not represent any unfairness to Dr Conlan.

### **The Allegation and the Doctor's Response**

6. The Allegation made against Dr Conlan is as follows:  
That being registered under the Medical Act 1983 (as amended):

#### **Misconduct**

1. Between 20 March 2017 and 26 November 2017, you issued prescriptions for:
  - a. [Ms A], a person with whom you have a close personal relationship, as set out in Schedule 1;  
**To be determined**
  - b. yourself as set out in Schedule 2.  
**To be determined**
2. At the time of issuing the prescriptions as set out in Schedules 1 and 2 you knew that it was inappropriate to prescribe for:
  - a. yourself;  
**To be determined**
  - b. [Ms A].  
**To be determined**

#### **Caution**

3. On 11 January 2018 at Borehamwood Police Station you accepted a caution for fraud by false representation in that between 20 March 2017 and 26 November 2017 at Shenley you committed fraud in that you dishonestly made a false representation, namely issued prescriptions without a licence to practice medicine, intending to cause loss to Crown Pharmacy or to expose them to a risk of loss contrary to sections 1 and 2 of the Fraud Act 2006.  
**To be determined**

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

- a. misconduct in relation to paragraphs 1 and 2;  
**To be determined**

b. caution in relation to paragraph 3.

**To be determined**

### **Factual Witness Evidence**

7. The Tribunal received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Ms B, Pharmacist and Inspector for the General Pharmaceutical Council (GPhC), witness statement dated 24 February 2020;
- Mr C, Pharmacist and Director of Pharmacy at Crown Pharmacy, witness statement dated 19 October 2020;
- Detective Constable (DC) D, Hertfordshire Police, witness statement dated 16 April 2020;
- Ms E, Revalidation Operations Manager for the GMC, witness statement dated 24 March 2020.

### **Documentary Evidence**

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

- Correspondence notifying Dr Conlan of the decision to withdraw his licence to practise;
- The ten private prescriptions written by Dr Conlan for either Ms A or himself, presented to Crown Pharmacy;
- A police statement summarising Dr Conlan’s police interview on 11 January 2018, written by DC D and dated 31 March 2020;
- The police caution signed and accepted by Dr Conlan on 11 January 2018;
- Dr Conlan’s undated statement about these events and his personal circumstances;
- Relevant letters pertaining to Ms A’s health and the medication she had been prescribed.

### **The Tribunal’s Approach**

9. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Conlan does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities (i.e. whether it is more likely than not that the events occurred).

### **The Tribunal’s Analysis of the Evidence and Findings**

10. The Tribunal has considered each paragraph and sub-paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

### Misconduct

#### Paragraph 1

11. In order to determine whether Dr Conlan issued prescriptions for himself and Ms A, a person with whom he has a close personal relationship, the Tribunal had regard to all the evidence before it.

12. The Tribunal considered, firstly, copies of each of the ten private prescriptions. A number of these had been written on paper imprinted with Dr Conlan's name. Further, all the prescriptions bore his name and GMC registration number. In each instance, the prescriptions were issued either to Ms A or to Dr Conlan himself.

13. The Tribunal considered, secondly, DC D's statement where she summarised (in an attached exhibit) Dr Conlan's police interview on 11 January 2018. Therein, Dr Conlan had confirmed that indeed he had written the said prescriptions. He explained he had only done so when the medication was due to run out and a repeat prescription could not otherwise be obtained in time.

14. Thirdly, the Tribunal took into account Dr Conlan's own undated statement, wherein he confirmed '[...] *I wrote the prescriptions [...]*'.

15. Taking this evidence together, the Tribunal was satisfied that between 20 March 2017 and 26 November 2017, Dr Conlan had issued prescriptions for Ms A and himself.

16. The Tribunal therefore found paragraph 1 of the Allegation proved in its entirety.

#### Paragraph 2

17. The Tribunal considered whether, at the time of issuing the ten private prescriptions, between 20 March and 26 November 2017, Dr Conlan knew it was inappropriate to prescribe for himself (per allegation sub-paragraph 2a) and for Ms A (allegation sub-paragraph 2b).

18. The Tribunal noted the correspondence which had been sent to Dr Conlan two years earlier, on 22 July 2015, explaining to him that his licence to practise had been withdrawn, and indicating (among other things) that one consequence of this was that he '*must not work in any role which requires [him] to hold a licence to practice.*'

19. It noted, too, that when interviewed by DC D on 10 January 2020, he is said to have '*confirmed that he had retired in August 2013 and that his licence to practice had lapsed in August 2015. He was shown a letter from the GMC and he confirmed receipt of it. He stated*

*that he was aware that he didn't have a licence to prescribe and that he shouldn't prescribe to himself or [Ms A] ...'*

20. Finally, the Tribunal noted that, in accepting a criminal caution, Dr Conlan had admitted acting dishonestly in having issued these prescriptions without a licence to practise medicine.

21. Bearing all this evidence in mind, the Tribunal was satisfied to the civil standard of proof that at the time he issued these prescriptions, he knew it was inappropriate to do so. Accordingly, the Tribunal found paragraph 2 of the Allegation proved in its entirety.

### **Caution**

#### **Paragraph 3**

22. The Tribunal noted that Dr Conlan had indeed accepted a caution for fraud by false representation at Borehamwood Police Station on 11 January 2018, and in the terms set out in the Allegation.

23. A copy of this caution was seen by the Tribunal. The Tribunal noted that Dr Conlan had signed the Caution Notice and that he had also signed to confirm he had read the wording of the Notice and had been served with a copy of it.

24. The Tribunal noted that there was no evidence before it to suggest Dr Conlan was denying being the person who had accepted that criminal caution.

25. The Tribunal therefore found paragraph 3 of the Allegation proved.

### **The Tribunal's Overall Determination on the Facts**

26. The Tribunal has determined the facts as follows:

#### **Misconduct**

1. Between 20 March 2017 and 26 November 2017, you issued prescriptions for:
  - a. [Ms A], a person with whom you have a close personal relationship, as set out in Schedule 1;  
**Determined and found proved**
  - b. yourself as set out in Schedule 2.  
**Determined and found proved**
2. At the time of issuing the prescriptions as set out in Schedules 1 and 2 you knew that it was inappropriate to prescribe for:

- a. yourself;  
**Determined and found proved**
  
- b. [Ms A].  
**Determined and found proved**

### **Caution**

3. On 11 January 2018 at Borehamwood Police Station you accepted a caution for fraud by false representation in that between 20 March 2017 and 26 November 2017 at Shenley you committed fraud in that you dishonestly made a false representation, namely issued prescriptions without a licence to practice medicine, intending to cause loss to Crown Pharmacy or to expose them to a risk of loss contrary to sections 1 and 2 of the Fraud Act 2006.  
**Determined and found proved**

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

- a. misconduct in relation to paragraphs 1 and 2;  
**To be determined**
  
- b. caution in relation to paragraph 3.  
**To be determined**

### **Determination on Impairment - 08/01/2021**

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts found proved, Dr Conlan's fitness to practise is impaired by reason of misconduct and/or caution.

### **The Evidence**

2. The Tribunal has taken into account evidence received during the previous stage of the hearing where relevant in reaching a decision on impairment. No further evidence was adduced at this stage of proceedings.

### **Submissions**

3. Ms Gilsean provided written and oral submissions on behalf of the GMC. She referred the Tribunal to relevant caselaw and submitted that Dr Conlan's fitness to practise is impaired.

4. In support of this, she said that the allegations proved against Dr Conlan were serious, they carry a presumption of impairment, and they relate directly to his professional status as a registered doctor (albeit one without a licence to practise). She asserted that Dr Conlan's actions were repeated over a sustained period of nine months and resulted in police action being taken. Resultantly, Dr Conlan has a criminal caution recorded against him which would show up on a Disclosure and Barring Service (DBS) check, and which would be present on Dr Conlan's record until 2024. She noted that the caution was for fraud by false representation, whereby Dr Conlan had admitted making a dishonest representation to Crown Pharmacy by issuing prescriptions without a licence to practise.

5. Turning to *Good Medical Practice* (2013) (GMP), Ms Gilsean submitted that Dr Conlan's behaviour engaged paragraphs 1, 16 (a, b and g), 65 and 68. These breaches were relevant to the Tribunal's consideration of impairment and the need to maintain public confidence in the profession and to declare and uphold proper professional standards.

6. Ms Gilsean addressed what she considered to be the mitigating and aggravating factors in this case.

7. She submitted that Dr Conlan has developing insight but has not demonstrated sufficient remediation, having only taken steps to avoid further private prescribing by setting up online repeat prescriptions for himself and Ms A. She also reminded the Tribunal of Dr Conlan's senior position (he had been a consultant paediatrician at the time he retired in 2013), submitting that his level of experience was an aggravating factor (i.e., he had enough experience to have known better).

8. In conclusion, Ms Gilsean invited the Tribunal to find Dr Conlan's fitness to practise to be currently impaired by reason of both misconduct and caution.

### **The Relevant Legal Principles**

9. 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 judgment alone.

10. In approaching the decision regarding impairment, the Tribunal was mindful of the two-stage process to be adopted. Firstly, to determine whether the facts found proved amounted to misconduct and/or a caution for a criminal conviction. Secondly, whether Dr Conlan's fitness to practise was currently impaired as a result.

#### 'Misconduct'

11. On the issue of whether the facts proved in paragraphs 1 and 2 of the Allegation amounted to Misconduct, the Legally Qualified Chair (LQC) advised the tribunal that 'misconduct' has been defined in the case of *Roylance v GMC* [(No.2) [2000] 1 AC 311] as '*a word of general effect, involving some act or omission which falls short of what would be*

*proper in the circumstances.* In that case, the Privy Council had gone on to say that *'The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances'*

12. The LQC went on to advise in the following terms:

- That mere negligence does not amount to misconduct unless particularly serious. A single act/omission may amount to misconduct if particularly grave but is less likely to amount to misconduct than multiple acts/omission [*GMC v Calhaem* [2007] EWHC 2606 (Admin), paragraph 39].
- For the doctor's conduct to amount to misconduct, *'it must be linked to the practice of medicine or [else it must be] conduct that otherwise brings the profession into disrepute, and it must be serious'*. [*GMC v Calhaem* [2007] EWHC 2606 (Admin) {citing *Meadows*, citing *Roylance*} paragraph 36]
- The behaviour must involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Such conduct can include the exercise of administrative or managerial functions which are part of the day-to-day practice of a professional doctor, such as proper record-keeping. [*R (on the application of Remedy UK Ltd) v GMC* [2010] EWHC 1245 (Admin) paragraph 37]
- As to seriousness, this must be given its proper weight. Caselaw establishes that it is conduct which would be regarded as deplorable by fellow practitioners. [*Nandi v GMC* [2004] EWHC 2317 (Admin) paragraph 31, approved by *Meadow v GMC* [2007] QB 462 paragraph 200]

### 'Impairment'

13. In relation to establishing 'Impairment', the LQC advised the Tribunal that:

- The question whether Dr Conlan's 'fitness to practise is impaired' is a question posed, and to be answered, in the present tense. The Tribunal looks forward and not back. However, in order to form a view as to the fitness of a person to practise today, the Tribunal will have to take into account the way in which Dr Conlan has acted, or failed to act, in the past. [*Meadow v GMC* [2006] EWCA Civ 1390, paragraph 32]
- Any approach to the issue of impairment must take into account the need to protect the individual patient, and the collective need to maintain confidence in the profession; as well as declaring and upholding proper standards of conduct and behaviour, including the protection of patients and the

maintenance of the public's confidence in their doctors. [*R (on the application of Cohen) v GMC* [2008] EWHC 581 (Admin), paragraph 62] (*'Cohen'*)

- Caselaw has established that it must be 'highly relevant' in determining if doctor's fitness to practise is impaired *'that, first, his or her conduct which led to the charge is easily remediable; second, that it has been remedied; and, third, that it is highly unlikely to be repeated'*. [*Cohen*, paragraph 65]
- But where a Tribunal considers that the case is one where the misconduct consists of violating a fundamental rule of the professional relationship between medical practitioner and patient and thereby undermining public confidence in the medical profession, a finding of impairment of fitness to practise may be justified on the grounds that it is necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the practitioner and in the profession. In such a case, the efforts made by the medical practitioner in question to address his behaviour for the future may carry very much less weight than in a case where the misconduct consists of clinical errors or incompetence. [*Yeong v GMC* [2009] EWHC 1923, paragraphs 50-51]
- The point is re-enforced in *Grant*, which indicates that *'It is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations; namely the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession'*. [*CHRE v NMC and Grant* [2011] EWHC 927 [Admin], paragraph 71]
- And *Grant* continues that: *'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the Tribunal should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'* [paragraph 74]
- The attitude of Dr Conlan to the matters that give rise to the specific allegations against, is in principle something which can be taken into account either in his favour, or against him, by the Tribunal; when it considers whether his fitness to practise is impaired [*Nicholas-Pillai v GMC* [2009] EWHC 1048 [Admin], paragraph 19]
- The Tribunal went onto remind itself of the question it should ask, namely *'do our findings of fact in respect of this doctor's misconduct and caution show that his fitness to practise is impaired in the sense that he;*

- a. has in the past acted or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. has in the past brought and/or liable in the future to bring the medical profession into disrepute; and/or*
- c. has in the past breached or liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.’ (CHRE v NMC & Grant paragraph 76, quoting Dame Janet Smith in paragraph 25.67 in her Fifth Report from Shipman).*

14. Finally, the Tribunal reminded itself of the statutory overarching objective: 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.

### **The Tribunal’s Determination on Impairment**

#### Misconduct

15. The Tribunal considered whether Dr Conlan’s actions in paragraphs 1 and 2 of the Allegation were serious enough to amount to Misconduct. It determined that they were.

16. The following factors were salient in coming to that determination:

- This behaviour involved breaching the trust of a fellow professional at Crown Pharmacy. That professional, a pharmacist, had established a relationship with Dr Conlan over 15 years.
- The offending behaviour did not occur on an isolated occasion, but was repeated by Dr Conlan over a period of eight months.
- Among the drugs he inappropriately prescribed during that period was a controlled drug, XXX.
- It appears the only reason the behaviour stopped was because it was exposed by a third party.

17. Having regard to these factors, and the generality of the evidence, the Tribunal decided that the following three paragraphs of the Good Medical Practice were therefore engaged:

**16** *In providing clinical care you must:*

*g wherever possible, avoid providing medical care to yourself or anyone with whom you have a close personal relationship.*

18. The Tribunal was prepared to accept, to some extent, XXX might have rendered it difficult on occasion to facilitate GP-generated prescriptions in a timely fashion. Nevertheless, the balance of the evidence persuaded the Tribunal that Dr Conlan did not *'wherever possible'* comply with paragraph 16g. Rather, the process of issuing private prescriptions, and thereby providing medical care to himself and Ms A, instead became part of the norm and not the exception. It arose from convenience not necessity.

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

19. The Tribunal was satisfied that his conduct described in paragraphs 1 and 2 of the Allegation, even taken in context (as described below), did not justify the public's trust in the profession.

*71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.*

*a You must take reasonable steps to check the information is correct.*

*b You must not deliberately leave out relevant information.*

20. The Tribunal found that, in presenting private prescriptions to Crown Pharmacy when he did not have a licence to practise, Dr Conlan had produced documents which were misleading.

21. In all three regards, Dr Conlan had breached the GMP and, as such, departed from the standards expected of a registered doctor.

22. Having decided that paragraph 1 and 2 of the Allegation amounted to Misconduct, the Tribunal went on to consider whether Dr Conlan's fitness to practise was impaired by reason of Misconduct.

#### Impairment re Misconduct

23. In assessing this, the Tribunal reminded itself of:

- Ms Gilsean's submission on the law and facts in relation to impairment;
- The advice the LQC had provided, as above;
- How paragraphs 1 and 2 of the Allegation were framed; and

- Those aspects of Dr Conlan’s conduct, outlined in paragraphs 16-21 above, that caused the Tribunal to determine the behaviour could be characterised as misconduct.

24. The Tribunal also, though, bore in mind the following factors – each of which provided important context within which the misconduct could properly be viewed.

Namely that:

- The private prescriptions related to genuine, pre-existing medical conditions regarding which he and Ms A had been professionally diagnosed and for which they were already receiving GP prescriptions.
- The medical conditions were serious in nature. XXX This was impactful in terms of the ease by which he could otherwise obtain repeat prescriptions.
- No evidence had been placed before the Tribunal to establish that any of the prescriptions were clinically inappropriate – whether in terms of the medication itself, its frequency or quantity. Indeed, the same or similar prescriptions have since been issued to them by other doctors.
- He stood to gain nothing financially by his actions – nor, equally, did the pharmacist stand to suffer any financial loss. Throughout, the doctor’s sole gain was one of convenience and a saving of time. By issuing private prescriptions, it cost Dr Conlan money he would otherwise have saved had those same prescriptions instead been issued by his GP.
- The Tribunal noted that as soon as the conduct was raised with Dr Conlan, he appears immediately to have stopped it. He has apologised to his regulator and directly to the pharmacist. He has not repeated the behaviour since.
- Dr Conlan promptly admitted he knew what he had been doing was ‘inappropriate’ (albeit he had not, he says, previously appreciated the regulatory and criminal significance of his actions). He has since taken corrective steps to facilitate the proper issuing of GP prescriptions.
- Prior to these events in 2017, Dr Conlan had an unblemished 40- year medical career.

25. The Tribunal considered Ms Gilsenan’s submission that GMP 16a and 16b had been contravened:

**16** *In providing clinical care you must:*

*a prescribe drugs or treatment, including repeat prescriptions, only when you have adequate knowledge of the patient's health and are satisfied that the drugs or treatment serve the patient's needs*

*b provide effective treatments based on the best available evidence*

26. The Tribunal was unpersuaded in both regards.

27. In considering paragraph 16a, the Tribunal was satisfied that Dr Conlan - given his profession, and the nature of his relationship to XXX Ms A - was well placed to understand Ms A's condition. His knowledge was adequate to assess her needs, and his own, and to prescribe accordingly. There is no evidence that he put either himself, or Ms A, at risk by his actions.

28. In relation to paragraph 16b of GMP, it was the GMC's submission that, as a retired consultant paediatrician, Dr Conlan was acting outside of his area of expertise in treating Ms A and issuing prescriptions for her. It was submitted that there was no evidence to suggest that Dr Conlan, having retired in 2013, had kept his knowledge and skills sufficiently up-to-date to prescribe using the best available evidence.

29. The Tribunal, though, in taking into account Dr Conlan's 40 years of medical practice, considered that he would have had a sufficiency of broad clinical knowledge, particularly given his seniority and his level of experience. It also bore in mind the contents of Dr Conlan's email to the GMC, dated 16 December 2020, wherein he stated '*I have been dedicated to my patients and have gone out of my way to be best informed of drug prescribing. I use an up-to-date BNF (British National Formulary) when required, as I did when prescribing [XXX]*'. Taking those matters together (and aware that there was no contra-evidence from the GMC that spoke directly to the point), the Tribunal was unpersuaded that 16b had been breached.

30. Set against all these factors, the Tribunal determined, first, that the matters forming the subject of paragraphs 1 and 2 of the Allegation were easily remediable, had been remedied and were highly unlikely to be repeated.

31. The Tribunal also considered that Dr Conlan had full insight into the Misconduct.

32. The Tribunal went on to consider carefully the other caselaw above; and whether, in light of it, a finding of impairment by reason of misconduct remained necessary in order to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession.

33. However, taking into account the above matters, particularly those set out in paragraph 24, the Tribunal did not think this necessary. Instead, it considered that if a finding of impairment of fitness to practise was to be justified on the grounds that it is necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the practitioner and in the profession; then that might – on the facts, and given the way the GMC

had framed the Allegation - more aptly occur in the context of paragraph 3 of the Allegation. The Tribunal now turns to that.

#### Impairment re caution for a criminal offence

34. The Tribunal determined that, for the purposes of S35C of the Medical Act 1983, the fact of a caution for a criminal offence had been established at the facts stage.

35. The Tribunal considered that accepting a caution for a criminal offence engaged paragraph 1 of GMP ('1 [...] *act with integrity and within the law*') as well as those paragraphs of GMP already cited in relation to Misconduct.

36. The Tribunal noted the seriousness of this particular caution (fraud by false representation) and that - significantly - the criminal offence expressly involved an admission of dishonesty on Dr Conlan's part.

37. In light of those elements, coupled with the fact that one of the drugs prescribed was a controlled drug, the Tribunal determined that a finding of impairment of fitness to practise was justified on the grounds that it is necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the practitioner and in the profession.

38. In consequence, the Tribunal determined that Dr Conlan's fitness to practise was impaired by reason of caution for a criminal offence.

#### **Conclusion**

39. The Tribunal has found that Dr Conlan's fitness to practise is not impaired by reason of misconduct but is impaired by reason of his caution for a criminal offence.

#### **Determination on Sanction - 11/01/2021**

1. Having determined that Dr Conlan's fitness to practise is impaired by reason of caution, 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**

2. The Tribunal has taken into account the evidence received during earlier stages of the hearing, where relevant to reaching a decision on sanction. No further evidence was adduced at this stage of proceedings.

#### **Submissions**

3. On behalf of the GMC, Ms Gilsenan provided written and oral submissions that a period of suspension would be the appropriate and proportionate sanction to be imposed on Dr Conlan's registration in light of the Tribunal's finding of impairment by reason of caution for a criminal offence.
4. Ms Gilsenan reminded the Tribunal to consider the overarching objective and referred to the relevant paragraphs of both the *Sanctions Guidance* (November 2020) ('the SG') and the supplementary guidance relating to '*The Relevance of whether a doctor holds a licence to practise*' ('supplementary guidance').
5. Ms Gilsenan invited the Tribunal to consider relevant paragraphs of her written submissions on impairment in relation to the mitigating and aggravating factors of this case. She also identified additional ones for the Tribunal to consider at sanction stage.
6. Ms Gilsenan submitted that the Tribunal should consider the least restrictive sanction first and then move 'up the scale'. In light of the finding of impairment for criminal caution, she submitted that it would be inappropriate to impose no sanction on Dr Conlan. Further, she submitted that imposing conditions on Dr Conlan's registration would be inappropriate and disproportionate. It would be difficult, she said, to envisage what conditions could be formulated.
7. In conclusion, Ms Gilsenan submitted that, in order to give appropriate weight to the tripartite overarching objective, a sanction of suspension was necessary. She added that it was a matter for the Tribunal to determine the length of any such suspension.

### **The Tribunal's Determination on Sanction**

8. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken the SG into account, as well as the supplementary guidance, and it has borne in mind the overarching objective.
9. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public. 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 Conlan's interests with the public interest.

### Mitigating and Aggravating Factors

10. In its determination on impairment, at paragraph 24, the Tribunal set out a number of considerations relevant to why Dr Conlan's fitness to practise was not impaired by reason of misconduct. For the reasons set out in the impairment determination at paragraphs 35-37, those considerations were not enough to cause his fitness to practise not to be impaired by reason of the caution. Nevertheless, the said matters at paragraph 24 are of direct relevance in mitigating his conduct when assessing the caution.

11. As a result of those factors, the Tribunal is satisfied Dr Conlan has full insight into the conduct which gave rise to the criminal caution. It is likewise satisfied he is highly unlikely ever to repeat it. The Tribunal notes that Dr Conlan had a 40-year unblemished medical career up to his retirement. He is a man of otherwise good character, before and since.

12. The Tribunal observed that Dr Conlan was not able to produce testimonial evidence of the kind commonly seen. Equally, though, it recognised that his particular situation, having retired seven years ago XXX, made acquiring testimonials at this stage problematic.

13. Having identified the relevant mitigating factors, the Tribunal went on to consider the aggravating factors in this case. It considered those factors set out in paragraph 16 of the impairment determination were all relevant to the circumstances of the caution and the seriousness with which it should be viewed, albeit they were discussed there in the context of the misconduct. (There was, of course, a significant overlap in the *misconduct* and *caution* aspects of the Allegation, as framed.)

14. The Tribunal balanced all these mitigating and aggravating factors throughout its deliberations and went on to consider each sanction in ascending order of severity, starting with the least restrictive.

### **No action**

15. In reaching its decision on the appropriate sanction, if any, to impose in Dr Conlan's case, the Tribunal first considered whether to conclude the case by taking no action.

16. The Tribunal determined that there were no exceptional circumstances to justify taking no action against Dr Conlan's registration. The Tribunal determined that, in view of its finding of impairment, and the nature of this doctor's caution for a criminal offence (an offence involving dishonesty), it would be neither sufficient, proportionate, nor in the public interest, to conclude this case by taking no action.

### **Conditions**

17. The Tribunal next considered whether to impose conditions on Dr Conlan's registration. The Tribunal noted that conditions must be appropriate, proportionate, workable and measurable.

18. Dr Conlan retired in 2013, and he has stated on more than one occasion that he has no desire to return to clinical practice. He does not currently hold a licence to practise.

19. In the circumstances, the Tribunal determined that no condition could be imposed that would be either appropriate, given the particular impairment (i.e., there was nothing that he could usefully be directed to do, given that he had remediated and had full insight); nor, in any event, workable (i.e., because he had retired from medical practise and was not,

therefore, in a position to comply). Accordingly, the Tribunal determined that this was not a suitable case for the imposition of conditions.

## Suspension

20. Earlier, the Tribunal had identified that Dr Conlan's actions breached a number of paragraphs of GMP. Those breaches were serious. However, having found that Dr Conlan's actions did not also amount to impairment by reason of misconduct, his actions, though inappropriate, were not incompatible with continued registration. The Tribunal had received no evidence that Dr Conlan had repeated his actions. Moreover, as set out above, he had significant mitigation to be considered. He had apologised and had full insight and the Tribunal had determined that it was highly unlikely he would repeat his actions.

21. In consequence, the Tribunal found paragraph 97 of the SG to be directly relevant:

*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.*

*g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.*

22. Taking all the above into account, together with paragraph 93 (i.e., that suspension may be appropriate where there has been an acknowledgement of fault and where it is satisfied that the behaviour is unlikely to be repeated), the Tribunal was therefore satisfied that a period of suspension would sufficiently mark the seriousness of Dr Conlan's caution. It acknowledged that a sanction of suspension would have a deterrent effect and could be used to send a signal to Dr Conlan, the profession, and the public about what is regarded as behaviour unbecoming a registered doctor.

23. The Tribunal went on to consider the length of the period of suspension. It determined to suspend Dr Conlan's registration from the medical register for a period of one month. It was satisfied that such a period marked the seriousness of Dr Conlan's impairment and met the overarching objective to protect the public, maintain public confidence in the profession and uphold proper professional standards.

24. Finally, the Tribunal considered whether to direct a review hearing. It recognised that, ordinarily, one would take place following a period of suspension. However, given the length

of this suspension, the fact that the retired Dr Conlan had already developed full insight, and the fact that the risk of repetition was highly unlikely, the Tribunal determined that a review hearing would serve no useful purpose.

25. Accordingly, the Tribunal does not direct a review hearing in this instance.

#### **Determination on Immediate Order - 11/01/2021**

1. Having determined to suspend Dr Conlan's registration for a period of one month, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Conlan's registration should be subject to an immediate order.

#### **Submissions**

2. On behalf of the GMC, Ms Gilsean made no submissions on an immediate order.

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

3. The Tribunal had regard to paragraphs 172 and 178 of the SG. It took account of the guidance, and the specific basis upon which the Tribunal reached its determination on sanction.

4. It determined that the substantive order of suspension upholds the overarching objective in maintaining public confidence in the profession and that in the absence of any concerns about patient safety, an immediate order would not be necessary in this case.

5. The Tribunal therefore determined not to impose an immediate order of suspension on Dr Conlan's registration.

6. This means that Dr Conlan's will be suspended from the Medical Register 28 days from when notice of this decision is deemed to have been served upon him, unless he lodges an appeal. If Dr Conlan does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

7. There is no interim order to revoke.

8. That concludes the case.

#### **Confirmed**

**Date** 11 January 2021

Mr Neil Dalton, Chair

ANNEX A – 04/01/2021

**Service of Notice of the Hearing**

1. Dr Conlan is neither present nor represented at this hearing.
2. Ms Emma Gilsenan, Counsel, on behalf of the GMC, provided the Tribunal with documents regarding service of these proceedings on Dr Conlan. This included:
  - A copy of the GMC Notification of Allegation letter, dated 20 November 2020, issued to Dr Conlan’s registered email address detailing how this hearing would be conducted, and attaching all required service paperwork. Dr Conlan confirmed receipt and replied to this email on 23 November 2020.
  - A copy of the Medical Practitioners Tribunal Service (MPTS) Notice of Hearing letter, dated 25 November 2020, Emailed to Dr Conlan on that date.
  - Subsequently, the same letter was posted to Dr Conlan’s registered address by Royal Mail Special Delivery on 27 November 2020. Royal Mail Track and Trace documentation confirmed that the Notice of Hearing letter was delivered and signed for by ‘Conlan’ on 28 November 2020.
3. Having considered all of the evidence before it, the Tribunal was satisfied that notice of the hearing had been served in accordance with Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) (‘the Rules’) and paragraph 8 of Schedule 4 to the Medical Act 1983 (as amended).

**Proceeding in Dr Conlan’s absence**

4. The Tribunal went on to consider whether it would be appropriate to proceed with this hearing in Dr Conlan’s absence pursuant to Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with appropriate care and caution, balancing the interests of the doctor with the wider public interest.
5. Ms Gilsenan invited the Tribunal to proceed in Dr Conlan’s absence. She referred the Tribunal to the case of *General Medical Council v Adeogba; General Medical Council v Visvardis* [2016] EWCA Civ 162 and reminded the Tribunal that the GMC brings these proceedings in the public interest. Ms Gilsenan submitted that, based on all of the

correspondence and documentation provided by Dr Conlan, it is clear that he is aware of this hearing, understands its purpose and knows the date and time of this remote hearing. Ms Gilsenan submitted that Dr Conlan has voluntarily absented himself from these proceedings and submitted that there was no indication that an adjournment would be of benefit to these proceedings. She reminded the Tribunal that Dr Conlan has engaged with the GMC at every juncture and has been clear about the impact of his personal circumstances and ongoing responsibilities which he has stated prevent him from attending these proceedings. Ms Gilsenan submitted that, in all the circumstances, it was in the public interest to proceed with the hearing today.

6. The Tribunal considered the recent email correspondence exchanged by the GMC and Dr Conlan on 16, 17 and 18 December 2020. On 16 December 2020, Dr Conlan set out that his applications for voluntary erasure had been refused. XXX In response to this email, on 17 December 2020, the GMC advised Dr Conlan that it was open to him to make *‘a further application for voluntary erasure to the Tribunal at your fitness to practise hearing, in which case you would need to attend the hearing to make such application’*. In the same email, the GMC also explained how Dr Conlan could attend the hearing using Skype for Business or telephone, that he would not be required to attend the full hearing and that access and adjustments to accommodate Dr Conlan’s personal responsibilities could be agreed. On 18 December 2020, Dr Conlan responded to this email and stated that he had *‘no desire to practise’*, that he would be unable to practise in the future and that he was not in a position to deal with any case examiners further.

7. The Tribunal had already determined that Dr Conlan had been appropriately served with notice of these proceedings. Taking into account the evidence before it, including the correspondence and documentation provided by Dr Conlan himself, the Tribunal was satisfied that he understands the case and these proceedings and that the GMC had made it clear that provisions could be put in place to accommodate his responsibilities while facilitating his engagement in these proceedings. The Tribunal was satisfied that Dr Conlan has voluntarily absented himself from the hearing. It concluded that, given Dr Conlan’s clear statement on 16 December 2020 that he would not be attending, an adjournment of this hearing to another date would serve no useful purpose. Considering the public interest in these matters, the Tribunal concluded that it was in public interest to proceed with this hearing today.

8. Therefore, in accordance with Rule 31, the Tribunal has determined to proceed in Dr Conlan’s absence.

SCHEDULE A

Schedule 1

Date	Medication	Duration
20 March 2017	XXX	1 week
24 March 2017	XXX	1 month
18 May 2017	XXX	1 month
22 May 2017	XXX	2 weeks
8 July 2017	XXX	XXX
13 July 2017	XXX XXX	1 month
21 September 2017	XXX	1 week
26 November 2017	XXX XXX	2 weeks

Schedule 2

Date	Medication	Duration
15 April 2017	XXX XXX	1 week
16 November 2017	XXX	2 weeks