

## PUBLIC RECORD

Date: 05/11/2024

Medical Practitioner's name: Dr Paul CROCKER

GMC reference number: 2477282

Primary medical qualification: MB BS 1979 University of London

Type of case: MPT - Preliminary

## Tribunal:

Legally Qualified Chair	Ms Amarjit Sagar
Lay Tribunal Member:	Miss Susan Hurds
Medical Tribunal Member:	Dr Shehleen Khan
Tribunal Clerk:	Mr Michael Murphy

## Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Andrew Colman, Counsel, instructed by the MDDUS
GMC Representative:	Mr Edmund Potts, 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 Preliminary Matters - 05/11/2024

### Preliminary Applications in relation to evidence

1. On behalf of Dr Crocker, Mr Andrew Colman made an application pursuant to Rule 17(2) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that witness evidence should be heard at the impairment stage (Stage Two) of proceedings and for documentary evidence, relating to impairment, to be provided at Stage One of proceedings. Mr Colman also made an application for hearsay evidence contained within the evidence of Ms D to be redacted.

### Submissions

#### On behalf of Dr Crocker

2. Mr Colman stated that in a caution or conviction case there is no allegation of misconduct based on the circumstances of the offence. He said that the only fact alleged is that Dr Crocker accepted a caution for the assault of an emergency worker, Person A, by beating causing injuries, on 11 May 2023 at The Health Centre and that is fully admitted. Mr Colman submitted that there was an issue as to whether the assault was intentional or reckless.
3. Mr Colman stated that when all of the facts in the allegation are admitted, and consequently found proved, the facts stage (Stage One) of the proceedings concludes, and the Tribunal must move on to consider impairment. He submitted that the evidence of the witnesses in this case, about the circumstances surrounding the offence, is not relevant to the facts stage and thereby not strictly admissible at Stage One. He submitted therefore that the rules prevent the admission of evidence at Stage One.
4. Mr Colman submitted that any outstanding factual questions surrounding the offence, which are important to the seriousness of the incident and likelihood of repetition as well as the impact on public confidence, should be decided on the basis of the GMC retaining the burden of proof on the balance of probabilities when considering impairment (Stage Two) to ensure fairness to both sides. He

went on to submit that there is nothing in the rules to prevent the application of the burden and standard of proof to factual, evidential matters on which such judgments can be founded, at the impairment stage. Mr Colman submitted that this would dispense with the need of requiring a Stage One determination and ultimately would save time as a formal determination on facts would not be required.

5. Mr Colman referred the Tribunal to the case of *Dr Richard Rogers v GMC [2008] EWHC 2741 (Admin)* and stated that the authority makes it clear that the court was referring to the facts upon which the allegation was based and that no stage one hearing took place, evidence was admitted at Stage Two. He submitted that the Rules were amended subsequent to this case however the 'facts' referenced in the rules must relate to the facts upon which the allegation is based and not the dictionary definition of 'facts'.
6. Mr Colman submitted that where pertinent factual issues remain in dispute, the Tribunal should decide them on the basis of the GMC retaining the burden of proof on the balance of probabilities at Stage Two. He also stated that whether this is done at Stage One or Stage Two is academic and makes little practical difference to when the witnesses will be required.
7. Mr Colman further submitted that the allegation has not been drafted to allege misconduct by way of the caution. He stated that if the GMC sought factual certainty, then misconduct should be alleged, and this would give rise to a Stage One factual hearing. In absence of such an allegation, Mr Colman argued that any factual findings should be heard at the impairment stage.
8. Mr Colman also responded to the GMC's proposal that a number of matters should be redacted from evidence as they are not relevant to facts but are relevant to impairment. Mr Colman proposed to serve a hearing bundle containing material for both the facts and impairment stages making it clear which parts are only relevant for the latter stages. He submitted that the Tribunal could differentiate that material and would not be prejudiced by receiving information relevant to the impairment stage at an early stage. He submitted

that having one bundle would be more convenient than serving two separate bundles.

9. With regard to redactions, Mr Colman submitted that the GMC's proposed redaction is within the document entitled 'XXX/12'. This is in reference to a paragraph incorporated within Ms D's statement labelled '*Timeline of events*' which has been provided by Dr E. Mr Colman submitted that this is a hearsay summary of the evidence of others and should therefore be excluded.
10. Mr Colman further submitted that The Tribunal should see the documents entitled 'XXX/24' (the certificate in relation to the completion of the anger management course), Dr Crocker's letter of apology and his witness statement at the same time and these need not be severed for consideration of impairment.

On behalf of the GMC

11. Mr Edmund Potts submitted that the oral evidence of Persons A and B should be heard within the confines of the facts stage of proceedings. He stated that even if Dr Crocker were to admit his acceptance of the caution, there would remain facts in dispute which are the substantially differing accounts provided by Dr Crocker and Persons A and B. He submitted that Dr Crocker's state of mind, as to whether his assault of Person A was intentional or reckless, is clearly a factual dispute.
12. Mr Potts submitted that the key question in this case would be in relation to what his intention was behind the conduct for which he received a caution. The mere caution itself does not carry sufficient detail as to Dr Crocker's conduct and without the hearing of evidence, the Tribunal would not be able to make a determination on whether the assault was reckless or intentional. Mr Potts referred to the case of *Rogers*, stating that the Judge agreed that the conduct which had given rise to the caution was relevant.
13. Mr Potts stated that the calling of evidence going to factual issues serves an important purpose to ensure the presentation of parties' respective cases at subsequent stages and that leaving questions of fact unresolved until the impairment stage means that the facts determination will be of little assistance

to the Tribunal as the case proceeds. He stated that the Tribunal would be forced in the course of their deliberations on impairment to make a series of factual findings, and findings as to impairment, simultaneously which runs the risk of inhibiting the cogency of submissions on impairment and complicating the Tribunal's decision-making process unnecessarily.

14. Mr Potts submitted that in a proper interpretation of the Fitness to Practice Rules, the facts giving rise to the caution need to be resolved as they remain in dispute and therefore would require the oral evidence of Persons A and B to be heard at Stage One. Mr Potts added that if all evidence was to be heard at Stage Two, it would be difficult for the Tribunal to assess insight later if the earlier, more fundamental issues of fact were not resolved beforehand and there would be a risk that the decision reached would lack transparency as to how a decision at Stage Two was reached and what evidence had been considered.
15. In relation to misconduct, Mr Potts submitted that an allegation of misconduct was not necessary in this case and differed to the case of *Rogers*, namely because Dr Crocker accepts assaulting an emergency worker and accepts being cautioned for the same. He submitted that if there was a requirement for misconduct to be added to such cases, then this would lead to the abolition of proceeding with Caution cases on their own.
16. Mr Potts further submitted that the calling of witnesses at Stage One would in no way prejudice Dr Crocker.
17. With regard to redactions, Mr Potts echoed his written submission which stated that usual practice is for facts and impairment documents to be kept separate in fairness. He submitted that there was no argument for serving documents relevant to impairment at the facts stage for the sake of convenience.
18. Mr Potts went on to submit that the notes in the document entitled 'XXX/12' were prepared by a member of staff acting in the course of their duties and have never been challenged as being inaccurate. He therefore invited the Tribunal to admit these notes as they are fair and relevant to the case.

19. Mr Potts re-iterated that the witnesses in this case should be called at Stage One, including not only Witnesses A and B, but also Ms D and Ms C.

### Documentary evidence

20. The Tribunal had regard to the documentary evidence provided which included but was not limited to:

- Serious Incident Report and witness account of Ms C, dated 11 May 2023;
- Police Statement of Ms C, dated 18 May 2023;
- Witness statement of Ms C, dated 13 May 2024;
- Ms A's Police Statement, dated 17 May 2023;
- Handwritten letter from Dr Crocker to Ms A, dated 21 May 2023;
- Witness statement of Ms A, dated 13 June 2024;
- Ms B's Police Statement, dated 18 May 2023;
- Witness statement of Ms B, dated 13 June 2024;
- Management Referral Management Advice Form – XXX, dated 13 June 2023;
- Witness Statement of Ms D, dated 14 May 2024;
- Witness statement of Dr Crocker, dated 29 August 2024;
- Certificate of Completion – The Anger Management Hub (Strength Based – Premium Course).

### The Tribunal's approach

21. Throughout its deliberations, the Tribunal considered all the submissions made by the parties, as well as the documents provided. It had regard to Rule 17(2) which states:

*'The order of proceedings at the hearing before a Medical Practitioners Tribunal shall be as follows*

*(a) the Medical Practitioners Tribunal shall hear and determine any preliminary legal arguments;*

*(b) the Chair of the Medical Practitioners Tribunal shall—*

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- (i) where the practitioner is present, require the practitioner to confirm his name and GMC Reference Number,
- (ii) where the practitioner is not present, require the representative for the GMC to confirm the practitioner's name and GMC Reference Number;

(c) the Chair of the Medical Practitioners Tribunal shall enquire whether the representative for the GMC wishes to amend the particulars of the allegation, and if that representative so wishes, the Medical Practitioners Tribunal shall consider whether to amend the particulars under paragraph (6);

(d) the Chair of the Medical Practitioners Tribunal shall enquire whether the practitioner wishes to make any admissions;

(e) where facts have been admitted, the Chair of the Medical Practitioners Tribunal shall announce that such facts have been found proved;

(f) where facts remain in dispute, the representative for the GMC shall open the case for the General Council and may adduce evidence and call witnesses in support of it;

(g) the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld;

(h) the practitioner may open his case and may adduce evidence and call witnesses in support of it;

(i) the Medical Practitioners Tribunal shall hear any submissions from the parties as to the facts to be found proven by the Medical Practitioners

*Tribunal in the light of the evidence adduced pursuant to sub-paragraphs (f) and (h);*

*(j) the Medical Practitioners Tribunal shall consider and announce its findings of fact and shall give its reasons for those findings;*

*(k) the Medical Practitioners Tribunal shall receive further evidence and hear any further submissions from the parties as to whether, on the basis of any facts found proved, the practitioner's fitness to practise is impaired;*

*(l) the Medical Practitioners Tribunal shall consider and announce its finding on the question of whether the fitness to practise of the practitioner is impaired, and shall give its reasons for that decision...'*

22. The Tribunal also bore in mind Rule 34(1) which states:

*'The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.'*

23. The Tribunal bore in mind the caselaw cited, as agreed between the parties. It also accepted and took into account the legal advice provided by the Legally Qualified Chair, which was unchallenged by the parties.

### **The Tribunal's decision**

24. In its deliberations, the Tribunal first considered whether the witness evidence should be heard at the facts stage or at impairment stage. It considered there to be no prejudice to any party either way but took the view that as there is a dispute around the facts that led to the caution, it would be sensible for the substantive Tribunal to resolve any issues relating to the facts before moving onto impairment.

25. The Tribunal interpreted Rule 17(2)(e) and 17(2)(f) as that the facts in this case are the detailed facts which gave rise to Dr Crocker's caution, as opposed to



findings of facts relating to the Allegation. Notwithstanding, that the facts in the Allegation may be admitted by Dr Crocker at the substantive hearing, the facts that gave rise to the caution are pertinent to the subsequent consideration at Stage Two of proceedings, which are clearly disputed.

26. As the basis of Dr Crocker's intention for the assault remains in dispute, the Tribunal determined that this matter should be properly considered at Stage One of proceedings to ensure clarity as to what matters need to be taken into Stage Two.
27. The Tribunal took the view that combing the documentary evidence for facts stage and impairment stage could make things more difficult for the substantive Tribunal which would undermine the nature of preliminary hearings, which is to assist with matters that could otherwise cause delays at a substantive hearing .
28. In all the circumstances, the Tribunal considered that any evidence relating to Stage Two should not be presented at Stage One as it has already determined to hear witness evidence as to fact at Stage One. It took the view that material relevant to impairment would not assist with any deliberation on facts and as such should be redacted for Stage One.
29. With regard to the document entitled 'XXX/24', the Tribunal noted that this included a certificate for undertaking anger management which was sent to Wiltshire Police. The Tribunal took the view that this would not go toward any factual findings and as such should be considered at Stage Two.
30. With regard to the document entitled 'XXX/12', the Tribunal noted that this included hearsay evidence as to the events which led to Dr Crocker's caution. The Tribunal bore in mind that there had been a number of different accounts provided by Dr Crocker throughout the investigation conducted by NHS England and noted that 'XXX/12' addressed one of these accounts. It noted that Dr E, who initially produced the '*Timeline of events*' entry, was present for the meeting on 31 May and sent this to Ms D the very same day. Furthermore, it noted that when the meeting notes were sent to Dr Crocker on 5 June 2023, Dr Crocker made no comments on those notes and no evidence as to his response to those

notes has been put before the Tribunal. The Tribunal therefore determined that it was fair and relevant to include document 'XXX/12' at Stage One of proceedings.

31. The Tribunal therefore refused Mr Colman's application for witness evidence to be given at Stage Two of proceedings and concluded that factual evidence should be heard at Stage One. It determined that the hearsay evidence of Dr E contained within Ms D's exhibits should be admitted into evidence. Furthermore, the Tribunal determined that documentary evidence relating to impairment ought to properly be submitted to the substantive Tribunal at the commencement at Stage Two of proceedings.