

Dates: 07/02/2019

Medical Practitioner's name: Dr Rebecca May KLEIN also known as Dr Rebecca MAWSON

GMC reference number: 6166937

Primary medical qualification: MB BS 2008 University of Newcastle upon Tyne

Type of case

Review - Misconduct

Outcome on impairment

Impaired

Summary of outcome

Suspension, 12 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Miss Tarryn McCaffrey
Lay Tribunal Member:	Mr Philip Geering
Medical Tribunal Member:	Dr Andrew Hoyle

Tribunal Clerk:	Ms D Montgomery
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Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	n/a
GMC Representative:	Mr Peter Warne, Counsel

Attendance of Press / Public

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

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Determination on Service and Proceeding in Absence - 07/02/2019

1. Dr Klein is neither present nor legally represented at this hearing.
2. Mr Peter Warne, Counsel on behalf of the General Medical Council (GMC), submitted that Notice of this hearing had been properly served on Dr Klein and he invited the Tribunal to proceed in her absence.
3. Mr Warne provided the Tribunal with a copy of a Service bundle which included a copy of the GMC Information letter and bundle, dated 20 December 2018, sent to Dr Klein's registered address by Special Delivery. The Tribunal has been provided with a copy of a Royal Mail Track and Trace receipt which confirms that the letter was signed for on 22 December 2018'. The Tribunal has also been provided with confirmation that the GMC Information letter and bundle was emailed to Dr Klein on 20 December 2018. It has been provided with an email delivery receipt, dated 6 February 2019.
4. Mr Warne provided the Tribunal with a copy of the Medical Practitioners Tribunal Service (MPTS) Notice of Hearing (NOH), dated 8 January 2019, sent to Dr Klein's registered address by Special Delivery. A Royal Mail Track and Trace receipt confirms that the letter was signed for on 9 January 2019.
5. Having considered the information in relation to service, the Tribunal was satisfied that Notice of this hearing had been served on Dr Klein in accordance with Rule 20 and Rule 40 of the GMC (Fitness to Practise) Rules 2004, and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.
6. The Tribunal then considered whether it would be appropriate to proceed with this hearing in Dr Klein'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 the utmost care and caution, balancing the interests of the doctor with the wider public interest.
7. Mr Warne provided the Tribunal with copies of GMC telephone notes, dated 11 January 2019 and 30 January 2019, which record conversations between Dr Klein and a GMC paralegal. The telephone note dated 11 January 2019 records that Dr Klein confirmed that she had received the GMC Information letter dated 20 December 2018. The telephone note dated 30 January 2019 records that, when asked whether she would be attending the hearing, Dr Klein responded by saying 'I don't know yet'. When asked whether she could inform the GMC by early next week whether she was planning on attending Dr Klein responded by saying 'urm...I dunno...I'll try'. A subsequent attempt to contact Dr Klein by telephone on 5 February 2019 was unsuccessful.

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8. Mr Warne submitted that the evidence shows that Dr Klein is aware of the proceedings. He submitted that Dr Klein has given no indication that she is unable to attend the hearing today, nor has she requested an adjournment of the hearing to enable her to attend on a later date. Mr Warne submitted that the case should be dealt with expeditiously.

9. In deciding whether to proceed in Dr Klein's absence, the Tribunal noted that Dr Klein has given no indication that she is unable to attend the hearing today, for any reason. She has also not asked for an adjournment of the hearing to enable her to attend on a later date. There is no indication that granting an adjournment would result in Dr Klein's future attendance.

10. Having considered all the information before it, the Tribunal was satisfied that Dr Klein has voluntarily waived her right to be present and/or represented and that it was appropriate to proceed with the hearing in her absence. The Tribunal notes that Dr Klein's current suspension is due to expire on 1 March 2019 and it considered that it would not be appropriate for it to be allowed to lapse without being reviewed. In the circumstances, the Tribunal was satisfied that it was in the public interest that the hearing proceed as scheduled.

11. In accordance with Rule 31, the Tribunal determined to proceed in Dr Klein's absence.

Determination on Impairment - 07/02/2019

1. The Tribunal has been informed of the background to Dr Klein's case which was considered by a Medical Practitioners Tribunal in March 2018 (2018 Tribunal).

2. The matters before the 2018 Tribunal related to Dr Klein's work as a Forensic Medical Examiner (FME). At the time of the alleged events Dr Klein was employed by Serco and was rostered as the on call FME on 29 November 2014 and on 6 and 7 December 2014.

3. The 2018 Tribunal found that, on 29 November 2014, Dr Klein failed to examine Patient A, a suspected victim of stranger rape, when requested to do so by the West Yorkshire Police. In addition, the 2018 Tribunal found that, on one or more occasions on 6 and 7 December 2014, Dr Klein failed to examine Patient C, a suspected victim of rape, when requested to do so. The 2018 Tribunal found that as a consequence of those failures, Dr Klein failed to undertake the forensic, medical and therapeutic responsibilities of an FME.

4. The 2018 Tribunal also found that Dr Klein failed to complete and/or return the police statements requested of her following her examinations of suspected victims on various dates between 20 October 2014 and 3 November 2014.

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5. In respect of patients A and C, the 2018 Tribunal accepted the evidence of the GMC expert that patients A and C had been seriously let down by Dr Klein's failure to examine and assess them. It concluded that Dr Klein had not followed the tenets of Good medical practice (2013) and did not make the care of her patients her first concern.
6. In respect of Dr Klein's failure to provide witness statements when requested, the Tribunal concluded that it had the potential to undermine the criminal justice system, possibly impacting on both alleged victims and defendants alike.
7. The 2018 Tribunal determined that the proven facts, both individually and cumulatively, amounted to misconduct that was serious.
8. In determining whether Dr Klein's fitness to practise was impaired by reason of her misconduct, the 2018 Tribunal took into account assertions made by Dr Klein regarding a lack of training, mentoring and support from her employer Serco. Dr Klein had also referred to her personal circumstances and other matters at the time of the incidents.
9. The 2018 Tribunal concluded that, despite Dr Klein's assertions, her failure to examine and consequently assess Patients A and C did not arise from any deficiency in the training and equipment provided to her but was rather a deliberate choice on her part. It considered that the proven facts amounted to a repeated pattern of failures affecting very vulnerable patients. The Tribunal noted that the explanations that Dr Klein had provided to justify her failures were inconsistent and had evolved significantly. The 2018 Tribunal was concerned that this demonstrated a persistent lack of insight on Dr Klein's part.
10. The 2018 Tribunal had regard to correspondence, dated 26 March 2018, from Dr Klein, who did not attend the 2018 hearing, in which she asserted that she had taken steps to address gaps in her knowledge that would allow her to mitigate risks. These included mentorship, membership of the Faculty of Forensic and Legal Medicine and attendance on courses that she identified as essential for her practice. However, the 2018 Tribunal noted that it had not been presented with any objective evidence to demonstrate any steps taken by Dr Klein to remedy the deficiencies identified in her practice, despite the significant period of time that had elapsed since the incidents. It also noted that, save for limited concessions, the recognition of failures by Dr Klein had been provided comparatively late in the proceedings.
11. The 2018 Tribunal concluded that Dr Klein's misconduct was not easily remediable and had not in fact been remedied. It also stated that it could not be confident that the failures were 'highly unlikely' to be repeated.

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12. The 2018 Tribunal found that Dr Klein’s fitness to practise was impaired by reason of her misconduct and it determined to suspend her registration for a period of 10 months.

13. In determining the length of Dr Klein’s suspension, the 2018 Tribunal considered that the period of suspension should be of sufficient length not only to uphold the overarching statutory objective, but also to mark the seriousness of the Tribunal’s findings and to allow Dr Klein adequate time to begin the process of developing insight and taking steps towards remediation. Although it was initially minded to impose the maximum period of suspension permissible, the 2018 Tribunal took into account the fact that Dr Klein had previously been subject to an interim order of suspension for six months.

14. Dr Klein was advised that her case would be reviewed and that the review Tribunal may be assisted by the following:

- evidence of the measures that Dr Klein had taken during the period of suspension to ensure her continued professional development, including evidence that she had kept her medical skills and knowledge up to date
- evidence that Dr Klein had remediated the failings identified by the 2018 Tribunal and the underlying issues that had gone unaddressed
- testimonial evidence from persons of good standing regarding Dr Klein’s conduct
- evidence of Dr Klein’s reflection on her misconduct, and any insight she had developed, for example courses/learning undertaken, a reflective diary
- any other information that Dr Klein considered would assist the Tribunal.

15. Today this Tribunal has reviewed the progress that Dr Klein has made since her 2018 hearing and it has considered whether her fitness to practise remains impaired by reason of her misconduct. It has had regard to all the evidence presented to it, which was limited to the following:

- a GMC telephone note, dated 27 April 2018, which recorded a conversation from Ms D, a former friend of Dr Klein’s, regarding the redirection of Dr Klein’s post
- letters from the GMC to Dr Klein, dated 18 October 2018, 13 November 2018 and 27 November 2018, requesting the information that the 2018 Tribunal recommended would assist a review Tribunal.

Submissions

16. On behalf of the GMC, Mr Warne submitted that Dr Klein’s fitness to practise remains impaired. Mr Warne stated that Dr Klein has not engaged with the process despite the fact that the GMC has made a number of attempts to engage her. Mr Warne submitted that Dr Klein has failed to provide the information requested by the

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2018 Tribunal. He reminded the Tribunal that the onus is on Dr Klein to demonstrate that she is fit to practise.

17. Mr Warne referred the Tribunal to paragraph 164 of the Sanctions Guidance which states, under the heading 'Review hearings':

'164 ...A review hearing is therefore likely to be necessary, so that the tribunal can consider whether the doctor has shown all of the following (by producing objective evidence):

- 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.'

The Tribunal's decision on impairment

18. In deciding whether Dr Klein's fitness to practise is impaired, the Tribunal has exercised its own judgement. It has borne in mind the statutory overarching objective which is to protect the public. This includes: to protect and promote the health, safety and wellbeing 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 the profession.

19. Since her 2018 hearing, Dr Klein has failed to engage with the GMC and, as a result, she has not provided any of the information that the 2018 Tribunal indicated may assist a reviewing Tribunal. There is therefore no evidence before the Tribunal in relation to her insight or remediation or how she has kept her skills and knowledge up to date during the period of suspension. The Tribunal reminded itself that the onus is on Dr Klein to demonstrate that she is fit to practise and she has not done so.

20. The Tribunal noted that the 2018 Tribunal had found that vulnerable patients were seriously let down. These were separate failings over a short period of time which had the potential to impact on criminal justice. The Tribunal remained mindful of Dr Klein's serious misconduct and whilst that misconduct may be remediable Dr Klein has produced no evidence that she has developed her insight, fully appreciates the gravity of her misconduct or has attempted any remediation. Therefore the Tribunal concludes that there remains a risk of repetition and a risk of harm to patients. In these circumstances the Tribunal also concludes that public confidence

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and professional standards would be undermined were no finding of impairment to be made at this time.

21. In the light of the above, the Tribunal has concluded that Dr Klein's fitness to practise remains impaired by reason of her misconduct.

Determination on Sanction - 07/02/2019

1. Having determined that Dr Klein's fitness to practise remains impaired by reason of misconduct, the Tribunal now has to decide on the appropriate sanction, if any, to impose.

Submissions

2. On behalf of the GMC, Mr Warne submitted that the appropriate sanction in this case was one of suspension. Mr Warne submitted that a further period of suspension would allow Dr Klein another opportunity to remediate and demonstrate to a future Tribunal that her skills are up to date.

The Tribunal's Determination on Sanction

3. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken account of the Sanctions Guidance (February 2018). It has borne in mind that although sanctions are not imposed to punish or discipline doctors, they may have a punitive effect.

4. Throughout its deliberations, the Tribunal has had regard to the principle of proportionality and has weighed the interests of the public with Dr Klein's interests.

5. The Tribunal considered each sanction in ascending order of seriousness, starting with the least restrictive.

6. The Tribunal first considered whether it would be sufficient to conclude Dr Klein's case with no action. It determined that taking no action on Dr Klein's registration would be wholly inappropriate given the risk to patient safety that it has already identified. The Tribunal also noted that there were no exceptional circumstances in this case.

7. The Tribunal then considered whether it would be sufficient to impose conditions on Dr Klein's registration. It has borne in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. The Tribunal concluded that Dr Klein's lack of engagement, and the absence of evidence relating to her insight, meant that it could not be satisfied that Dr Klein would

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comply with conditions or that conditions would be sufficient to manage the risks identified.

8. The Tribunal next considered whether it would be sufficient to suspend Dr Klein's registration.

9. The Tribunal accepted that there is no evidence before it in relation to Dr Klein's insight or remediation, despite the fact that the 2018 Tribunal considered that a period of 10 months suspension would allow her sufficient time to provide this. However, the Tribunal considered that Dr Klein's recent telephone conversations with the GMC indicate that she may be willing to engage going forward. The Tribunal had in mind the telephone conversation that Dr Klein had on 30 January 2019 with a GMC representative in which she said that she did not yet know if she would attend the hearing. The Tribunal took this as a sign that she might engage in the future. The Tribunal was satisfied that Dr Klein's original misconduct is remediable and it wished to give her a further opportunity to engage so that she can demonstrate to a future Tribunal that she is fit to practise.

10. Having considered the particular circumstances of this case, the Tribunal was satisfied that a further period of suspension is sufficient to protect the public and is the appropriate and proportionate sanction at this time. The Tribunal considered that Dr Klein's actions to date do not yet amount to a fundamental incompatibility with continued registration. However, the Tribunal noted that further non-engagement on Dr Klein's part might lead a future Tribunal to conclude that she was unable or unwilling to engage and that erasure might then be viewed as the appropriate sanction.

11. In deciding on the length of the period of suspension, the Tribunal considered that it was necessary to impose the maximum period of suspension to allow Dr Klein sufficient time to gather evidence that would demonstrate to a future Tribunal that she has fully developed her insight and remediated. The Tribunal accepted that this is longer than the original period of suspension imposed but Dr Klein's lack of engagement to date makes it necessary.

12. The Tribunal determined to direct a review of Dr Klein's case. The Tribunal wished to emphasise that, at the next review hearing, the onus will again be on Dr Klein to demonstrate how she has developed her insight, remediated her misconduct and maintained her knowledge and medical skills. The reviewing Tribunal may therefore be assisted by the following:

- evidence that she has remediated the failings identified by the 2018 Tribunal and the underlying issues that have gone unaddressed
- a written reflective piece that demonstrates that Dr Klein understands how her misconduct came about, the gravity of her misconduct, its impact on others and how she will ensure that there is no repetition

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- evidence of any opportunity she has had to reflect with a mentor
- testimonial evidence from persons of good standing regarding Dr Klein's conduct
- evidence of relevant measures that Dr Klein has taken during the period of suspension to ensure her continued professional development, including evidence that she has kept her medical skills and knowledge up to date
- any other information that Dr Klein considered would assist the Tribunal.

13. The effect of the foregoing direction is that Dr Klein's current order of suspension will be extended for 12 months. Dr Klein has 28 days from the date on which written notice of this decision is deemed to have been served upon her to appeal the decision. If Dr Klein decides to appeal against this decision the suspension imposed on her registration by the 2018 Tribunal will remain in force until that appeal is determined.

14. That concludes this hearing.

Confirmed

Date 07 February 2019

Ms Tarryn McCaffrey, Chair