

PUBLIC RECORD

Dates: 07/12/2020 - 10/12/2020

Medical Practitioner's name: Dr Robert KEANE
GMC reference number: 3145504
Primary medical qualification: MB BCh 1985 National University of Ireland

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

Summary of outcome

Suspension, 12 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Ian Comfort
Medical Tribunal Members:	Professor Irving Benjamin, Dr Neil Shastri-Hurst

Tribunal Clerk:	Mr Andrew Ormsby
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Attendance and Representation:

Medical Practitioner:	Not present and not represented
GMC Representative:	Ms Georgina Goring, 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 - 08/12/2020

Background

1. Dr Keane qualified in 1985 at University College Cork and prior to the events which are the subject of the hearing Dr Keane had worked as a GP. From 1998 to 2016 he was a full time GP and partner at Old Catton Surgery in Norwich. In 2016 he left that practice and since then, he had been working as a Locum GP. At the time of the events Dr Keane was practising as a Locum GP.
2. The allegation that has led to Dr Keane's hearing can be summarised as a failure to engage with an NHS England ('NHSE') investigation following a complaint. It is also alleged that, in the course of the NHSE investigation into the concerns raised, Dr Keane exhibited unprofessional behaviour towards colleagues who were engaged in the NHSE investigation. It is further alleged that Dr Keane had failed to comply with the conditions that had been placed upon his registration as part of the NHSE investigation.
3. The initial concerns were raised via email on 11 May 2018 to NHSE by a GP partner at Lakenheath Surgery ('the Surgery') after Dr Keane had worked at the Surgery as a Locum for one day on 16 April 2018. The concerns were initially discussed at The Professional Performance and Practice Review Group ('PPPRG') on 16 May 2018 and they asked for details of the concern to be shared with Dr Keane. The PPPRG also requested Dr Keane's factual account of the concerns raised in the complaint. It is alleged that the PPPRG did not receive this factual account despite additional email communication with Assistant Medical Director, Dr C. The case was subsequently referred to The Performance Advisory Group ('PAG').
4. The case was discussed by the PAG on 27 June 2018 where it was agreed that further attempts would be made to contact Dr Keane. It was alleged that Dr B made further attempts to contact Dr Keane by telephone and email to suggest a face to face meeting to discuss the concerns. It was further alleged that Dr Keane did not respond to Dr B and

subsequently responded to the case manager on 28 June 2018 to say that he would be *'happy to appear on national media to discuss the situation with Dr B'*. It is alleged that Dr Keane engaged in unprofessional correspondence towards colleagues involved in the investigation and then subsequently breached the conditions that had been imposed by NHSE.

5. The initial concerns were raised with the GMC on 24 October 2018 by NHSE on the recommendation of the GMC Employer Liaison Adviser.

The Outcome of Applications Made during the Facts Stage

6. The Tribunal determined that notice of this hearing had been served, pursuant to Rules 15 and 40 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). It subsequently determined to proceed in the absence of Dr Keane. The Tribunal's full decision on the application is included at Annex A.

The Allegation and the Doctor's Response

7. The Allegation made against Dr Keane is as follows:

'That being registered under the Medical Act 1983 (as amended):

Failure to engage with an investigation

1. Following a complaint made to NHS England ('NHSE') by Dr A on 11 May 2018 you failed to cooperate with an investigation by NHSE in that you did not:

To be determined

- a. complete and return a reflection and questionnaire template ('the Template'), having been requested to do so by NHSE on 23 May 2018;

To be determined

- b. contact or meet with a Medical Adviser at NHSE, Dr B, having been requested to do so by NHSE on 28 June 2018; **To be determined**

- c. confirm whether you would be attending an oral hearing of the performers list decision panel ('PLDP') on 15 October 2018; **To be determined**

d. attend the hearing of the PLDP on 15 October 2018.

To be determined

2. Following a referral to the GMC on 24 October 2018 you failed to complete and return a work details form having been requested to do so by the GMC on:

a. 20 November 2018; **To be determined**

b. 27 November 2018; **To be determined**

c. 4 December 2018. **To be determined**

Unprofessional behaviour towards colleagues

3. On 23 May 2018 you emailed Dr C and described Dr A's complaint as 'just a vindictive pile of female crap'. **To be determined**

4. On 24 May 2018 you responded inappropriately to an email from Dr C asking you to return the Template, in that you stated 'I was wondering if you're [sic] secretary could ring BBC newsdesk ... to arrange an interview with me, [Dr C] and my responsible officer [Dr D] to discuss the issues raised. If you chose not to cooperate I shall make the arrangements myself.' **To be determined**

5. On 28 June 2018 you responded inappropriately to an email from Ms E in that you stated, '... under no circumstances am I discussing anything with [Dr B]. If you are so confident of your ground then send it to the GMC. I am happy to appear on national media to discuss the situation with [Dr B]'. **To be determined**

6. On 24 September 2018 you responded inappropriately to an email from Ms E asking you whether you or a representative would attend the PLDP hearing on 15 October 2018, in that you stated 'I look forward to seeing you in a real court'. **To be determined**

Breach of PLDP conditions

7. You breached conditions (as set out in Schedule 1) imposed on you by the PLDP by letter dated 15 November 2018, in that you failed to:

a. undergo an assessment of behavioural concerns as required by condition 5, in that you failed to complete and return the referral form sent to you on 30 November 2018; **To be determined**

b. provide your written reflections as required by condition 6;
To be determined

c. support an NHSE audit of your patient records as required by condition 7, in that you failed to provide details of where you had worked between 1 January and 31 July 2018, having been requested to do so by NHSE on 5 December 2018. **To be determined**

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct.’ **To be determined**

8. 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:

- Witness statement of Dr C, Assistant Medical Director of NHS England East, dated 22 July 2020;
- Witness statement of Dr B, GP and a Medical Adviser for NHS England, dated 3 July 2020;
- Witness statement of Ms E, project co-ordinator working in the Professional Standards Team, which is part of the Medical Directorate, NHSE and NHS Improvement – East of England, dated 8 August 2020;
- Witness statement of Mr I, GMC Investigation Officer, dated 17 March 2020;

9. Dr Keane did not provide a witness statement. The Tribunal noted that Dr Keane had stated in an email, dated 23 November 2018, that he would not be responding to the GMC.

Documentary Evidence

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

- Email exchange between Dr Keane and Dr C regarding return of the reflection questionnaire, dated 23 May 2018 and 24 May 2018;
- Emails from Dr B to Dr Keane requesting a meeting, dated 2 July 2018 and 3 July 2018;
- PLDP hearing pack, dated 9 November 2018;
- Email from Ms E to Dr Keane attaching reflection questionnaire and his reply, dated 23 May 2018;
- Emails from Ms E to Dr Keane regarding PAG meeting, dated 28 June 2018;
- Emails from Ms E to Dr Keane regarding PDLP case, various dates;
- Email from Ms E to Dr Keane asking for the return of referral form, dated 14 January 2019;
- Email from Practitioner Performance Advice Service ('PPAS') to Dr Keane asking for the return of the referral form, dated 19 December 2018;
- Various emails from Ms E to Dr Keane about PLDP hearings and decisions, various dates between 30 January 2019 and 9 May 2019;
- Email correspondence between the GMC and Dr Keane regarding 'Work Disclosure Form', dated 20 November 2018, 23 November 2018, 26 November 2018 and 27 November 2018;
- Minutes of the oral PDLP Hearing, dated 9 November 2018.

The Tribunal's Approach

- 11.** 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 Keane 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

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

Failure to engage with an investigation

Paragraph 1

13. The Tribunal first considered the stem of paragraph and whether there was an obligation on Dr Keane to cooperate with the NHSE investigation of 11 May 2018 following Dr A's complaint.

14. The Tribunal considered Dr C's email to Dr Keane:

*'From: [Dr C] (NHS ENGLAND)
Sent: 23 May 2018 15:36
To: KEANE, Robert (OLD CATTON MEDICAL PRACTICE)
Cc: [Ms E] (NHS ENGLAND); [Dr D] (NHS ENGLAND)
Subject: RE: Letter, questionnaire and reflection
Dear Dr Keane,*

The below e-mail has been forwarded to me. Unfortunately 'feel free to forward to the GMC' is not an acceptable response to the request from NHS England for further information.

The legislative framework in England, as set out in the National Health Service (Performers List) (England) clearly sets out the legal framework for managing medical performers who undertake NHS primary care services. Also there is the Medical Profession (Responsible Officers) Regulations 2010. Your Responsible Officer is [Dr D]. These acts convey powers to [Dr D] to allow him to investigate concerns that are raised about performer's connect to him and to impose conditions as seen fit by the Performer's List Decision panel.

It is for this reason you have been contacted by a NHS England representative to complete a reflection questionnaire following a concern being raised to us. The concern is explained within the letter which was sent to you by email on the 23rd May.

We would therefore be most grateful if you would completed the questionnaire. This will enable the case to be fully discussed, including your side of the story, at the Multi-disciplinary group. If you fail to make representation then the case will still be discussed.

If you would like to discuss this further then please feel free to contact me by return of e-mail. I have also copied in your responsible officer, [Dr D] so he is aware. If you wish to contact him he can be contacted on ...@nhs.net.

Yours Sincerely,

[Dr C]'

15. The Tribunal determined that, while there was no explicitly stated obligation, there was an implicit obligation and requirement for Dr Keane to engage in the process. The Tribunal, therefore, concluded that Dr Keane did indeed fail to cooperate with an investigation by NHSE following a complaint made to NHSE by Dr A on 11 May 2018.

Paragraph 1 (a)

16. The Tribunal considered the above email that had been sent by Dr C to Dr Keane, dated 23 May 2018 15:36. The Tribunal considered this email as evidence that Dr Keane was explicitly asked to complete a reflection and Template on 23 May 2018. No evidence was provided by Dr Keane to prove that he provided this questionnaire and Template. Accordingly, the Tribunal determined that paragraph 1 (a) was found proved on the balance of probabilities.

Paragraph 1 (b)

17. The Tribunal noted the letter written by Mr F, PAG Chair, NHSE, NHS Midlands and East, dated 28 June 2018 and sent by email to Dr Keane. The Tribunal noted the that the letter stated:

'28th June 2018

Dear Dr Keane

The Midlands and East (East) Team Performance Advisory Group (PAG) manages the identification and analysis of performance concerns, the PAG reviews new and ongoing cases.

The PAG, at its meeting on the 27th June 2018, has reviewed the concerns raised to us by Lakenheath Surgery where you have previously worked as a locum.

The PAG agreed that further action is required to be undertaken locally by the Midlands and East (East) Team, as outlined below:

- *The PAG require you to discuss the case with an NHS England Medical Advisor, therefore [Dr B] will contact you to arrange a suitable time to have the discussion.*

The PAG will review the outcome of the conversation with the Medical Advisor and will inform you if any further actions are required and/or your case is closed by the PAG.

...'

- 18.** The Tribunal noted that the letter from Mr F, dated 28 June 2018, proved, on balance, that Dr Keane had been requested to contact or meet with a Medical Advisor at NHSE, Dr B, on 28 June 2018. The Tribunal then considered whether Dr Keane had subsequently contacted Dr B.
- 19.** The Tribunal had been provided with email correspondence that Dr B had sent to Dr Keane in order to facilitate the proposed discussion that Dr Keane had been informed of in the letter from NHSE dated 28 June 2018:

'From: [Dr B] (NHS IPSWICH AND EAST SUFFOLK CCG)

Sent: 02 July 2018 18:46

To: KEANE, Robert (OLD CATTON MEDICAL PRACTICE)

Cc: [Ms E] (NHS ENGLAND); [Mr F], (NHS ENGLAND)

Subject: Dates for a meeting

Dear Dr Keane,

My name is [Dr B]. I am a GP, and Medical Adviser for NHSE (E).

You received an e-mail from [Mr F], the chair of the NHS Midlands and East (East) PAG on 28.6.2018, asking if you could meet me to discuss two cases that were raised at the last PAG meeting.

I tried to contact you by both landline and mobile telephone without success on 29.6.2018, and again today, 2.7.2018. I left a message on your mobile phone with a contact number to reach me this afternoon at my surgery, but did not hear from you.

Tomorrow morning I will be available on. I appreciate that getting in contact by phone can be difficult to fit around our commitments, so you would also be welcome to e-mail me so we may arrange a time and date to meet,

Yours sincerely,

[Dr B]'

'From: [Dr B] (NHS IPSWICH AND EAST SUFFOLK CCG)

Sent: 03 July 2018 15:12

To: KEANE, Robert (OLD CATTON MEDICAL PRACTICE)

Cc: [Ms E] (NHS ENGLAND); Mr F (NHS ENGLAND)

Subject: RE: Dates for a meeting

Dear Dr Keane,

Further to my e-mail yesterday, I did not hear from you today either by telephone or e-mail. I tried your mobile again without success this afternoon.

I realise it may be possible that you have not picked up the messages yet, in which case please e-mail me when you do.

For now I am going to let NHSE know that we have been unable to make contact each other to arrange a meeting and will not make any further calls for the moment,

Yours sincerely,

[Dr B]'

20. The Tribunal noted the above email correspondence from Dr B dated *02 July 2018 18:46* and *03 July 2018 15:12* and determined that this supported the allegation that Dr Keane did not contact or meet Dr B, having been requested to do so by NHSE on 28 June 2018. Accordingly, and in the absence of any evidence to the contrary, the Tribunal determined that paragraph 1 (b) was found proved.

Paragraph 1 (c) and Paragraph1 (d)

21. When considering the allegation that Dr Keane did not confirm whether he would be attending an oral hearing of the PDLP on 15 October 2018 the Tribunal noted paragraph 12 of Ms E's statement dated 8 April 2020 which stated:

'Dr Keane did not attend the first oral hearing of the PLDP which had been

arranged for 15 October 2018 and did not send his apologies. Following his suspension by the PLDP, Dr Keane then requested an oral hearing which was scheduled for 9 November 2018.'

22. The Tribunal determined that, in the absence of any evidence to the contrary, this statement proved that, on the balance of probabilities, Dr Keane did not confirm whether he would be attending the oral hearing of the PDLP on 15 October and did not attend the hearing of the said PDLP.
23. Accordingly, the Tribunal found paragraph 1 (c) and paragraph 1 (d) to be proved.

Paragraph 2

24. The Tribunal considered the witness statement of Mr I in which he states:

'5. Looking at Siebel, I can see that on 20 November 2018 I wrote to Dr Keane at his registered address, as part of our doctor disclosure process, to inform him that we had received some information from NHS England - Midlands and East, and that the GMC would be opening an investigation. Also enclosed with the letter was a WDF, and the letter requested that Dr Keane return the WDF by 27 November 2018. I attach a copy of the letter as Exhibit [XXX]1.'

'8. On 27 November 2018, I sent the first chaser to Dr Keane to his registered address and to his email address. In this letter I reminded Dr Keane of his professional obligation to complete and return the WDF and asked him to return the form by 4 December 2018. I attach a copy of the letter at Exhibit [XXX]4.'

'9. The second chaser was sent on 4 December 2018 by Royal Mail Special Delivery. A copy of the letter is attached as Exhibit [XXX]5.'

'10. I have checked Siebel and I can see that to date, the GMC has still not received a completed WDF from Dr Keane.'

25. The Tribunal also considered exhibits XXX1, XXX4 and XXX5 referred to in Mr I's statement.

26. The Tribunal noted that the letters to Dr Keane, dated 27 November 2018 and 4 December 2018, made it clear that: *‘to complete our review I require you to complete the form and I have a duty to inform you that you have a professional obligation to send this information to me’.*
27. The Tribunal determined that in the absence of any evidence to the contrary the statement and exhibits proved that, on the balance of probabilities, Dr Keane failed to complete and return a Work Details Form having been requested to do so by the GMC.

Unprofessional behaviour towards colleagues

Paragraph 3

28. The Tribunal considered Dr Keane’s email, dated 23 May 2018, provided as evidence in a word document which stated:

‘23 May 2018 Email from Dr Keane to [Dr C]

Dear dr [Dr C] It is just a vindictive pile of female crap as I have just informed dr [Dr A] herself! dr Robert kean

Sent from my iPhone’

29. The Tribunal also noted the minutes of the oral PDLP hearing, dated 9 November 2018, at which Dr Keane, when questioned, admitted having sent an email correspondence in which he described Dr A’s complaint as ‘just a vindictive pile of female crap’:

‘Going back to your failure to engage, p5 under D. I was wondering if you could explain your comment about [Dr A]. You wrote it’s “just a vindictive pile of female crap”. Could you explain that sentence?’

RK. Well, you know, 99% of the complaints in the NHS come from females and I’ve been doing my job for 33 years and yes, I mean. It’s not my finest hour but that’s my explanation.

Ms G. Does that imply that all complaints by females are crap?’

R.K No, no, it’s a judgement on my 33 years. It’s a personal judgement.’

30. The Tribunal considered the documentary evidence of the email provided. It also concluded that this evidence was corroborated by Dr Keane’s admission of the content of the email sent to Dr C on 23 May 2018. The Tribunal considered Dr Keane’s email to be unprofessional for the following reasons: 1. It indicated a lack of respect to a colleague; 2. It indicated scant regard for the integrity of the complaints process; 3. It indicated a dismissive approach to his professional obligations. Accordingly, the Tribunal found paragraph 3 to be proved.

Paragraph 4

31. The Tribunal noted the documentary evidence of the email sent by Dr Keane on 24 May 2018 to Dr C in response to an email asking him to return the Template:

‘24 May 2018 Email from [Dr C] to Dr Keane

Dear Dr Keane,

If that is the case it is all the more important that you complete the questionnaire, it really shouldn’t take very long, and this will allow the panel to hear your side of the story.

I hope you don’t mind me asking but the phone calls and the emails you have sent to us at NHS England appear to show signs of considerable anger and [XXX] you feel you need any help then please feel free to contact me.’

‘24 May 2018 Email from Dr Keane to [Dr C]

Dear dr [Dr C]. I was wondering if you’re secretary could ring Bbc newsdesk

0160 to arrange an interview with me dr [Dr A] and my responsible officer dr [Dr D] to discuss the issues raised. If you chose not to cooperate I shall make the arrangements myself. Robert keane

Sent from my iPhone’

32. The Tribunal also noted Dr C’s witness statement provided to the GMC, paragraph 9, dated 20 July 2020 which stated:

‘My initial reaction to Dr Keane’s response was one of concern. I wrote back to him to advise again that he really should provide his version of events. I was worried about the signs of anger and stress that Dr Keane had displayed in the emails and in the voicemail that he had left [Ms E], so I offered him an olive branch. I asked him if there was anything we could do to help. An hour later I received a further email from him which suggested that my secretary should ring the BBC News Desk. I did not respond to that email.’

33. The Tribunal concluded that the above documentary evidence, and in the absence of any contrary evidence, proved that it was more likely than not that Dr Keane did respond on 24 May 2018 to an email sent by Dr C asking him to return the Template, and stated Dr C’s secretary could ring the BBC newsdesk and arrange an interview with him and Dr D to discuss the issues raised. The Tribunal further considered that such a response was unprofessional in the sense that it indicated a lack of appropriate engagement in a complaints process related to professional practice and it was therefore inappropriate. Accordingly, the Tribunal determined that paragraph 4 was found proved.

Paragraph 5

34. The Tribunal considered the provided documentary evidence of Dr Keane’s email response to Ms E, dated 29 June 2018:

‘From: KEANE, Robert (OLD CATTON MEDICAL PRACTICE)

Sen : 28 June 2018 17:24

To: [Ms E] (NHS ENGLAND)

Subject: Re: PAG outcome letter

Dear [Ms E] under no circumstances am I discussing anything with dr [Dr B]. If you are so confident of your ground then send it to the gmc. I am happy to appear on national media to discuss the situation with dr [Dr B].

Robert keane

Sent from my iPhone’

35. The Tribunal determined that the documentary evidence of the relevant email was persuasive and also noted that there was no contrary evidence to this allegation. Further,

the Tribunal considered Dr Keane's email response to be unprofessional and therefore inappropriate for the reasons already stated. Accordingly, the Tribunal found paragraph 5 of the allegation to be proved on the balance of probabilities.

Paragraph 6

36. The Tribunal considered the documentary evidence of Dr Keane's email response to Ms E, dated 24 September 2018.

'Dear [Ms E] I look forward o seeing you in a real court. Robert Keane

Sent from my iPhone

On 24 Sep 2018, at 13:24, [Ms E] (NHS ENGLAND) <...@nhs.net> wrote:

Dear Dr Keane,

Many thanks for your certificate. Could I please check whether or not you are currently working as the certificate states 'you may be fit for work taking account of the following advice: amended duties.' These amended duties being to 're rain rom extra administrative duties.'

Also, as you are aware, the oral hearing is scheduled for 15th October 2018, do you plan to a tend or send someone as a representative on your behalf?

Kind regards

[Ms E]

Project Officer - Performance

XXX

From: KEANE, Robert (OLD CATTON MEDICAL PRACTICE)

Sent: 24 September 2018 13:07

To: [Ms E] {NHS ENGLAND}

Subject: Re : [XXX]'

37. The Tribunal considered that the documentary evidence of the relevant email was evidentially persuasive and also noted that there was no contrary evidence to this allegation. Further, the Tribunal considered Dr Keane’s email response to be unprofessional and therefore inappropriate for the reasons already stated. Accordingly, the Tribunal found paragraph 6 of the allegation to be proved on the balance of probabilities.

Breach of PLDP conditions

Paragraph 7 (a)

38. The Tribunal noted the conditions set out in the PDLP letter dated 15 November. The Tribunal first considered whether Dr Keane breached condition 5 in failing to undergo an assessment of behavioural concerns and return the referral form that was sent to him on 30 November 2018.

39. Condition 5 stated that Dr Keane must undergo an ‘Assessment of Concerns XXX at the earliest appointment available by The Practitioner Performance Advice Service and in any case not more than three months from the date of the letter’.

40. The Tribunal considered Ms E’s email sent to Dr Keane, dated 5 December 2018:

‘Dear Dr Keane,

Further to the conditions imposed on your continued inclusion on The National Performers List, I am writing to remind you that completion of the following condition is due by no later than 15 December 2018.

‘You must provide your written reflection to the NHS England Medical Advisor on the following within a month of this letter:

a. The concerns raised regarding patients 1 and 2 that you treated at Lakenheath Surgery on 16 April 2018.

b. The quality of your record keeping relating to patients 1 and 2

c. Your attitude, behaviour and level of engagement with the NHS England PAG and PLDP processes in respect of this case.’

Please can you provide me with a copy of this written reflection and I will forward on to the NHS England Medical Advisor.

In addition, in accordance with condition 7, a Medical Advisor will undertake an audit of 30 of your patient's records. Therefore please could I ask you to confirm which practices you have worked in from the period 1st January to 31st July 2018 so 30 records can be chosen at random.

Please could you confirm this by return or by no later than 7 December 2018.

If you have any questions, please do not hesitate to come back to me.

Kindest regards

Ms E

Project Officer - Performance

Medical Directorate

NHS England Midlands and East (East)'

41. The Tribunal further noted the email sent by Ms E to the GMC dated 14 January 2019 in which she stated:

'Dr Keane has not engaged in this process. I completed the necessary NCAS referral for their consideration and Dr Keane was required to also complete a section of the form. He has not completed the form despite reminders from me and NCAS directly. Without the Dr's input NCAS are unable to consider the referral.'

42. The Tribunal considered the contents of the documentary evidence provided and determined that, on the balance of probabilities, and in the absence of any evidence from Dr Keane to the contrary, Dr Keane failed to undergo an assessment of behaviour concerns as required by condition 5 and to return the referral form by 30 November 2018. Accordingly, the Tribunal found paragraph 7 (a) to be proved.

Paragraph 7 (b) and Paragraph 7 (c)

43. The Tribunal considered the allegation that Dr Keane breached the conditions imposed on him by the PDLP by letter dated 15 November 2018 by failing to provide written reflections as required by condition 6 (as set out in Schedule 1). The Tribunal also

considered the allegation that Dr Keane breached conditions imposed on him by the PDLP by letter dated 15 November 2018 by failing to support an NHSE audit of his patient records as required under condition 7 (as set out in schedule 1) in that he failed to provide details of where he worked between the relevant dates as requested by NHSE on 5 December 2018.

44. The Tribunal noted that Dr Keane provided no evidence to support the assertion that he abided by the conditions imposed on him by the PDLP on 15 November 2018. However, the Tribunal has received evidence that Dr Keane breached the relevant conditions as documented by Ms E in her email dated 14 January 2019 08:57 to the GMC:

'6 You must provide your written reflection to the NHS England Medical Advisor on the following within a month of this letter.

- a. The concerns raised regarding patients 1 and 2 that you treated at Lakenheath Surgery on 16 April 2018.*
- b. The quality of your record keeping relating to patients 1 and 2*
- c. Your attitude, behaviour and level of engagement with the NHS England PAG and PLDP processes in respect of this case.*

This has not been provided.

7 You must allow and support an NHS England Medical Advisor to undertake an audit of 30 of your patient's records chosen randomly from the period 1st January to 31st July 2018 using the national NHS England based on the results of the audit, decide if further action is required and may refer back to PAG/PLDP for discussion about future management.

Dr Keane was asked to confirm where he had worked between the specified dates so a notes review could be undertaken. He did not respond to the request, therefore NHS England had to choose a practice where it was known the Dr had worked.'

45. The Tribunal determined that, based on the evidence provided, it was more likely than not that Dr Keane failed to provide written reflections as required by condition 6 of the conditions imposed on him by the NHSE PDLP by letter dated 15 November 2019. The Tribunal also determined that, upon the evidence, and in the absence of any evidence to the contrary, Dr Keane failed to support an NHSE audit of his patient records as required

by condition 7, in that he failed to provide details of where he worked between 1 January and 31 July 2018.

46. Accordingly, the Tribunal found both paragraph 7 (b) and paragraph 7 (c) to be proved.

The Tribunal's Overall Determination on the Facts

47. The Tribunal has determined the facts as follows:

'That being registered under the Medical Act 1983 (as amended):

Failure to engage with an investigation

1. Following a complaint made to NHS England ('NHSE') by Dr A on 11 May 2018 you failed to cooperate with an investigation by NHSE in that you did not:

Found Proved

a. complete and return a reflection and questionnaire template ('the Template'), having been requested to do so by NHSE on 23 May 2018;

Found Proved

b. contact or meet with a Medical Adviser at NHSE, Dr B, having been requested to do so by NHSE on 28 June 2018; **Found Proved**

c. confirm whether you would be attending an oral hearing of the performers list decision panel ('PLDP') on 15 October 2018; **Found Proved**

d. attend the hearing of the PLDP on 15 October 2018.

Found Proved

2. Following a referral to the GMC on 24 October 2018 you failed to complete and return a work details form having been requested to do so by the GMC on:

a. 20 November 2018; **Found Proved**

b. 27 November 2018; **Found Proved**

c. 4 December 2018. **Found Proved**

Unprofessional behaviour towards colleagues

3. On 23 May 2018 you emailed Dr C and described Dr A's complaint as 'just a vindictive pile of female crap'. **Found Proved**
4. On 24 May 2018 you responded inappropriately to an email from Dr C asking you to return the Template, in that you stated 'I was wondering if you're [sic] secretary could ring BBC newsdesk ... to arrange an interview with me, [Dr C] and my responsible officer [Dr D] to discuss the issues raised. If you chose not to cooperate I shall make the arrangements myself.' **Found Proved**
5. On 28 June 2018 you responded inappropriately to an email from Ms E in that you stated, '... under no circumstances am I discussing anything with [Dr B]. If you are so confident of your ground then send it to the GMC. I am happy to appear on national media to discuss the situation with [Dr B]'. **Found Proved**
6. On 24 September 2018 you responded inappropriately to an email from Ms E asking you whether you or a representative would attend the PLDP hearing on 15 October 2018, in that you stated 'I look forward to seeing you in a real court'. **Found Proved**

Breach of PLDP conditions

7. You breached conditions (as set out in Schedule 1) imposed on you by the PLDP by letter dated 15 November 2018, in that you failed to:
 - a. undergo an assessment of behavioural concerns as required by condition 5, in that you failed to complete and return the referral form sent to you on 30 November 2018; **Found Proved**
 - b. provide your written reflections as required by condition 6;
Found Proved
 - c. support an NHSE audit of your patient records as required by condition 7, in that you failed to provide details of where you had worked between 1 January and 31 July 2018, having been requested to do so by NHSE on 5 December 2018. **Found Proved**

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct.’ **To be determined**

Determination on Impairment - 09/12/2020

1. This determination will be handed down in private as it includes references to XXX. A redacted version will be published at the close of the hearing with those matters XXX removed.
2. 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 Keane’s fitness to practise is impaired by reason of misconduct.

The Evidence

3. The Tribunal has taken into account all the documentary evidence received during the facts stage of the hearing.

Submissions

4. On behalf of the GMC, Ms Goring submitted that Dr Keane’s fitness to practise is impaired by reason of misconduct.
5. Ms Goring submitted that the Tribunal’s findings of fact amounted to serious misconduct and that there is a need to maintain public confidence in the profession and to uphold professional standards.
6. Ms Goring submitted that Dr Keane failed to engage with two separate investigations and brought the profession into disrepute. She further submitted that it is a fundamental tenet of the profession that doctors establish good relationships with colleagues and act with integrity. She further argued that Dr Keane’s conduct had breached Good Medical Practice (2013) (‘GMP’).
7. Ms Goring submitted that Dr Keane had shown a lack of respect for colleagues and a dismissive approach to the complaint process and that such behaviour was indicative of misconduct. She stated that Dr Keane was an experienced and senior doctor and to have

sent egregiously unprofessional emails to colleagues engaged in an investigation using an official work email was particularly inappropriate.

8. Ms Goring stated that PLDP conditions were imposed on the doctor as a safeguarding mechanism and that Dr Keane's failure to engage with the conditions undermined public confidence in the profession and fell short of what was expected of a medical practitioner.
9. Ms Goring further submitted that Dr Keane had failed to cooperate with the GMC. She stated that it was important for doctors to cooperate with their regulator for the public to have faith in the medical profession and to ensure that the public was kept safe.
10. Ms Goring stated that Dr Keane had not provided any evidence of remediation, had not engaged with the regulatory process and had not demonstrated insight into the inappropriateness of his conduct.
11. Ms Goring further submitted that XXX Dr Keane XXX had not demonstrated insight and that no new correspondence had been received from the doctor for two years. In that sense, he had not provided any evidence of remediation. She further noted that Dr Keane's expression of remorse for his conduct was made at the above PLDP hearing but had not expressed remorse during the GMC investigation.

The Relevant Legal Principles

12. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.
13. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct, and then whether the finding of that misconduct, which was serious, could lead to a finding of impairment.
14. The Tribunal must determine whether Dr Keane's fitness to practise is impaired today, taking into account Dr Keane'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.

15. With regard to impairment, the Tribunal had regard to CHRE v NMC and P Grant [2011] EWHC 927 where Dame Janet Smith’s observations in the Fifth Report of the Shipman Inquiry were reiterated:

‘an appropriate test for panels considering impairment of a doctor’s fitness to practise, [...] .

Do our findings of fact in respect of the doctor’s misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/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 is liable in the future to bring the medical profession into disrepute; and/or*
- c. has in the past breached and/or is 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.’*

16. It was noted by the Tribunal that in Ms Goring’s submissions she explicitly asserted that this was not a case where dishonesty arose.

The Tribunal’s Determination on Impairment

Misconduct

17. The Tribunal considered whether Dr Keane’s fitness to practise is currently impaired by reason of his misconduct.
18. The Tribunal had regard to the overarching objective.
19. The Tribunal concluded that Dr Keane’s failure to cooperate with the NHSE investigation, failure to abide by the conditions imposed by the PLDP, and his failure to engage with the GMC constituted a breach of GMP, namely:

'22 You must take part in systems of quality assurance and quality improvement to promote patient safety. This includes:

- a. taking part in regular reviews and audits of your own work and that of your team, responding constructively to the outcomes, taking steps to address any problems and carrying out further training where necessary*
- b. regularly reflecting on your standards of practice and the care you provide*
- c. reviewing patient feedback where it is available.'*

'35 You must work collaboratively with colleagues, respecting their skills and contributions'

'61 You must respond promptly, fully and honestly to complaints and apologise when appropriate. You must not allow a patient's complaint to adversely affect the care or treatment you provide or arrange.'

'73 You must cooperate with formal inquiries and complaints procedures and must offer all relevant information while following the guidance in Confidentiality.'

- 20.** The Tribunal considered that Dr Keane's failure to engage with the NHSE investigation, PLDP hearing and GMC investigation fell significantly short of what is expected of a medical practitioner. Further, the Tribunal was of the view that such a failure to engage with the NHSE investigation and the subsequent GMC investigation would be considered deplorable by fellow practitioners. The Tribunal concluded that such a failure to engage with any of the above processes was a serious and repeated breach of a professional obligation and constituted misconduct.
- 21.** The Tribunal considered that Dr Keane's behaviour towards colleagues fell short of what is expected of a medical practitioner. It noted that Dr Keane's unprofessional behaviour towards colleagues stemmed from the NHSE investigation and was also considered as behaviour that frustrated the NHSE investigation process.
- 22.** The Tribunal determined that Dr Keane's inappropriate email correspondence was unprofessional. It considered that referring to a colleague's complaint as *'just a vindictive pile of female crap'* in an email was exacerbated by Dr Keane having sent the relevant email correspondence from his NHS email address.

23. Further, the Tribunal considered that Dr Keane’s inappropriate email correspondence was clearly unprofessional and breached GMP, namely:

‘35 You must work collaboratively with colleagues, respecting their skills and contributions’

‘73 You must cooperate with formal inquiries and complaints procedures and must offer all relevant information while following the guidance in Confidentiality.’

24. The Tribunal was of the view that sending deeply inappropriate email correspondence from an NHS email to colleagues in response to professional enquiries was behaviour that fell seriously short of the proper standards expected of a medical practitioner and clearly constituted misconduct.

25. The Tribunal then considered Dr Keane’s breach of PLDP conditions. It noted that such conditions were imposed in order to protect and promote patient safety. The Tribunal concluded Dr Keane’s non-compliance with the conditions was conduct that fell well below the proper standards expected of a medical practitioner. This was a clear breach of GMP, in particular:

‘22 You must take part in systems of quality assurance and quality improvement to promote patient safety. This includes:

a. taking part in regular reviews and audits of your own work and that of your team, responding constructively to the outcomes, taking steps to address any problems and carrying out further training where necessary

b. regularly reflecting on your standards of practice and the care you provide

c. reviewing patient feedback where it is available.’

26. The Tribunal further concluded that, when considered together, Dr Keane’s repeated failure to engage with an investigation, his unprofessional behaviour towards colleagues and his breach of PLDP conditions, amounted to misconduct as a result of their cumulative effect.

27. The Tribunal concluded that, on the facts found proved, when considered both individually and cumulatively, Dr Keane’s conduct fell so far short of the standards of

conduct reasonably to be expected of a doctor as to meet the threshold of serious misconduct.

Impairment

28. The Tribunal having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Keane's fitness to practise is currently impaired.
29. The Tribunal considered Dr Keane's insight into his actions. The Tribunal noted that Dr Keane had not engaged in either the NHSE investigation or the GMC regulatory process. Dr Keane had not engaged in these proceedings and, accordingly, the Tribunal had no evidence before it to suggest that he had developed insight into his misconduct or taken any effective steps towards remediation.
30. The Tribunal noted that Dr Keane's representative did apologise on his behalf at the PLDP hearing on 9 November 2018 for sending unprofessional emails to Dr C and Ms E. His representative at the hearing stated that:

'He accepts now that the way he reacted was inappropriate and he's very sorry about sending those emails. He doesn't think they reflect what he's normally like. His emails were based on incomplete information and personal devastation. RK wants to address you on that and apologise.'

The Tribunal further noted that, while at that PLDP hearing on 9 November 2018, Dr Keane also personally apologised for sending the inappropriate emails and stated that he was *'very sorry about the emails and if they upset anyone'*.

31. The Tribunal acknowledged that Dr Keane had shown contrition for his inappropriate and unprofessional email correspondence. However, it further noted that this apology was not spontaneous and has not been repeated since that PLDP hearing, as Dr Keane has not engaged with either the NHSE investigation or the GMC investigation since 2018.
32. In the circumstances the Tribunal noted that Dr Keane had not engaged in these proceedings and, accordingly, the Tribunal had no evidence before it to suggest that he had developed any insight into his misconduct or taken any effective steps towards remediation. It further noted that there was no evidence of any remediation or of any plan to engage in remediation in respect of his misconduct. Although there are

references in the transcript of the meeting of the PLDP to courses undertaken and reflective documents, these were not presented as evidence and therefore the Tribunal could give no weight to any evidence of remediation. The Tribunal concluded that, as Dr Keane had shown limited insight into the inappropriateness of his behaviour and had not remediated, the risk of a repetition of his misconduct remains.

33. XXX

34. The Tribunal determined that Dr Keane’s misconduct engaged all three of the limbs of the statutory overarching objectives of the GMC which involves the pursuit of the following objectives as set out in the s1 (1A) Medical Act 1983 (the 1983 Act) as amended:

- *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 the profession*

35. With regard to the first limb of the overarching objective the Tribunal considered that engagement with investigations is necessary to protect, promote and maintain the safety of the public. It considered that Dr Keane’s failure to do so engaged the first limb of the overarching objective.

36. Further, the Tribunal considered that Dr Keane’s misconduct engaged the overarching objectives of promoting and maintaining public confidence in the medical profession and of promoting and maintaining proper professional standards and conduct for members of the profession. It noted that Dr Keane’s unprofessional and inappropriate behaviour fell far below the standard to be expected from a medical practitioner.

37. The Tribunal concluded that confidence in the medical professional would be undermined and that there would be a failure to uphold professional standards if a finding of impairment was not made.

38. The Tribunal therefore determined that Dr Keane’s fitness to practice is currently impaired by reason of misconduct on all three limbs of the overarching objective.

Determination on Sanction - 10/12/2020

1. This determination will be handed down in private as it includes references to XXX. A redacted version will be published at the close of the hearing with those matters XXX removed.
2. Having determined that Dr Keane's fitness to practise is impaired by reason of 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

3. The Tribunal has taken into account the evidence received during the earlier stages of the hearing, where relevant, in reaching a decision on sanction.

Submissions

4. On behalf of the GMC, Ms Goring submitted that all three limbs of the overarching objective had been engaged and that the appropriate sanction in this case was suspension, the length of which should be at the Tribunal's discretion.
5. Ms Goring submitted that sanctions are not intended to punish past misconduct but are rather intended to protect the public and referenced the Sanctions Guidance (November 2020) ('SG') and GMP.
6. Ms Goring submitted that a sanction of conditions was not appropriate in this case due to the need to send a message to the profession and to the public. She further stated that conditions may not be workable given Dr Keane's failure to engage with the GMC until now, and his statement that he was not willing to engage in the future.
7. Ms Goring submitted that there were both aggravating and mitigating factors. She stated that Dr Keane had not demonstrated insight nor remediation and, by virtue of his absence, had not shown remorse at this hearing. Further she stated that he had failed to engage collaboratively with colleagues, made reference to a colleague's gender in an unprofessional email and that the misconduct took place over a sustained period of seven months. Ms Goring also stated that Dr Keane had not engaged actively with the GMC for a significant period of time.

8. Ms Goring submitted that there were mitigating factors which the Tribunal should take into account. She stated that these mitigating factors included Dr Keane’s expressions of remorse at the PLDP hearing in November 2018. Further, she submitted that there may be mitigating XXX reasons that may link to the misconduct. However, she urged caution as Dr Keane had not engaged or provided further evidence on that issue. She went on to state that the issue of work related stress had been referenced during his PLDP hearing; however, she also noted that Dr Keane was working as a Locum GP at the time of the index incidents.

The Tribunal’s Approach to Sanction

9. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement. Every case will necessarily turn on its own facts.
10. In reaching its decision, the Tribunal has borne in mind that the purpose of a sanction is not to be punitive, but to protect the public, although a sanction may have a punitive effect.
11. Throughout its deliberations, the Tribunal has taken into account the overarching objective and applied the principle of proportionality, balancing Dr Keane’s interests with the public interest.
12. The Tribunal has taken into account its earlier determination on the facts and on impairment, the SG and GMP, and the submissions of Ms Goring on behalf of the GMC.

The Tribunal’s Determination on Sanction

13. The Tribunal first considered the mitigating and 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

14. The Tribunal first considered the mitigating factors in relation to Dr Keane’s proven misconduct:
 - The Tribunal noted that Dr Keane had no prior regulatory findings against him over the course of a lengthy career;

- There was no evidence that Dr Keane had engaged in similar misconduct or behaved in a similar manner in the past;
- Dr Keane had expressed contrition for his behaviour at a PLDP hearing, personally, and through his representative;
- XXX

15. The Tribunal then considered the aggravating factors:

- The Tribunal noted that Dr Keane had not provided any evidence of meaningful insight into his misconduct;
- Dr Keane had not engaged with the GMC investigation or the present MPT hearing;
- The Tribunal considered that Dr Keane’s unprofessional behaviour towards colleagues breached a fundamental tenet of the medical profession;
- Dr Keane had not demonstrated sustained remorse for his conduct.

16. Having considered the aggravating and mitigating factors in this case the Tribunal then weighed them against each other in relation to the misconduct. The Tribunal concluded that the mitigating factors were outweighed by the aggravating factors, particularly given the lack of evidence of insight or remediation, which reflected Dr Keane’s non-engagement with the regulatory process.

No Action

17. The Tribunal first considered whether to conclude the case by taking no action.

18. The Tribunal determined that to take no action would be wholly inappropriate given the seriousness of the proven misconduct. The Tribunal did not consider that there were any exceptional circumstances that would justify such a course.

Conditions

19. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Keane’s registration. It bore in mind that any conditions imposed should be appropriate, proportionate and workable.

20. The Tribunal determined that there were no conditions that it could formulate that would address the issue of Dr Keane’s non-compliance. The Tribunal further considered that

they could not be confident that Dr Keane would respond positively to remediation or retraining given his non-engagement with the regulatory process.

21. The Tribunal determined that the imposition of conditions on Dr Keane’s registration would be inappropriate and unworkable given the nature of Dr Keane’s misconduct, which included the breach of NHSE conditions.

Suspension

22. The Tribunal then went on to consider whether imposing a period of suspension on Dr Keane’s registration would be appropriate and proportionate.
23. The Tribunal acknowledged that suspension has a deterrent effect and can be used as a signal to the doctor, the profession, and to the public about what is regarded as behaviour unbecoming a registered doctor.
24. The Tribunal took account of the following paragraphs of the SG which indicate circumstances in which it may be appropriate to impose a sanction of suspension and also indicate circumstances in which it may be appropriate to impose a sanction of erasure:

‘92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).’

‘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.’

'108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor'

'109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).

...

j Persistent lack of insight into the seriousness of their actions or the consequences.'

25. The Tribunal considered that Dr Keane's misconduct is potentially remediable and that a period of suspension would uphold all three limbs of the overarching objective and allow Dr Keane the opportunity to remediate his misconduct.
26. The Tribunal acknowledged that there was an absence of evidence before it that Dr Keane had shown insight or taken steps to remediate his actions. The Tribunal noted that Dr Keane had only expressed contrition for his actions to the PLDP hearing and had not engaged with the GMC. The Tribunal also considered that, given Dr Keane's non-engagement with the GMC and the present MPT hearing, there remained a risk of repetition of misconduct in this case.
27. The Tribunal determined that erasure would, in all the circumstances, particularly having regard to the possibility of remediation, be disproportionate at this time. The Tribunal considered that Dr Keane's misconduct was serious but not so serious as to be fundamentally incompatible with continued registration. (i.e. to the extent that Dr Keane should not be permitted to practise again).
28. The Tribunal considered Dr Keane's non-engagement with the regulatory process to be of serious concern. It noted that continued non-engagement could eventually result in erasure as only through engagement with the GMC could Dr Keane hope to demonstrate insight and remedy his misconduct. It further noted that engagement with the regulatory process is vital to ensure patient safety. The Tribunal considered that Dr Keane should be given an opportunity to engage.

29. The Tribunal was of the view that there remained the possibility of Dr Keane demonstrating insight and remediation in the future. Further, it considered that an opportunity should be afforded to Dr Keane at a future review hearing to demonstrate insight, reflect upon the importance of engaging constructively with colleagues, engage with the NHSE and GMC and express contrition. The Tribunal further considered that Dr Keane should be given the opportunity to engage with the regulatory process and provide any evidence of XXX.
30. The Tribunal determined that suspending Dr Keane’s registration for a period of twelve months would be sufficient for this purpose and to demonstrate remediation. It would also send a message to the medical profession and to the wider public that such misconduct is not acceptable, and it would reflect the seriousness of the proven facts.
31. The Tribunal determined to direct a review of Dr Keane’s case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Keane to demonstrate how he has remediated and developed insight into his misconduct. It therefore may assist the reviewing Tribunal if Dr Keane attends the review hearing and provides that Tribunal with evidence of work he has undertaken to address his misconduct, develop insight and demonstrate remediation. This should include, but is not limited to, a reflective statement.
32. Dr Keane will also be able to provide any other information that he considers will assist in demonstrating that his fitness to practise is no longer impaired.

Determination on Immediate Order - 10/12/2020

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

Submissions

2. On behalf of the GMC, Ms Goring referred to SG and submitted that this is not a case where an immediate order is necessary. She stated that, in the GMC’s submission, there

is no threat to patient safety as Dr Keane is not currently practising and has stated that he has retired.

The Tribunal's Determination

3. The Tribunal, having considered the SG and noted Ms Goring's submissions, concluded that there was no need for an immediate order to be imposed on Dr Keane's registration as he is not currently practising and has stated that he has retired. The Tribunal concluded that, in the circumstances, there was no threat to patient safety.
4. There is no interim order to revoke.
5. That concludes this case.

Confirmed

Date 10 December 2020

Mr Ian Comfort, Chair

ANNEX A – 07/12/2020

Service and Proceeding in Absence

1. Dr Keane is neither present nor legally represented at this hearing.
2. The Tribunal were made aware of Dr Keane’s registered email and postal address by the General Medical Council (GMC), in a screenshot taken from their database. The Tribunal noted that all correspondence had been accurately addressed.
3. The Tribunal was provided with a copy of a Service bundle from the GMC. This included an email entitled ‘PHM: Keane, R (M) - relisting’ dated 27 August 2020.
4. On behalf of the GMC, Ms Goring submitted that the GMC and have complied with Rules 15 and 40 of the GMC’s (Fitness to Practise) Rules 2004, as amended, (‘the Rules’).
5. Having considered all the documentary evidence, the Tribunal determined that notice of this hearing had been served on Dr Keane in accordance with Rules 15 (9) and 40 of the Rules and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.

Proceeding in Absence

6. The Tribunal then went on to consider whether it would be appropriate to proceed with this hearing in Dr Keane’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. Ms Goring invited the Tribunal to proceed with the hearing in Dr Keane’s absence. She submitted that it could be inferred that Dr Keane had voluntarily waived his right to be present and did not want to participate in the hearing. Ms Goring stated that Dr Keane had received the Notice of Hearing information well in advance and the proper inference is that notice had in fact been given and that the requirements of Rule 31 have been satisfied.
8. Ms Goring further submitted that adjourning the hearing in Dr Keane’s absence would not resolve any difficulties as there was no basis to conclude that, given more time, the doctor would attend. Put simply, if the hearing were to be adjourned there was nothing before the Tribunal upon which it could safely conclude that Dr Keane would attend at a later date.

9. In deciding whether to proceed with this hearing in Dr Keane’s absence, the Tribunal carefully considered all the information before it, including Ms Goring’s submissions.
10. The Tribunal had regard to the cases of *R v Jones [2003] 1 AC HL* and *GMC v Adeogba [2016] EWCA Civ 162*, which outlined the factors which should be taken into consideration before deciding to proceed in a doctor’s absence.
11. In the circumstances, the Tribunal determined it was appropriate to proceed in Dr Keane’s absence. The Tribunal was satisfied that all reasonable efforts had been made to inform Dr Keane of these proceedings and considered that he had voluntarily absented himself. The Tribunal also considered Dr Keane’s email to the GMC, dated 23 November 2018, as further evidence of his wish to voluntarily absent himself:

‘Subject: GMC no 3145504

Date: 23 November 2018 11:40

Dear [Mr I]. I have now retired from practice. I will not be responding in any way shape or form to any other communications from you.

Robert Keane

Sent from my iPhone’

12. The Tribunal noted that no application was made for an adjournment, nor is there any indication that he would attend a hearing at a later date if this hearing were to be postponed. The Tribunal further noted that there had already been a delay in proceedings due to the Covid-19 pandemic and concluded that any further delay would neither be in the public interest or the doctor’s interest.
13. The Tribunal further considered the overarching objective and concluded that it was in the public interest to proceed in Dr Keane’s absence.
14. In deciding to proceed with the hearing the Tribunal drew no inference from Dr Keane’s non-attendance.

SCHEDULE 1

Extracts from conditions set out in PLDP letter dated 15 November 2018:

'5. You must undergo an 'Assessment [XXX]' [XXX] at the earliest appointment available by The Practitioner Performance Advice Service (previously known as NCAS) and in any case no more than three months from the date of this letter.'

'6. You must provide your written reflection to the NHS England Medical Advisor on the following within a month of this letter:

- a. the concerns raised regarding patients 1 and 2 that you treated at Lakenheath Surgery on 16 April 2018;
- b. the quality of your record keeping relating to patients 1 and 2;
- c. your attitude, behaviour and level of engagement with the NHS England Performance Advisory Group ('PAG') and PLDP processes in respect of this case.'

'7. You must allow and support an NHS England Medical Advisor to undertake an audit of 30 of your patient's records chosen randomly from the period 1 January to 31 July 2018 using the national NHS England template. This audit will take place within two months from the date of this letter. The Medical Advisor will, based on the results of the audit, decide if further action is required and may refer back to PAG/PLDP for discussion about future management.'