

PUBLIC RECORD

Dates: 04/03/2022

Medical Practitioner's name: Dr Sian HEKE

GMC reference number: 4310392

Primary medical qualification: MB BCh 1996 University of Wales

Type of case

Review - Misconduct

Outcome on impairment

Not Impaired

Summary of outcome

Suspension to expire

Tribunal:

Legally Qualified Chair	Mr Paul Moulder
Medical Tribunal Member:	Dr Michelle Taggart
Medical Tribunal Member:	Dr Edmund Morris

Tribunal Clerk:	Mr Larry Millea
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Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Justin Meiland, Counsel, instructed by Hempsons Solicitors
GMC Representative:	Mr Jacob Dyer, 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 Impairment - 04/03/2022

Background

1. Dr Heke's case was initially considered by a Medical Practitioners Tribunal ('MPT') at a hearing which took place in August 2021 ('the 2021 Tribunal').

The 2021 Tribunal

2. Dr Heke admitted, and the 2021 Tribunal found proved, the entirety of the Allegation.

3. Dr Heke qualified as a doctor in 1996 from the University of Wales. She practised in different areas of medicine before specialising in Psychiatry in 2006. Since 6 July 2013, Dr Heke had also worked as a Deprivation of Liberty Safeguarding ('DoLS') Assessor and carried out ad hoc DoLS assessments. At the time of the events that gave rise to the Allegation against her, Dr Heke was working as a specialty doctor in Adult Psychiatry at the Ty Einon Centre, part of Swansea Bay Health Board ('the Trust').

4. The allegation was that, on 8 September 2017, Dr Heke carried out DoLS assessments whilst she was on sick leave. It was alleged that, on 11 September 2017, Dr Heke told her supervisor that she had not carried out DoLS assessments whilst on sick leave on 8 September 2017. It was also alleged that this information was untrue and that Dr Heke's actions were dishonest. Further, it is alleged that on 21 December 2018, at Neath Police Station, Dr Heke accepted a caution for failing to disclose contrary to section 1(3) of the Fraud Act 2006 and that she failed to notify the General Medical Council ('GMC') without delay that she had been cautioned.

5. Dr Heke self-referred to the GMC, via email on 12 August 2019.

6. The 2021 Tribunal considered that each of the matters contained in the allegation would amount to misconduct. It was of the view that, as a whole, Dr Heke's behaviour would be considered deplorable by fellow practitioners and that her actions fell short of the

standards of conduct reasonably expected of a doctor. The 2021 Tribunal concluded that such behaviour amounted to misconduct which was serious.

7. The 2021 Tribunal was concerned that the reflective piece which Dr Heke had provided to it had been written almost four years after the events in questions and did not demonstrate unequivocal acceptance of her wrongdoing and that it also sought to justify her actions. The Tribunal was of the view that Dr Heke's insight was extremely limited.

8. The 2021 Tribunal considered whether Dr Heke had remediated her misconduct. It noted that Dr Heke had attended a '*Maintaining Professional Ethics*' course and that she had completed other ethics courses at the Trust and as part of a psychotherapy course in 2018. Nevertheless, the 2021 Tribunal was not satisfied that Dr Heke had remediated her conduct to any great extent.

9. The 2021 considered that, given Dr Heke's lack of insight and remediation, there was a risk of repetition of her previous behaviour. It concluded that all three limbs of the overarching objective were engaged and, in the Tribunal's judgment, the need to uphold proper professional standards and public confidence in the medical profession would be undermined if a finding of impairment were not made in relation to the misconduct proved in this case.

10. The 2021 Tribunal determined that Dr Heke's fitness to practise was impaired by reason of misconduct.

11. The 2021 Tribunal went on to consider whether Dr Heke's fitness to practise was impaired by reason of a caution. It considered that the caution amounted to a serious departure from Dr Heke's obligations under GMP to act with honesty, integrity and within the law. The Tribunal also considered that her failure to notify the GMC for eight months that she had accepted a caution was a particularly serious breach of paragraph 75 of GMP.

12. Accordingly, the 2021 Tribunal determined that Dr Heke's fitness to practise was impaired by reason of a caution.

13. In reaching a decision on the appropriate sanction to impose, if any, the 2021 Tribunal took into account Dr Heke's full admission to the allegation. It bore in mind that Dr Heke had accepted a caution under the Fraud Act 2006 and failed to notify the GMC. The 2021 Tribunal also noted that such a failure had occurred, despite the similarities of the circumstances of the 2007 Fitness to Practise hearing, when Dr Heke's fitness to practise was found to be impaired for failing to disclose to the GMC that she had been convicted of a criminal offence. The 2021 Tribunal found it especially troubling that Dr Heke's caution in December 2018 was the second occasion on which she had failed to notify the GMC without delay of a conviction or caution.

14. The 2021 Tribunal bore in mind that Dr Heke did not appear to recognise the impact that her actions would have had on public confidence in the medical profession. It was also

extremely concerned that her evidence focused on there being no clinical issues with her work and that there had not been any complaints in respect of the DoLS assessments carried out on 8 September 2017. The 2021 Tribunal noted that Dr Heke had no apparent insight into how her actions, in working whilst on sick leave, placed patients at potential risk of harm. The failure to appreciate the potential risk of harm to patients contributed to further concerns by the 2021 Tribunal as to Dr Heke’s extremely limited insight and the risk of repetition.

15. The 2021 Tribunal considered that, in light of her admitted dishonesty, her acceptance of the caution, her persistent lack of insight and her previous fitness to practise history, Dr Heke’s conduct was fundamentally incompatible with continued registration. It took into account that Dr Heke’s inability to continue in her post as a Locum Consultant Psychiatrist would have a significant adverse impact on the provision of psychiatric services in her local area. The 2021 Tribunal also considered each limb of the overarching objective was engaged.

16. The 2021 Tribunal concluded that the erasure of Dr Heke’s name from the Medical Register was the only sanction which would protect patients and maintain public confidence in the profession.

Appeal

17. Dr Heke lodged an appeal against the Tribunal decisions on impairment by reason of misconduct and caution and the decision to erase her name from the Medical Register.

18. In the Consent Order, dated 18 November 2021 (“Consent Order”), the High Court ordered that:

“1. The MPT’s determination that the Appellant’s fitness to practise was impaired also by reason of the caution be quashed, the determination that the Appellant’s fitness to practise was impaired by reason of misconduct remaining in place (pursuant to s.40(7)(b) of the Act).

2. The MPT’s determination on sanction be quashed and substituted instead for a direction that the Appellant’s registration be suspended for a period of 4 months’ suspension, with a review hearing also directed (pursuant to s.40(7)(b) and (c) of the Act).”

19. In the Annex to the Consent Order, the High Court stated:

“The MPT appears to have fallen into error when it concluded that the bare fact of the caution represented “a serious departure from Dr Heke’s obligations under GMP to act with honesty, integrity and the law”, and without the caution, if proceeding on the basis of the dishonest statement to Dr A and the failure to disclose the caution to the GMC, even having regard to the Appellant’s fitness to practise history, a reasonable tribunal

could have determined that a period of suspension of this period with a review hearing was sufficient to protect the public.”

Today’s Review Hearing

20. At this review hearing the Tribunal must first decide, in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended (‘the Rules’) whether Dr Heke’s fitness to practise remains impaired by reason of misconduct.

The Outcome of Applications Made during the Impairment Stage

21. At the outset of the hearing, Mr Dyer, counsel on behalf of the GMC submitted that the Defence bundle was received very late and that the GMC had not had the opportunity to verify the testimonials contained within. However, the GMC did not submit that there would be any prejudice in admitting this evidence. The Tribunal considered its powers under Rule 34(1) to admit evidence where it was fair and relevant. It took into account the fact that the GMC did not formally object to the Defence bundle and that the relevant timescales in this case were short owing to the short period since the appeal. The Tribunal considered that it had sufficient time to give the evidence due consideration and took into account that the GMC had been given limited notice of the documentation. The Tribunal determined that the evidence was relevant to the issues before it and it would be fair to admit it. The Tribunal decided to admit the Defence bundle.

The Evidence

22. The Tribunal has taken into account all the evidence received including the determinations of the previous Tribunal, the Consent Order, correspondence between the GMC and Dr Heke and a Defence bundle containing personal reflections by Dr Heke, a number of testimonials provided on her behalf and evidence of her Continuing Professional Development (“CPD”).

23. Dr Heke also gave oral evidence to the Tribunal.

Submissions

24. On behalf of the GMC, Mr Jacob Dyer submitted that on balance, the evidence suggests that Dr Heke’s fitness to practise remains impaired by reason of misconduct.

25. Mr Dyer submitted that the key factors for the Tribunal to consider were those of insight and remediation, as they affected the risk of repetition. He asked the Tribunal to consider whether the evidence provided in the form of written reflections, CPD and testimonials constitute a genuine demonstration of insight.

26. Mr Dyer submitted that the further one-day course on Maintaining Professionalism was principally concerned with communication with colleagues and does little to address the

principal concerns identified by the 2021 Tribunal, namely insight into the impact of Dr Heke's misconduct.

27. Mr Dyer submitted that the 2021 Tribunal highlighted Dr Heke's failure to apologise to Dr A or her Trust and that despite that being highlighted, she has done nothing to rectify that, which may demonstrate a lack of genuine insight on her part.

28. Mr Dyer submitted that testimonials can be very revealing and that the testimonial of Mrs B states *"Dr Heke has informed how saddened she was that she did not inform her consultant of her intentions and wishes she could go back and change her behaviour."* He submitted that this does not sit easily with the suggestion that she fully accepts her dishonesty and the misconduct found by the 2021 Tribunal and perhaps suggests some minimisation of what took place.

29. On behalf of Dr Heke, Mr Justin Meiland submitted that Dr Heke's fitness to practise is no longer impaired.

30. Mr Meiland submitted that the Tribunal should consider whether there remains any risk of repetition and whether the public interest needs to be marked by a further finding of impairment. He submitted that the latter has been adequately addressed by the suspension already imposed and which has almost passed, and therefore the requirement to mark Dr Heke's misconduct has already been satisfied.

31. Mr Meiland submitted that taking into account the circumstances and Dr Heke's reflections since, it is highly unlikely that there will be any repetition. He submitted that Dr Heke has fully engaged with these proceedings, admitted the entirety of the Allegation from the outset and has clearly taken steps to reflect on the events and the findings of the 2021 Tribunal. He submitted that she has taken further objective steps and undertaken further training covering relevant topics, and clearly sees things differently than at the time of the 2021 Tribunal, accepting full responsibility for her actions. He submitted that Dr Heke also now accepts the finding that her actions put patients at potential risk of harm, and understands how her actions could have resulted in flawed decision-making. In response to a question from the Tribunal, he submitted that Dr Heke's written and oral evidence includes reflections on the importance of disclosing cautions and convictions in a timely fashion and that the risk of repetition is low in this respect also.

32. Mr Meiland submitted that there is no evidence of any repetition of Dr Heke's misconduct over an almost five-year period, including the period she remained practising unrestricted between 2017 and the recent suspension, supporting the assertion that there is a very low risk of repetition.

33. Regarding the lack of a direct apology from Dr Heke to Dr A, Mr Meiland submitted an apology was contained within Dr Heke's written reflections. He submitted that Dr Heke had said she considered her apology would be given through the formal review process and she should not be criticised for adopting that method of communication, as she genuinely felt

that this would have more weight. In regard to the testimonial of Mrs B, he submitted that the full testimonial makes it clear that Dr Heke's expressions of remorse and insight are genuine and this is consistent with Dr Heke's evidence.

The Relevant Legal Principles

34. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. It is aware that it is for the doctor to satisfy it that she would be safe to return to unrestricted practice.

35. This Tribunal must determine whether Dr Heke's fitness to practise is impaired today, taking into account her 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. It must also consider whether a finding of impairment remains necessary in the public interests of maintaining confidence in the profession and declaring and upholding standards for the profession.

Tribunal Decision

36. The Tribunal first considered whether Dr Heke had demonstrated sufficient insight into her misconduct.

37. In regard to her dishonesty, the Tribunal considered that the period of suspension had given Dr Heke time to reflect on her actions and the findings of the 2021 Tribunal. In the Tribunal's view Dr Heke had produced a clear and compelling personal reflective statement summarising her reflections. The Tribunal was of the opinion that this demonstrated that Dr Heke has now developed an understanding of the mistakes she made which led to the original Fitness to Practise proceedings.

38. The Tribunal considered that no evidence had been put before it to show that Dr Heke's insight was incomplete, and attributed significant weight to her written and oral expressions of regret, reflection and insight. Although Dr Heke had not directly apologised to Dr A, she had provided considerable reflections on the effects of her dishonesty on colleagues. This included the emotional impact on Dr A. The Tribunal accepted the evidence of Dr Heke and the submission made by Mr Meiland that she felt that it might not be appropriate to contact Dr A directly and that Dr Heke felt that a formal apology during the course of these proceedings would more appropriately address this matter. The Tribunal considered that this was a reasonable explanation and noted that when Mr Dyer challenged her on this during cross-examination, Dr Heke responded that perhaps she could and should have apologised directly but felt that this approach was most appropriate in the circumstances. The Tribunal considered this open-mindedness and willingness to reflect on her approach demonstrated a positive attitude on the part of Dr Heke.

39. The Tribunal was of the opinion that the evidence of insight and remediation provided by Dr Heke demonstrated a clear change in her demeanour from the 2021 Tribunal and her

reflections very much support that she has changed her mindset since that time. The Tribunal accepted Dr Heke's evidence as straightforwardly given and genuine and her answers to questions were appropriate, strong and direct.

40. In her written reflections, dated 22 February 2022, Dr Heke states that:

"I accept full responsibility for my actions although this event happened 5 years ago and due to the passage of time, I cannot recall exactly every detail. Honesty is fundamental to being a doctor, the importance of trust in developing and maintaining relationships with patients and colleagues is at the centre of a doctor's beliefs and values, anything undermining this trust puts the relationship at risk. I understand the complexities of these relationships and how my dishonesty has led to this trust being undermined by my actions. My failure to disclose the police caution promptly also prevented the GMC from investigating the circumstances and taking appropriate action.

Professional standards must be upheld by the GMC and I put patients at risk of harm by undertaking DoLs assessments during sick leave. A patient puts all their trust in the doctor to believe and understand their diagnosis and treatment, to have put this at risk is horrifying to me. The patient must trust the doctor's integrity, if this is undermined confidence in me as a doctor is diminished. A learning point for me is that I should have taken measures to immediately report and rectify the situation by informing Dr [A] that what I had said was incorrect. I would like to formally apologise to Dr [A] for lying to her about undertaking the DoLs assessments and any emotional distress this may have incurred including the loss of trust in our working relationship.

It has taken me some time for me to see things from other people's perspective and develop an understanding of the full impact of my dishonesty. I now fully understand the importance of trusting a junior colleague at work, as to what they are saying and doing is true. The emotional and professional impact my dishonesty must have had on Dr [A] undermining her ability to trust my decisions and work independently must have been extremely hurtful and harmed our working relationship hugely. This may have led to her questioning her belief in anything I said. The team would also have questioned their trust in working with me and whether I was always working with honesty and integrity.

At the time of my dishonest behaviour, I had been under a great deal of stress XXX and I had not taken the time to XXX release the full impact XXX...

Although I did a lot of work ...on my feelings of guilt, shame XXX with hindsight, I recognise now that I was still XXX when I undertook the Dols assessments and subsequently lied.

I could have potentially put patients I undertook DoLs assessments on at risk of harm due to working on sick leave. I did not at the time recognise the seriousness of how my

decision making could have been adversely affected XXX, making the wrong decision could have affected the patient's management on the ward and even affected their discharge plan, one wrong decision could have led to a rollercoaster of catastrophic events for patient care. If patients and staff had been aware then this could have put their trust in me and the profession at risk.

Reflecting further since the hearing, I now accept the Tribunal's finding that I put patients at risk. Working under any circumstances that are questionable is wrong and this is a risk I should not have taken. I failed to see it that way at the time but can see this now. I misjudged the situation and have learnt considerable lessons from this.

On careful and considered reflection of the GMP it is clear to me that I failed to uphold several important factors that are fundamental to good practice which I truly regret.

I failed to disclose the caution to the GMC promptly and they as a governing body were therefore unaware of any concerns that my Fitness to Practice may have been impaired. They were unable to act promptly accordingly to take the appropriate measures to ensure public safety and trust due to the delay. The GMC were unable to uphold Professional Standards because of this."

41. The Tribunal noted the further CPD activity undertaken by Dr Heke, in the form of an additional day's ethics course, focused on responsibility and communication, and the number of positive testimonials provided on her behalf. It concluded that there was little more Dr Heke could do to demonstrate insight and remediation.

42. The Tribunal did not accept the submission of Mr Dyer that the testimonial of Mrs B demonstrated a minimisation or avoidance of responsibility by Dr Heke, considering that it would be unsafe to make such an inference, taking the entirety of the letter into account. The Tribunal noted that elsewhere in the testimonial Mrs B states:

"Finally I know Dr Heke has really looked at her life and how issues developed which led her to make decisions which lacked integrity and honesty. She has a deeper understand of this process and has turned her life around. I now have no doubt in her trustworthiness and her future honesty around wanting to be a valued medical professional person." [sic]

43. Dr Heke was clear and consistent that this was the case during cross-examination, when this point was put to her by Mr Dyer.

44. The Tribunal considered that at the 2021 Tribunal Dr Heke had demonstrated at that time a lack of sufficient insight, a lack of remediation and a failure to accept personal responsibility. In contrast, at this review, Dr Heke has demonstrated to the Tribunal an entirely reformed view and demonstrated a thorough personal reflection on and assessment of her dishonesty.

45. The Tribunal noted that there had been particular personal mitigating circumstances around the time of the events. The Tribunal also took into account that Dr Heke has taken steps to adopt appropriate mechanisms to ensure that she would deal in an appropriate fashion with any recurrence of stressors which had affected her in the past.

46. The Tribunal determined that Dr Heke had, by the insight gained, fully remediated her past dishonesty and was highly unlikely to repeat it. Accordingly, the Tribunal found that Dr Heke's fitness to practise was no longer impaired by reason of her past dishonest misconduct.

47. In terms of Dr Heke's failure to disclose her caution, the 2021 Tribunal did not accept that she did not know of her obligations to disclose this to the GMC. This Tribunal did not seek to go behind that finding but accepted the persuasive written and oral evidence from Dr Heke that she accepted the findings of the 2021 Tribunal and that she currently understands the requirement and the importance to disclose all such matters in a timely fashion.

48. The Tribunal therefore accepted that it is highly unlikely that Dr Heke will repeat her misconduct, both in terms of her dishonesty and her failure to disclose any caution.

49. The Tribunal also considered whether a finding of impairment was necessary in order to protect the public interest and uphold the overarching objective. It concluded that the substantive period of suspension already imposed by the High Court had been sufficient to reflect the seriousness of Dr Heke's misconduct and to mark the public interest.

50. The Tribunal decided that given it has identified the risk of repetition is highly unlikely and that Dr Heke has demonstrated clear insight into her actions, public confidence would not be undermined, nor standards undermined, if there was no finding of current impairment. The Tribunal therefore determined that a finding of impairment was not necessary to protect the public interest and uphold the overarching objective.

51. Accordingly, the Tribunal has determined that Dr Heke's fitness to practise is no longer impaired.

52. The Tribunal considered that as it had found that Dr Heke's fitness to practise is no longer impaired, it may either leave the suspension in place to expire on 22 March 2022 or revoke it immediately.

53. The Tribunal considered that there was no strong reason to alter the sanction imposed by the High Court, and that this should be completed in order to uphold the overarching objective, namely the second and third limbs: 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.

54. As such the substantive sanction will remain in place and expire on 22 March 2022.

55. That concludes this case.