

## PUBLIC RECORD

Dates: 27/04/2023 -28/04/2023

Medical Practitioner's name: Dr Timothy BAXTER

GMC reference number: 3166004

Primary medical qualification: MB BS 1986 University of London

Type of case: MPT - Preliminary

## Tribunal:

Legally Qualified Chair	Mr Duncan James Ritchie
Medical Tribunal Member:	Dr Marta Babores
Medical Tribunal Member:	Dr Richard Brighton-Knight
Tribunal Clerk:	Ms Maria Khan

## Attendance and Representation:

Medical Practitioner:	Not present and represented
Medical Practitioner's Representative:	Mr Mark Shaw, KC, instructed by Wiley Rein LLP
GMC Representative:	Ms Sharon Beattie, KC

## Attendance of Press / Public

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

## Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

## Determination on Preliminary Matters - 28/04/2023

### Background

1. Dr Baxter qualified with an MBBS in 1986 from the University of London. Since 2006 he has lived and worked in the USA. While Dr Baxter remains registered with the GMC and holds a licence to practise in the UK, he has never held a licence to practise medicine in the USA because he has not worked in a capacity which requires such a licence. After retiring in 2016, Dr Baxter started his own consultancy, Baxter Healthcare Consulting LLC, which remains his full-time job. He has not practised clinical medicine for over 30 years.
2. From 2006 to 2014, Dr Baxter was the Global Medical Director of Reckitt Benckiser Pharmaceuticals ('RBP') and then became Chief Medical Officer of its successor entity, Indivior Solutions ('Indivior'), from 2014 until his retirement from the company in 2016. In these roles Dr Baxter oversaw medical functions for the company, including pharmacovigilance and medical affairs.
3. RBP had three products during Dr Baxter's time at the company: Subutex, Suboxone Tablets and, later, Suboxone Film. All three were/are buprenorphine-based drugs and therapies for opioid addiction. However, unlike Subutex, Suboxone combines buprenorphine with naloxone to deter abuse
4. In November 2012, a Medical Manager at Reckitt Benckiser submitted faulty data that exaggerated the difference between the paediatric rates of Suboxone Film and Suboxone Tablets to MassHealth, the state Medicaid provider in Massachusetts. She later compounded that error by sharing a chart which, although peer reviewed and accurate in itself, added to the impression of exaggeration.
5. In December of 2013, in response to a "whistleblower" who claimed impropriety amongst the Sales and Government Affairs teams at Indivior, teams for which Dr Baxter held no responsibility or oversight, Indivior's offices in Richmond, Virginia as well as the homes of certain sales representatives were raided by various government agencies including DOJ, FBI, IRS, FDA and ATF. The federal officers removed all paper and electronics including computers, servers, phones and tablets. The DOJ then opened an investigation into Indivior with no specific concerns stated. This investigation continued until the Summer of 2020.

6. With Dr Baxter's endorsement, Indivior sent a correction letter to MassHealth in December 2015.

7. Around May 2020, Indivior agreed a settlement with the DOJ. The DOJ subsequently pursued the CEO and Dr Baxter as the head of the reporting line in which the Medical Manager who misrepresented the data to Massachusetts sat. In July 2020 the DOJ sent Dr Baxter a draft "*information*", which is a document laying out potential charges. The information contained one count under the Responsible Corporate Officer Doctrine of a misdemeanour offence of causing the introduction into interstate commerce of a misbranded product. Dr Baxter entered a plea of guilty on 28 August 2020 which was accepted by a Judge of the United States.

8. On 17 December 2020, Dr Baxter was sentenced to a fine of \$100,000, one year of probation (including six months of home confinement) and 100 hours of community service, but expressly allowed to continue working (including necessary travel, as confirmed in a subsequent Court Order).

9. In January 2021, Dr Baxter referred himself to the GMC in accordance with his obligations under Good Medical Practice.

10. On 22 August 2022, the Rule 15 Allegation was served on Dr Baxter:

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

1. On 17 December 2020, at the United States District Court Western District of Virginia, you were convicted of causing the introduction or delivery for introduction into interstate commerce of a drug that is misbranded, contrary to Title 21 of the United States Code, Sections 331(a) and 333(a)(1).
2. On 17 December 2020, at the United States District Court Western District of Virginia, you were sentenced to:
  - a. pay a fine of \$100,000.00;
  - b. one year probation.
3. You failed to notify the General Medical Council without delay that you had formally admitted to the criminal offence outlined at paragraph 1.

The offence outlined at a paragraph 1, if committed in England and Wales, would constitute a criminal offence.

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

- a conviction in relation to paragraphs 1 and 2;
- b misconduct in relation to paragraph 3.”

The Allegation is identical to an earlier draft Allegation as annexed to the Rule 7 letter on 16 March 2021, and to the Rule 8 letter on 17 August 2021.

11. Dr Baxter’s position via correspondence, telephone conference and in a pre-hearing meeting on 24 March 2022, is that the Allegation cannot lawfully fall within section 35C(2)(c) as a “conviction” case. Dr Baxter maintains the stance that his fitness to practise cannot, within the relevant sub-section, properly “be regarded as ‘impaired’ ... by reason only of ... a conviction [outside the UK] for an offence which, if committed in England and Wales, would constitute a criminal offence” because there is no applicable UK criminal offence.

12. By letter dated 19 August 2022, Dr Baxter admitted paragraphs 1 and 2 of the Allegation (the fact of the US offence and the US sentencing) but nothing else.

13. Dr Baxter’s representatives have objected, in correspondence, to the Allegation’s lack of specificity, and asked for it to be properly particularised. That request was first made by letter dated 21 February 2022, which sought four specific particulars. By the time of the pre-hearing meeting on 24 March 2022, however, that letter and request remained unanswered. Accordingly, the Tribunal “directed [the GMC] to respond to [Dr Baxter’s representatives’] letter of 21/02/2022 requesting further particulars, by 01/04/2022”.

14. On 1 April 2022, the GMC wrote, referring to certain parts of the Rule 8 letter and to one of the two sets of UK regulations referred to therein. But the letter neither discussed nor offered any particularisation of the Allegation.

15. On 4 April 2022, Dr Baxter’s representatives responded that they were “very troubled” by the GMC’s letter since it provided none of the four particulars sought and seemed “to have misunderstood the nature (and significance) of [the] request”. This prompted a further letter from the GMC, dated 8 April 2022. Again, the GMC declined to make any amendment to the Allegation but repeated the references in the Rule 8 letter to some parts of two sets of UK regulations, claiming these to be “comparable” to Dr Baxter’s US conviction/conduct.

16. On 13 April 2022 Dr Baxter’s representatives again asked that the Allegation be amended to identify the precise UK offence(s) relied upon which the allegation of impairment was based. On 29 April 2022, the GMC re-served the Allegation in unamended form. A covering email said that it had been approved in its original (unparticularised) form as compliant with the relevant section (pages 24-25) of the GMC’s *Guidance on Drafting Charges* (‘the Guidance’).

17. By letter dated 31 May 2022 Dr Baxter’s representatives replied that the Guidance neither explains nor justifies the Allegation’s brevity. Accordingly, it remained unlawful. The GMC was again urged to give proper particulars, or face a preliminary legal argument on the issue under rule 17(2)(a). On 16 June 2022, the GMC again declined:

*“The GMC notes your view in relation to the draft charges but considers that the same are sufficiently particularised. I obtained instructions, ahead of the draft charges being served and the content remains as per the served document. Dr Baxter has been informed of the case against him and has been presented with a copy of the draft charges. Your intention to raise the matter as a preliminary legal argument is noted and we will await a copy of the skeleton argument in due course, in line with the case management directions.”*

## The Application

18. This is a preliminary legal argument, put forward by Dr Baxter in advance of the final Tribunal hearing, that the Allegation he faces is not detailed enough for him to properly defend himself and, further, that the case against him should be stopped as an unfair abuse of process.

## Evidence

19. When considering the application, the Tribunal had regard to the following:

- Defence Preliminary Hearing bundle
- GMC Substantive Hearing bundle
- GMC supplementary Substantive Hearing bundle

20. Both parties provided skeleton arguments and submitted supporting authorities.

## Submissions

### Submissions on behalf of Dr Baxter

21. Mr Shaw KC, submitted that elementary fairness required Dr Baxter to be able to understand the Allegation and particulars brought against him by the GMC.

22. Mr Shaw KC told the Tribunal that the GMC had a duty to explain the case to Dr Baxter and this was especially important where notional criminality is alleged, as was the case here.

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23. Mr Shaw KC drew the Tribunal's attention to the Guidance on drafting charges and the '*Guidance on convictions, cautions, determinations and other methods of disposal*' and submitted that the GMC could not have provided any fewer particulars than it had.
24. Mr Shaw KC asked the Tribunal to consider that the GMC, at some stage, would be forced to specify the offence(s) in England and Wales which they said the US conviction constituted, so why not do so now?
25. Mr Shaw KC submitted that the correspondence in which candidate England and Wales offences were suggested was insufficient for providing the certainty that Dr Baxter was entitled to.
26. Mr Shaw KC submitted that the GMC has had an opportunity to "*cure*" the defective Allegation, but has failed to do so and the GMC was wrong to say that the hearing process can remedy any defects in the Allegation because it would be too late at that stage.
27. Mr Shaw KC reminded the Tribunal that it cannot "*cure*" any defect in the Allegation. The Tribunal cannot choose a UK offence for itself and it is for the GMC to rectify the defect.
28. Mr Shaw KC submitted that the Guidance on charging supported Dr Baxter's case that the Allegation needs to be detailed.
29. Mr Shaw KC submitted that the proceedings against Dr Baxter are unfair and they should be stopped as an abuse of process because Dr Baxter cannot have a fair hearing with the Allegation in its current form and, further, the proceedings are so unfair that they ought to be an affront to the Tribunal's sense of justice. Alternatively, in the consequence of the Tribunal's power to regulate its own proceedings the case should be stopped because they are unfair to the doctor.

Submissions on behalf of the GMC

30. Ms Beattie KC submitted that the heads of charge were properly and correctly drafted. There was no unfairness to Dr Baxter, who was fully aware of the Allegation and the supporting facts, having pleaded guilty to the offence in the USA.
31. Ms Beattie KC submitted that the starting point was in the Medical Act under s35(2)(c) and there was only one allegation, namely that Dr Baxter's fitness to practise is impaired by virtue of his conviction.
32. Ms Beattie KC referred the Tribunal to the Guidance on drafting document and pointed out that the Guidance does not require in terms the GMC to specify the offence in England and Wales.

33. Ms Beattie KC drew the Tribunal's attention to correspondence in which GMC has referred to two sets of regulations and submitted that, in light of that correspondence, Dr Baxter cannot be said to not know the case against him. Ms Beattie KC submitted that Dr Baxter's defence team sought clarity about what was being alleged against Dr Baxter and this had been provided in the correspondence.

34. In relation to abuse of process, Ms Beattie KC submitted that there was no prejudice to Dr Baxter in the way that these proceedings have progressed. Dr Baxter knows what he has done, has pleaded guilty to the offence in the USA, and there is no unfairness to him in the way that the Allegation is set out. Ms Beattie KC submitted that any stay of the proceedings should only be in exceptional circumstances, and those circumstances were not present in this case.

35. In answer to the Tribunal's question about whether the GMC wished to keep its options open by not adding details of the England and Wales regulations, Ms Beattie KC replied it would be fairer for options to be kept open so that the registrant could be properly dealt with by their regulatory body. She further argued that it would be too restrictive an approach to require the GMC to specify the particular offences in the Allegation.

### The Tribunal's Approach

The Legally Qualified Chair ('LQC') gave the following advice to the Tribunal:

36. This is a preliminary legal argument advanced by Dr Baxter under s.17(2)(a) of the Fitness to Practice Rules. There is no particular burden or standard of proof to apply at this stage. The Tribunal should consider the arguments advanced by both parties before making its determination.

37. In determining this preliminary argument the Tribunal should bear in mind the statutory overarching objective of protecting the public. That objective involves pursuing the following of these objectives:

- a. To protect, promote and maintain the health, safety and wellbeing of the public;
- b. To promote and maintain public confidence in the medical profession; and
- c. To promote and maintain proper professional standards and conduct for members of that profession.

38. The decision which the Tribunal has to make is essentially whether the Allegation which Dr Baxter faces is sufficiently detailed for the proceedings against him to be fair. The Tribunal should approach the decision in two parts:

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- i. Firstly, the Tribunal should consider: is the Allegation, as currently drafted, sufficiently detailed to permit Dr Baxter to understand the GMC's case against him so that he can receive legal advice upon it and admit it or deny it? Does the fact that the GMC have not specified in the Allegation the offences which they say were committed cause unfairness to Dr Baxter?
- ii. Secondly, If the Tribunal determines that there is some unfairness or that the Allegation is drafted deficiently, then the Tribunal will need to then consider how that unfairness or deficiency is to be remedied. There are, broadly, two options: the Tribunal could stop the case as an abuse of process, or, alternatively, the Tribunal could require the GMC to amend the Allegation in a way which deals with the unfairness or deficiency and renders the proceedings fair.

Deficiency for Want of Detail and Unfairness

39. The relevant law is largely agreed between the parties.

40. In order for Dr Baxter's fitness to be impaired by virtue of his conviction the Tribunal which hears the substantive Allegation will need to decide whether, as set out in s.35C (2) (c) of the Medical Act 1983, his US conviction was for an offence which, if committed in England and Wales, would constitute a criminal offence.

41. It is agreed between the parties that ultimately the Tribunal which hears the substantive Allegation will need to consider Dr Baxter's acts or omissions in the USA which led to his US conviction and consider whether those acts or omissions constitute a criminal offence in England and Wales. There is not precise agreement between the parties about how the Tribunal should approach that exercise, but that does not affect the decision which the Tribunal has to make today, because the parties are agreed that the Tribunal will, at some stage, need to consider the ingredients of English and Welsh criminal offences to decide whether Dr Baxter's conviction would constitute an offence in England and Wales. It is not for the Tribunal at this stage to decide whether, in fact, Dr Baxter's conviction constitutes an offence in this country; that will be for the Tribunal to determine at the full hearing. Dr Baxter wants the Allegation to include at least specific reference to the English and Welsh criminal offences which the GMC say he may have committed. The GMC say that it is not necessary to include this in the Allegation.

42. It is accepted that in these proceedings Dr Baxter is entitled to know what allegation is made against him and to be provided with information about the allegation against them – to understand what it is that they are said to have done wrong. The Tribunal's attention has been drawn to various authorities from a criminal law, administrative law and European Court of Human Rights perspective which all support the general principle that those against whom allegations are made are entitled to know what is alleged against them. As the principle is expressed in Article 6(3) of the European Convention on Human Rights, the



accused has the right to be informed promptly and in detail of the nature and cause of the accusation against him. This is a prerequisite of a fair trial under Article 6.

43. Given that the Tribunal has read the skeleton arguments and heard the submissions of the parties and given that there is broad agreement about these principles between the parties, the LQC did not propose to summarise the law again; the Tribunal will apply the law as set out in the skeleton arguments of the parties.

44. Whilst the parties agree on what the law is, they disagree in how that law is to be applied to the facts in this case – in other words, whether the GMC has fulfilled its obligations by drafting the Allegation in the way they have and by corresponding with Dr Baxter in the way that it has. Further, whether there is unfairness to Dr Baxter in the fact that the written Allegation does not contain reference to specific English and Welsh offences. That will be a matter for the Tribunal to determine after considering all the evidence and the submissions made in written argument and oral submissions by the parties.

45. The Tribunal will bear in mind that, since Dr Baxter admits the fact of his US conviction, the sole substantive issue between the parties is whether the US conviction would constitute a criminal offence in England and Wales.

46. The Tribunal has the written skeleton arguments and has heard the submissions of the parties but in general terms, the competing cases are as follows. The GMC submits that the way the charge is drafted is in compliance with the requirements of the Medical Act and the GMC's guidance on the drafting of charges and that there is no unfairness to Dr Baxter because they have informed him in correspondence (to which the Tribunal's attention has been drawn) of which English and Welsh offences they believe are possible candidates for being "*constituted*" by his actions in the USA. Dr Baxter, amongst other things, submits that natural justice requires the GMC to "*pin their colours to the mast*" and to identify in the Allegation which offence or offences in English and Welsh law they say he committed when he did the things which led to his conviction in the USA. He argues that it is unfair, given the seriousness of the Allegation and given that the only real issue in the case is whether his US conviction constitutes an English or Welsh offence, for this detail not to be set out in the Allegation.

47. The Tribunal will consider the Guidance for drafting charges and the competing submissions by the parties about the Guidance and the way it has been applied in this case.

48. If the Tribunal decides that the Allegation as currently drafted is not deficient and that it causes no unfairness to Dr Baxter, then the Tribunal will refuse Dr Baxter's application and the Tribunal need not go on to consider remedy. If, on the other hand, the Tribunal finds that the Allegation is drafted deficiently or there is unfairness to Dr Baxter, then it will go on to consider the second aspect of the argument about abuse of process and remedy.

#### Abuse of Process and Remedy

49. If the Tribunal finds that the charge is drafted deficiently and/or there is unfairness to Dr Baxter, then the Tribunal will consider the parties' submissions about whether the deficiencies can be remedied, or whether the case ought to be stopped now as an abuse of process.

50. Rule 17(6) of the Fitness to Practise Rules states that where it appears to the Tribunal at any time that— (a) the particulars of the Allegation or the facts upon which it is based, of which notice has been given under rule 15, should be amended; and (b) the amendment can be made without injustice, it may, after hearing the parties and consulting with the Legal Assessor, amend the particulars on appropriate terms.

51. When considering whether to direct an amendment of the Allegation there is no particular standard of proof – the Tribunal can make such a direction *“if it appears that the particulars of the Allegation or the facts upon which it is based should be amended”*.

52. The Tribunal should only make such a direction if the amendment can be made without injustice to either party. Both parties have had the opportunity of making submissions on this point.

53. Although this Rule suggests that the Tribunal can amend the Allegation, the Tribunal should not undertake this task themselves if they decide that this is the right way to proceed; a direction can be made to the GMC to amend the Allegation.

54. The Tribunal will also consider Dr Baxter's argument that the proceedings against him amount to an abuse of process. What he is asking the Tribunal to do is to throw the case against him out because he says that the proceedings are unfair. In some of the authorities which the parties have drawn to the Tribunal's attention this is referred to as a *“stay”* of the indictment, which is a phrase from criminal law which means that the court stops the prosecution from proceeding with the case any further because allowing the case to proceed would amount to an abuse of the process of the court. The Tribunal can do this in two types of cases:

- i. It is impossible for the doctor to have a fair Tribunal hearing, or
- ii. The proceedings as a whole are unfair and it would offend the Tribunal's sense of justice and propriety to be asked to proceed in the particular circumstances of the case.

55. Again, the parties broadly agree on the legal principles as set out in their skeleton arguments and the Tribunal will apply the law as set out in those skeleton arguments. The parties place emphasis on different cases in support of their case, for example Ms Beattie KC on the part of the GMC reminds the Tribunal of *AGs Reference No 1 of 1990 (1992 Cr App R 296)* in support of her contention that a stay of the proceedings should only be acceded to in the most exceptional circumstances and not as a means of punishing the GMC. On behalf of

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Dr Baxter, Mr Shaw KC argues that the case of *R v Chief Constable of Merseyside Police ex p Merrill 1 WLR 1077* is authority for the proposition that in regulatory or disciplinary proceedings like these the Tribunal can dismiss the charge simply if it determines that the case ought to go no further, which suggests that it need not be as exceptional a case as the case cited by Ms Beattie KC suggests.

56. Dr Baxter contends that this case falls into both categories of abuse of process; that he cannot have a fair trial because the Allegation is insufficiently clear for it to be possible for him to have a fair trial, and also that the way the GMC have conducted the case is so unfair that the case ought to be stopped under the second limb.

57. In considering both limbs of the abuse of process test the Tribunal should consider whether any unfairness to Dr Baxter can be excluded from the proceedings by directing an amendment of the Allegation.

58. In considering the second limb of the abuse of process application the Tribunal should consider the overarching objective and should balance the public interest in ensuring standards are upheld with any defects which the Tribunal has found in the proceedings.

59. The burden of establishing that there has been an abuse of process is on the doctor and the standard of proof is on the balance of probabilities. The Tribunal also retains a power to stop the case if it determines that the proceedings are unfair, as identified in the case of *R v Chief Constable of Merseyside Police ex p Merrill 1 WLR 1077* but there is a good deal of overlap between this power and abuse of process principles.

60. The Tribunal should consider the submissions made by both parties, in written skeleton argument form and in oral submissions and should provide reasons for its decision.

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

61. The Tribunal identified that the allegation is that Dr Baxter's fitness to practise is impaired by reason of his US conviction and that this was only a basis for impairment if the US conviction constituted a criminal offence in England and Wales.

62. The Tribunal noted that the substantial dispute, in this case, was whether Dr Baxter's US conviction would constitute a criminal offence in England and Wales.

63. The Tribunal considered that the Tribunal which ultimately determines that matter could only decide the issue by comparing Dr Baxter's conduct against the evidential ingredients of criminal offences in England and Wales. For this reason, the Tribunal determined that Dr Baxter was correct in his submission that the GMC will, at some stage, inevitably have to identify the English and Welsh offences which they say could be constituted by the US conviction (hereafter the 'candidate offences'). If they did not identify

the candidate offences the Tribunal would find it impossible to make its determination about whether the US conviction would constitute a criminal offence in England and Wales.

64. Since the determination of whether the US conviction would constitute an offence in England and Wales is the central issue in these proceedings the Tribunal considered that the identification of the candidate offences was a crucial part of the allegation made by the GMC against Dr Baxter. The case against Dr Baxter is not simply that he has a US conviction and that therefore, his fitness to practise is impaired: the GMC must also prove, on the balance of probabilities, that the conviction would constitute a criminal offence in England and Wales, which is precisely the matter in dispute.

65. The Tribunal noted that the GMC has plainly identified some candidate criminal offences and has detailed these in correspondence with Dr Baxter and determined that the GMC had deliberately chosen not to include the details of these candidate offences in the written Allegation.

66. The Tribunal considered the GMC's reasons for this decision not to include details of the allegations.

67. Firstly, the argument that to include reference to the candidate offences in the written Allegation would be analogous to including evidence in the particulars of an indictment: that it was not good charging practice to provide this level of detail in a conviction case (unlike a misconduct case). The Tribunal were not persuaded that this was a good and sufficient reason not to include reference to the candidate offences in the Allegation because the identification of the candidate offences goes to the heart of these proceedings and that fairness demanded that the candidate offences be identified in the written Allegation so that Dr Baxter could adequately understand the case against him.

68. Secondly, the argument that, since the GMC had corresponded with Dr Baxter and had suggested some regulations which might be constituted by his US conviction, that they were not required to include this detail in the Allegation because Dr Baxter knows the GMC's case. The Tribunal considered that this method of identifying the nature of the GMC's case was insufficiently certain and permitted the GMC to shift its position at a later date. It was unclear to the Tribunal why, having identified candidate offences, the GMC were reluctant to "*pin their colours to the mast*" in this regard.

69. In this context the Tribunal noted particularly the GMC's agreement during oral submissions to the suggestion that the GMC was trying to "*keep its options open*" about which England and Wales offences might have been constituted by the US conviction. Ms Beattie KC submitted that it would be "*fairer*" if the options about the candidate offences were kept open in this way. The Tribunal considered that this demonstrated that the GMC was deliberately avoiding identifying the candidate offences at this stage, in case other candidate offences occurred to the GMC or the Tribunal during the final hearing. The Tribunal considered that this approach was unfair to Dr Baxter and, applying the legal

principles identified in the parties' skeleton arguments about the right of the accused to certainty about what they are charged with, this approach could not be condoned.

70. The Tribunal considered the GMC's reference to its guidance on drafting charges in support of its refusal to provide details of the candidate offences. The GMC placed reliance on a single sentence of that guidance which states: *"If the case involves a conviction outside of the British Islands, the charge should specify that the offence would constitute a criminal offence in England and Wales."* The Tribunal noted that this sentence does not say that the candidate offences should not be set out in the Allegation. The Tribunal considered the guidance document as a whole and found that, rather than supporting the GMC's case, it supported Dr Baxter's case that the Allegation should particularise that which the GMC said he had done wrong and make it clear what the GMC's case against him is. At pages 2 and 3 of the Guidance document, the following is stated:

*"Our charges should:*

- *Set out those alleged facts which go directly to the case for impairment*
- *Enable the doctor to know exactly what is being alleged against him*
- *Assist the Tribunal in making structured findings of fact"*

*"We should seek to ensure that the allegation is particularised sufficiently, so that it is robust and will stand up to scrutiny from the Tribunal and the Defence"*

The Tribunal considered that in the particular circumstances of this case, following the Guidance requires the GMC to identify the candidate offences.

71. The Tribunal concluded that Dr Baxter is entitled to know the nature and cause of the Allegation, which in the particular circumstances of this case, where the very existence of a criminal offence which would be constituted by the doctor's actions was the only real matter in issue, it was necessary for the candidate offences to be set out in order that Dr Baxter could know, with certainty, the nature and cause of the allegation against him.

72. The Tribunal considered that the GMC's argument that Dr Baxter *"knows what he has done"* was not a sufficient reason to overturn the general principle of fairness requiring certainty about the basis of the Allegation.

73. The Tribunal noted that Dr Baxter was aware of the facts of his conviction in the USA, but considered that it was unfair to require him to admit or deny the Allegation until the GMC stated in the Allegation what candidate offences it considered were constituted by his US conviction.

74. The Tribunal took into account that there was no requirement to provide pleadings in MPTS proceedings.

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75. Having identified that the Allegation ought to contain details of the candidate offences the Tribunal went on to consider whether this was a fault which could be remedied, or whether the proceedings were so unfair that it was necessary to stop the proceedings as an abuse of process or by virtue of the Tribunal's inherent right to stop unfair proceedings.

76. The Tribunal considered that the defect in the Allegation could be remedied by requiring the GMC to amend the Allegation.

77. Applying Rule 17(6) the Tribunal determined that the Allegation or the facts upon which the Allegation is based should be amended against Dr Baxter so that the Allegation contained in paragraphs 1 & 2 of the Heads of Charge/Notice of Hearing document specifies the particular regulations and/or criminal offences in England and Wales which the GMC identify as being constituted by Dr Baxter's US conviction.

78. The Tribunal determined that, with that amendment to the Allegation being made any unfairness to Dr Baxter was extinguished and that it was not necessary to stop the proceedings as an abuse of process or in the Tribunal's inherent jurisdiction.

79. The Tribunal could identify no injustice which would be caused to either party by requiring the Allegation to be amended in the above terms.

80. The Tribunal was mindful that a stay of proceedings on the grounds of abuse of process is an exceptional remedy. The Tribunal reminded itself of the overarching objective which made it clear that if a doctor has a conviction, that it is in the interests of public safety, maintenance of professional standards and in the public interest, for the GMC to consider whether that doctor's fitness to practise is impaired.

81. The Tribunal, therefore, declined Dr Baxter's submission that the proceedings should be stopped in the Tribunal's inherent jurisdiction on the basis that they were unfair.