

## PUBLIC RECORD

Dates: 06/11/2023 - 24/11/2023

Medical Practitioner's name:	Mr Michael WALSH
GMC reference number:	2336974
Primary medical qualification:	MB ChB 1978 University of Edinburgh
<b>Type of case</b>	<b>Outcome on impairment</b>
New - Misconduct	Consideration of impairment not reached

**Summary of outcome**  
Voluntary erasure

**Tribunal:**

Legally Qualified Chair	Mrs Nessa Sharkett
Medical Tribunal Member:	Dr Helen McCormack
Medical Tribunal Member:	Dr John Garner
Tribunal Clerk:	Ms Keely Crabtree (6 November 2023) Mr Sewa Singh

**Attendance and Representation:**

Medical Practitioner:	Present and not represented
Medical Practitioner's Representative:	None
GMC Representative:	Mr Adam Lodge, 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 Voluntary Erasure - 24/11/2023

### Decision to proceed in Mr Walsh's absence

1. Mr Walsh was not in attendance. The Tribunal was satisfied in the circumstances that prevailed at this time, as are set out below, that Mr Walsh did not intend to attend and that it was appropriate to continue in his absence.

### The Application

2. On 6 November 2023 this MPT hearing was convened to consider whether Mr Walsh's fitness to practise was impaired by reason of misconduct. Unfortunately, due to technical issues that had not been previously identified and issues relating to disclosure and late delivery of the Hearing bundles, there was considerable delay and little progress had been made at the time of this Application. The Tribunal had however had a full opportunity to consider all the documentary evidence and had heard evidence from two factual witnesses on behalf of the GMC together with a small amount of evidence from Mr A, the expert instructed on behalf of the GMC. His evidence was also delayed due to issues of disclosure and the need to produce a further supplemental report following the disclosure of additional relevant documents.

3. Mr Walsh was not represented and at the time of the incident that has led to him making this application he had only just started to ask his questions of Mr A. It was at this time that the Tribunal witnessed XXX. It was clear to the Tribunal that Mr Walsh required urgent medical attention and XXX determined to adjourn the hearing pending further news of Mr Walsh.

4. When the Tribunal convened the following day it was informed that Mr Walsh had contacted the GMC XXX to advise that, whilst he still wished to take part in the hearing and ask questions of Mr A, XXX would currently prevent him from doing so for at least six weeks. Mr Lodge suggested an adjournment until the following day but it was agreed that it was more appropriate to leave it a further day to allow for Mr Walsh to make contact. It was also agreed that the GMC would write to Mr Walsh setting out the options available to him, including the potential for him to apply for voluntary erasure on medical grounds.

5. When the Tribunal reconvened as agreed on 23 November 2023 it was told that the GMC had corresponded with Mr Walsh to seek an update XXX and consider how to proceed with the case. Mr Lodge for the GMC confirmed that in an email to Mr Walsh, dated 22 November 2023, the GMC advised Mr Walsh that one of the options open to him was to consider applying for Voluntary Erasure (VE) to have his name removed from medical register. A link to the relevant form(s) and guidance was provided. In his email of the same date, Mr Walsh advised the GMC that he would be making an application for VE.

6. That application had been duly made on 22 November 2023 and Mr Lodge informed the Tribunal that an Assistant Registrar had referred the application on to the Tribunal in accordance with the relevant regulations. The Tribunal had been provided with a bundle of documents relating to the Application and was satisfied that by email, dated 22 November 2023, from Ms B (XXX, Registration and Revalidation Directorate), in her capacity as Assistant Registrar, Mr Walsh's application for VE had been referred to the Medical Practitioners Tribunal, under Regulation 3 of the GMC (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations 2004, as amended ('the Regulations').

## Submissions

### On behalf of the GMC

7. Mr Lodge submitted that the GMC's position on the application was neutral. He submitted that it was a matter for the Tribunal to consider whether the application should be considered now or at a later date. He referred the Tribunal to the GMC 'Guidance on making decisions on voluntary erasure applications and advising on administrative erasure' ('the Guidance') and relevant paragraphs therein. In particular he referenced paragraphs 11, 13, 14, 16 – 20, 21 – 22, 23(e), 24(a) - 24(b) and 27. Mr Lodge reminded the Tribunal that when considering the application for VE, it must weigh into the balance the overall assessment of whether erasure was appropriate in the public interest, and whether there was a risk that Mr Walsh might decide to return to clinical practice overseas.

8. Mr Lodge submitted that Mr Walsh was now in his late sixties and had not practised medicine for over five years. Mr Walsh had clearly expressed that he had no intention of returning to clinical practice. Mr Lodge also reminded the Tribunal of the stage at which the hearing was and that matters upon which the Tribunal needed to make decisions had not yet been reached. Mr Lodge submitted that the Tribunal would need to consider the seriousness of the allegations against Mr Walsh and whether if found proved they would amount to significant or persistent breaches of Good Medical Practice, He submitted that in accordance with the guidance an application for VE should not usually be granted unless there were exceptional circumstances. He reminded the Tribunal that this case involved allegations of dishonesty involving financial probity, and acknowledged that it was clear from what Mr Walsh had said, that it would be his position that at the time he undertook the procedures, he held a genuine belief that he was acting in good faith.

9. In respect of the doctor's health and likelihood of return to practice, Mr Lodge referred the Tribunal to paragraph 27 of the Guidance. Mr Lodge referred the Tribunal to the XXX evidence relied upon and the fact that the Tribunal did not have information about XXX. However, he accepted that the Tribunal would need to have regard to the factors which remained to be determined and balance these against the doctors age and XXX. Mr Lodge submitted that the Tribunal may feel that there are exceptional circumstances engaged, XXX.

### The Tribunal's Approach

10. The Legally Qualified Chair reminded the Tribunal that, when deciding whether or not to grant Mr Walsh's application for VE, it needed, according to the Guidance, to take into account the GMC's overarching objective. It also needed to balance carefully the relevant factors to decide whether or not VE was in the public interest, considering the seriousness of the concerns against information such as:

- the doctor's health and likelihood of him returning to practice; and
- the ability to revive the matter should the doctor apply for restoration.

11. The decision as to whether or not to grant Mr Walsh's application for VE is a matter for this Tribunal alone to determine, exercising its own judgment. In reaching a decision on this matter, the Tribunal had regard to the Regulations, and the Guidance. It had regard to all the documentary evidence provided to it by the GMC and Mr Walsh's completed application form for VE. It also took into account the submissions made by Mr Lodge.

12. The Tribunal took into account Regulation 3(8) of the Regulations which states:

'Where, on the date the Registrar receives an erasure application, an allegation against the practitioner has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal under the Fitness to Practise Rules and the hearing before the Medical Practitioners Tribunal has commenced, the Registrar shall refer the application to the MPTS for them to arrange for it to be determined by the Medical Practitioners Tribunal, and the application shall be determined by the Medical Practitioners Tribunal accordingly.'

13. The Tribunal was satisfied that Mr Walsh's application for VE had been properly referred to the Tribunal in accordance with the Regulations and that it was appropriate for it to determine whether or not it should be granted.

14. The Tribunal was in receipt of Mr Walsh's application form for VE. In this, he set out the chronology leading up to XXX on 20 November 2023, and stated:

*'I THEREFORE APPLY FOR VOLUNTARY ERASURE FROM GMC REGISTER ON MEDICAL GROUNDS, AS ANY FURTHER CONTINUATION OF MY INVOLVEMENT IN MPTS HEARING IS A VERY SIGNIFICANT RISK TO MY HEALTH, AND I HAD NO PLANS TO RETURN TO ANY MEDICAL PRACTICE IN ANY EVENT XXX'*

15. In reaching its decision, the Tribunal had regard to the Overarching Objective. It also had regard to paragraph 23(e) of the Guidance, which states:

*‘23 The following are examples of cases where (except in exceptional circumstances) it will not be in the public interest to allow voluntary erasure or proceed with administrative erasure before the conclusion of fitness to practise proceedings, including a MPT hearing in some cases. This is because they involve a conviction for a serious criminal offence or the allegation carries a presumption of impaired fitness to practise.*

*e Allegations of dishonesty’*

16. The Tribunal had regard to paragraph 24(d) which states:

*‘24 There may sometimes be exceptional circumstances when it is appropriate to allow voluntary or administrative erasure prior to the conclusion of the fitness to practise process, even if a case falls into one of the categories above. These may include cases:*

*d where the doctor is suffering from a terminal or very serious illness and there is no prospect they will recover sufficiently to practise medicine again’*

17. The Tribunal considered the Guidance and noted that evidence that XXX is likely to be a strong indicator that they are unlikely to apply for restoration in the future and their application is genuine. This of course is only one factor for consideration in the circumstances of this particular case because of the seriousness of the allegations.

18. The Tribunal bore in mind that the public interest as set out in the Guidance incorporates three elements:

- The protection of patients and the public generally from doctors whose fitness to practise is impaired.
- The maintenance and promotion of public confidence in the medical profession.
- The maintenance and promotion of public confidence in the GMC’s performance of its statutory functions.

### **The Tribunal’s decision**

19. From the outset of the Hearing and in previous correspondence with the GMC Mr Walsh had always expressed his wish to have his name removed from the medical register and confirmed that he had no intention of practising medicine again and that he had been retired for over five years. It was clear however that the matters which originally led to the suspension of Mr Walsh’s practising rights at the Spire Hospital were serious and had

resulted in these fitness to practice proceedings. It would therefore, in most circumstances, be in the Public Interest to ensure these proceedings were determined before any removal from the Register was granted.

20. However, in the circumstances of this case there has been an intervening event which had required further consideration of whether it is in the Public Interest to proceed with this matter or whether Mr Walsh should be allowed to voluntarily erase his name from the Register. As set out above, on Day 11 of the Hearing Mr Walsh XXX.

21. Part of the Tribunal's consideration of this application was to assess XXX and whether he is likely to seek to return to practice in the future. The Tribunal also considered it relevant to assess the impact of refusing the application and requiring Mr Walsh to continue with the Fitness to Practice Proceedings to its conclusion.

22. The Tribunal was assisted by the hospital discharge letter dated 21 November 2023 which records the following:

XXX

23. XXX

24. XXX

25. XXX

26. The Tribunal determined that his medical condition was severe and enduring and unlikely to improve. In the circumstances the Tribunal considered that the likelihood of Mr Walsh returning to clinical practice, either in the UK or abroad, was remote.

27. The Tribunal had regard to the need to protect the public interest in ensuring that doctors are not allowed to avoid fitness to practice proceedings by applying to have their name removed from the medical register. The GMC, as the regulator, has a duty to bring cases which it considered merit a full investigation by a Medical Practitioners Tribunal.

28. The Tribunal has taken into account that the allegations in this case were serious. It had regard to the public interest and balanced that against the interests of Mr Walsh. The Tribunal accepted Mr Walsh's evidence that he has no intention to return to clinical practice XXX. It was also satisfied that it is highly unlikely that Mr Walsh will apply for restoration to the register in the future. In the event he did apply for restoration, the Tribunal is confident that the documentary evidence already held, including the expert reports, would afford the GMC sufficient comfort that resurrection of these allegations would be possible and thus the public interest would be protected.

29. The Tribunal noted, as set out above, that Mr Walsh has repeatedly asserted that he wished for his name to be removed from the medical register, following his retirement from

medical practice, XXX. Taking into account Mr Walsh's health, the Tribunal considered that Mr Walsh's stated view that he did not wish to and would not practise medicine again, was genuine.

30. The Tribunal noted that in this case there are allegations of dishonesty. This falls squarely within the remit of paragraph 23 of the Guidance such that the overarching principle was that it would not be in the public interest to allow VE unless there were exceptional circumstances.

31. From the evidence before it, it is clear to the Tribunal that XXX would prevent him from participating fully in these proceedings. The Tribunal noted that Mr Walsh demonstrated a strong willingness to engage in these proceedings. The Tribunal was of the view that even if the hearing were to be adjourned to a future date when Mr Walsh was able to participate, there was a risk that further stress as a result of these proceedings may have a significant negative impact on his health and may lead to the hearing having to be adjourned again.

32. In considering the public interest, the Tribunal bore in mind that any risk to the public that could arise from the misconduct alleged would be negated by the erasure of Mr Walsh from the register and him ceasing to practise entirely in the UK. For the reasons set out above, the Tribunal determined that the likelihood of Mr Walsh practising overseas was remote. The Tribunal was conscious of the need to maintain and promote public confidence in the medical profession, and in the GMC's performance of its statutory functions.

33. The Tribunal noted that, should Mr Walsh make a future application for his name to be restored to the Medical Register, he would need to do so in the knowledge that he would need to satisfy the GMC he had kept his medical knowledge and skills up to date, and his fitness to practise would still need to be addressed in light of the outstanding allegations.

34. In conclusion, the Tribunal was of the view that, if a properly informed member of the public were fully aware of the circumstances present in this case, their confidence in both the medical profession and the GMC's performance of its statutory functions would not be damaged by the granting of Mr Walsh's application for VE. Furthermore, having completed the balancing exercise required, the Tribunal is satisfied that it is right in all the circumstances to grant VE.

35. Accordingly, Mr Walsh's name will be erased from the Medical Register forthwith. The Registrar will notify Mr Walsh of this outcome as soon as is reasonably practicable, in accordance with Regulation 3(9) of the Regulations.

36. That concludes this case.