Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 04/03/2019 - 07/03/2019

Medical Practitioner’s name: Dr Anirban MANDAL

GMC reference number: 5193840

Primary medical qualification: MB BS 1993 Calcutta

Type of case
New - Misconduct

Outcome on impairment
Not Impaired

Summary of outcome
Warning

Tribunal:

<table>
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<tr>
<th>Legally Qualified Chair</th>
<th>Miss Tarryn McCaffrey</th>
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<tbody>
<tr>
<td>Lay Tribunal Member:</td>
<td>Mrs Debbie Hill</td>
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<td>Medical Tribunal Member:</td>
<td>Dr Nigel Langford</td>
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<td>Tribal Clerk:</td>
<td>Ms Lorraine Curry</td>
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Attendance and Representation:

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<tr>
<th>Medical Practitioner:</th>
<th>Present and represented</th>
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<tbody>
<tr>
<td>Medical Practitioner’s Representative:</td>
<td>Mr Matthew McDonagh, Counsel, instructed by Case Management Medical.</td>
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<tr>
<td>GMC Representative:</td>
<td>Ms Chloe Fairley, Counsel, instructed by GMC legal.</td>
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Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.
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 and Impairment - 06/03/2019

Background

1. Dr Mandal has been working at St Helens and Knowsley Teaching Hospitals NHS Trust (‘the Trust’) as a locum Consultant since February 2017 and as a Speciality Doctor in Plastic and Reconstructive Surgery from August 2018 to date.

2. Concerns were raised by staff in the post room at the Trust, where Dr Mandal had been sending parcels via first class post. When questioned by post room staff if the contents of the parcels were regarding hospital business, Dr Mandal stated that they were.

The Allegation and the Doctor’s Response

3. The Allegation made against Dr Mandal is as follows:

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

1. On one or more occasions between August 2017 and September 2017 whilst employed by St Helens & Knowsley Hospitals NHS Trust (the ‘Trust’), you used the Trust’s postal system to send one or more parcels (the ‘Parcels’) which were not related to your work at the Trust. **Admitted and found proved**

2. On one or more occasions you confirmed to the Trust post department that the Parcels were for hospital business, or words to that effect. **Admitted and found proved**

3. You did not pay the postage to send the Parcels. **Admitted and found proved**

4. You knew that:
   a. the Parcels were not related to your work at the Trust; **Admitted and found proved**
b. you should have paid the postage for the Parcels. **Admitted and found proved**

5. Your actions as described at paragraphs 1 to 3 were dishonest by reason of paragraphs 4 a and b. **Admitted and 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**

### The Admitted Facts

4. At the outset of these proceedings, Dr Mandal made admissions to all paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

### Dr Mandal’s oral evidence

5. Dr Mandal gave oral evidence at the hearing. He told the Tribunal that he accepted he acted dishonestly and apologised for this. He provided details regarding his charity work and stated that the parcels which he was sending at the Trust were in relation to this. He provided examples of the CD’s and a magazine which he sent to people who support his charity work.

### Documentary Evidence

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

- Witness statement of Mr A, Post Porter at the Trust dated 9 October 2018;
- Witness statement of Mr B, Post Porter at the Trust dated 13 December 2018;
- Statement of Dr Mandal dated 2 February 2019;
- CPD documents from Dr Mandal
- Evidence of attendance at courses;
- Witness statements and testimonials on Dr Mandal’s behalf;
- Appraisal documents;
- Dr Mandal’s CV;
- Minutes from Financial and Performance meeting;
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- Minutes from Risk Management meeting;
- Dr Mandal’s reflective statement;
- Examples of Dr Mandal’s charity CD;
- An example of the magazine he sold for charity.

The Outcome of Applications Made during the Impairment Stage

7. The Tribunal granted Dr Mandal’s application, made pursuant to Rule 34(13) of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), that it hear the character evidence of a witnesses, Prof C, by telephone. Mr McDonagh submitted that the given Prof C’s professional commitments, he is unable to make the journey to the hearing today but has made himself available for to give telephone via telephone. Ms Fairley did not object to the application. The Tribunal considered the availability of the witness, the need for the witnesses to attend in person, the importance of the witnesses’ evidence to the proceedings and fairness to all parties. The Tribunal determined that it was in the interests of justice to hear the evidence of the witnesses by telephone.

Evidence

8. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence as follows:

- Prof C, Consultant Burns, Plastic & Laser Surgeon, by telephone link;
- Mr D, Consultant Plastic Surgeon, in person;
- Ms E, Directorate Manager, the Trust, in person.

Submissions by the GMC

9. On behalf of the GMC, Ms Fairley submitted that, on the basis of the facts found proved, Dr Mandal’s fitness to practise is impaired. Ms Fairley referred the Tribunal to Good Medical Practice (‘GMP’) and stated that there are elements engaged in this case. She reminded the Tribunal of the overarching objectives and submitted that two limbs are engaged in this case, namely, to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards of conduct for members of the profession.

10. Ms Fairley submitted Dr Mandal’s actions demonstrated a departure from GMP and this is not a case of a single incident or mistake. She stated there was a period
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of two weeks where Dr Mandal sent multiple packages without paying for them. She referred the Tribunal to Dr Mandal’s oral evidence, where he stated that he was “rushing” to send the packages. However, Ms Fairley stated that Dr Mandal made no effort to ascertain if the Trust would permit him to send the packages via the Trust post, despite having opportunities to do so.

11. Ms Fairley stated that it is not just that the hospital’s budget was being used to send the packages, but Dr Mandal’s dishonesty in misleading the hospital post room porters when asked directly if the packages were for hospital business and he stated they were.

12. Ms Fairley stated that Dr Mandal is obviously a highly regarded clinician however he lacks insight into his misconduct. She told the Tribunal that Dr Mandal has not clearly demonstrated insight into the misleading of the postal porters calling it a ‘mistake’. She submitted that given the repeated nature of his actions, he doesn’t fully appear to appreciate his dishonesty.

13. Ms Fairley submitted that accordingly, the Tribunal should find that there has been clear dishonesty and it is so serious that it amounts to misconduct. Ms Fairley further submitted that if the Tribunal find serious misconduct it should find that Dr Mandal’s fitness to practise is currently impaired.

Submissions on behalf of Dr Mandal

14. Mr McDonagh submitted that the matter of misconduct is a matter for the Tribunal. He stated that Dr Mandal did engage in direct and repeated dishonesty but stated that this followed from an error of judgment. He stated that Dr Mandal acknowledges that he has made a serious mistake and urged the Tribunal to consider proportionality, and that not every case of dishonest conduct leads to a finding of impairment. He reminded the Tribunal of the testimonials from the character witnesses who gave evidence and accounted for Dr Mandal’s probity and integrity. He told the Tribunal that Dr Mandal currently works in a speciality role, and there have been no concerns regarding his clinical ability. Dr Mandal has continued to play a positive role at the Trust and his colleagues value him highly.

15. Mr McDonagh stated that Dr Mandal raised money for a burns charity in India and these packages were sent to raise money for this charity. He usually sent these items at the post office in his own time. However following a holiday in India coinciding with music and religious festivals there had been a peak in demand for
the items at this time. He stated that Dr Mandal was unable to leave the hospital in order to send these, given his busy schedule when on-call and instead used the hospital post.

16. Mr McDonagh submitted that these are serious mistakes but the Tribunal must recognise that Dr Mandal was not trying to deceive his employer, it was not an organised and concerted effort and this is not a man who sought personal gain.

17. He accepted that matters of dishonesty are difficult to remediate and reflect on. However, he drew the Tribunal’s attention to Dr Mandal’s reflective statement and stated that he has shown insight and has reflected upon the elements of GMP and the Tribunal can be assured that his actions will not be repeated.

18. Mr McDonagh submitted that having regard to all the evidence the Tribunal has seen and heard the Tribunal should conclude that Dr Mandal is not currently impaired.

Legal advice

19. In deciding whether Dr Mandal’s fitness to practise is impaired, the Tribunal has exercised its own judgement. It has borne in mind the statutory overarching objective which is to protect the public. This includes: to protect and promote the health, safety and wellbeing of the public; to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards of conduct for members of the profession. The Tribunal would not give excessive weight to any single limb.

20. The Tribunal reminded itself that the purpose of these proceedings is not to punish a doctor for past wrongdoing but to maintain proper standards in the profession and to protect the public. The Tribunal must look forward, not back, but in order to determine whether a doctor is currently fit to practise without restriction it must take into account the way in which a doctor has acted, or failed to act, in the past.

21. The Tribunal had regard to the guidance given by Justice Siber in Cohen v GMC [2008] EWHC 581(Admin) where he said:

"There must always be situations in which a panel can properly conclude that the act of misconduct was an isolated error on the part of the medical
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practitioner and that the chance of it being repeated in the future is so remote that his or her fitness to practice has not been impaired. Indeed the Rules have been drafted on the basis that the once the Panel has found misconduct, it has to consider as a separate and discreet exercise whether the practitioner’s fitness to practice has been impaired... It must be highly relevant in determining if a doctor’s fitness to practice is impaired that first his or her conduct which has led to the charge is easily remediable, second that it has been remediated and third that it is highly unlikely to be repeated.”

22. In considering this matter the Tribunal reminded itself that it must follow a two-step process. It must first consider whether the facts admitted and found proved amount to serious misconduct and, if so, it must then decide whether as a result Dr Mandal’s fitness to practise is impaired. The Tribunal also considered if there was any evidence provided regarding insight and remediation, and the likelihood of repetition.

The Tribunal’s Determination on Impairment

23. The Tribunal first considered whether the facts found proved amounted to misconduct.

24. The Tribunal considered that Dr Mandal had engaged in dishonesty, which he has acknowledged and accepted. The Tribunal considered the context of Dr Mandal’s dishonesty. Dr Mandal had sent up to 20 packages during the last two weeks of August 2017. On one or more occasions he had actively misled the post room porters regarding the nature of these packages. The Tribunal noted that even when Dr Mandal was told that if the packages were not for hospital business he would have to pay, Dr Mandal had none-the-less sent the packages without paying. The Tribunal considered that the cost to the NHS amounted to approximately £30 indicating that the dishonesty was not perpetrated for the purposes of personal gain.

25. The Tribunal felt that Dr Mandal had been dishonest for a matter of convenience, believing it did not matter where the funds came from as it was for charity and when challenged thought it would go unnoticed. However, The Tribunal determined that Dr Mandal's conduct was in clear contravention of the guidance set out in GMP:

1) Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to
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date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.

65) You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession.

68) You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.

77) You must be honest in financial and commercial dealings with patients, employers, insurers and other organisations or individuals.

26. Ms E in her oral testimony highlighted that probity is important and that patients expect doctors to be open and honest because we rely on them to be honest with us. Through his dishonest conduct Dr Mandal betrayed this expectation. The Tribunal therefore concluded that Dr Mandal’s conduct fell so far short of the standards of conduct expected of a doctor as to amount to misconduct and that misconduct was serious.

Impairment

27. Having found that the facts found proved amounted to misconduct, the Tribunal went on to consider whether, as a result of that misconduct, which was serious, Dr Mandal’s fitness to practise is currently impaired.

28. The Tribunal accepted that honesty is a fundamental characteristic to be expected of every medical practitioner. It goes to the heart of what it means to be a doctor. However, it was conscious that not every case of misconduct by dishonesty automatically leads to a finding of impairment. It needed to take into account the individual circumstances in this case.

29. The Tribunal had regard to paragraph 76 of CHRE v NMC and Paula Grant [2011] EWHC 927 QBD (Admin), in which Cox J, referring to paragraph 25.67 of the Fifth Shipman report, posed the following question:

‘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:'

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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…’

30. The Tribunal agreed, and it was not in dispute that Dr Mandal had brought the profession into disrepute and breached one of the fundamental tenants of the medical profession such that at the time of these events he was impaired. However this assessment is of current impairment as of today’s date and looking forward.

31. The Tribunal considered the guidance of Justice Silber in *Cohen vs GMC [2008] EWHC 581(Admin)*

‘Whether the conduct is remediable
Whether it has been remedied
Whether or not there is a likelihood of repetition.’

32. The Tribunal was of the view that dishonesty is particularly difficult to remediate, but not impossible. The Tribunal noted that it had a number of positive written testimonials before it, which spoke very highly of Dr Mandal, and took account of the oral evidence of Prof C, Mr D and Ms E all of whom work with Dr Mandal, spoke highly of his probity, integrity and clinical skills as a practitioner. Prof C described Dr Mandal as “a great asset” and “a key member of the team [who had] shown commitment over and above the norm.” Prof C referred to Dr Mandal’s decision making at the time of these events as a “moment of indiscretion” and said that Dr Mandal was generally conscientious and did not think he was of “that sort of character” to behave in this way. Ms E said that Dr Mandal was “a very hard worker, well respected and very supportive of his colleagues.” Mr D gave evidence that Dr Mandal was altruistic, that “no one was perfect”, and this was a “lapse of judgment” in the context of a busy workplace. Given their evidence, the Tribunal was satisfied that Dr Mandal’s actions were wholly out of character.

33. Dr Mandal has produced significant evidence of remediation and reflection on the events that occurred. Ms E gave evidence that Dr Mandal had co-operated fully
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with the Trust investigation, being very apologetic and very honest with the investigators. Ms E further stated that since these events the actions he had taken had been “on his conscience” with the result that he was now more cautious, thought things through in a more structured way and was careful not to rush all the time leading to a positive benefit in caring for his patients. Ms E also noticed that Dr Mandal was checking with her on a more frequent basis before taking administrative action.

34. Dr Mandal had attended budgetary meetings at the hospital and stated that these had helped him to understand the impact of his actions alongside the micro and macro economics of the hospital. The Tribunal was impressed by this unusual but directly relevant form of remediation. This indicated to the Tribunal that Dr Mandal had given real thought to his dishonest conduct, the financial consequences of that conduct and taken steps to remediate it in appropriate way.

35. The Tribunal notes that in his reflective statement Dr Mandal states that “Having re-read the clauses of GMP, I reflected on my action, understood that it was wrong and assure that I will stick to the highest standard in future”. Dr Mandal further provides details regarding the steps he has taken to remediate, including completing courses such as “Fundamentals of Medical Ethics”, “the Human as hero or hazard” and “Reflective Learning” amongst others and has booked on to a face-to-face Ethics course in the near future.

36. The Tribunal found that, in his oral and written evidence, Dr Mandal appeared to take the incident seriously, has admitted his dishonesty and apologised for it. The Tribunal does not consider that Dr Mandal is likely to repeat this conduct given his high level of insight and remediation. The Tribunal is also of the view that his involvement in this Tribunal whilst not intended to be punitive is likely to act as a salutary reminder and cause him to behave differently in the future. The Tribunal finds that he now fully understands the importance of ensuring that he maintains professional standards in all aspects of his work and adhering to GMP.

37. The Tribunal was satisfied that by acting dishonestly Dr Mandal had breached a fundamental tenet of the profession, but, that his dishonest behaviour was an error of judgment in an otherwise exemplary 18 year career in which he has demonstrated ‘enthusiasm over and beyond the norm.’

38. In all the circumstances, the Tribunal determined that Dr Mandal had understood the impact of his actions, had remediated them and was not impaired at
today’s date. It therefore determined a finding of impairment is not necessary in this case to uphold public confidence in the medical profession.

39. The Tribunal has therefore determined that Dr Mandal’s fitness to practise is not impaired either on public protection or public interest grounds.

Determination on Warning - 07/03/2019

1. As the Tribunal determined that Mr Mandal’s fitness to practise was not impaired it considered whether in accordance with s35D(3) of the 1983 Act, a warning was required.

Submissions

2. On behalf of the GMC, Ms Fairley, submitted that a Warning should be issued to Dr Mandal. She referred the Tribunal to the GMC Guidance on Warnings (February 2018) (‘the Warnings Guidance’), specifically to paragraph 14, 16, 20 and 24 of the Warnings Guidance, which states as follows:

**14** Warnings should be viewed as a deterrent. They are intended to remind the doctor that their conduct or behaviour fell significantly below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise. Warnings may also have the effect of highlighting to the wider profession that certain conduct or behaviour is unacceptable.

**16** A warning will be appropriate if there is evidence to suggest that the practitioner’s behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:

- there has been a significant departure from Good medical practice

**20** The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.

a There has been a clear and specific breach of Good medical practice or our supplementary guidance.

b The particular conduct, behaviour or performance approaches, but falls short of, the threshold for the realistic prospect test or in a case before a tribunal, that the doctor’s fitness to practise has not been found to be impaired.
A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise. Warnings may be an appropriate response to any type of allegation (subject to the comments in paragraph 7 regarding cases solely relating to a doctor’s health); the decision makers will need to consider the degree to which the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear the potential impact of the conduct, behaviour or performance in question, accordingly.

There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).

There is a presumption that the GMC should take some action when the allegations concern dishonesty.* There are, however, cases alleging dishonesty that are not related to the doctor’s professional practice and which are so minor in nature that taking action on the doctor’s registration would be disproportionate. A warning is likely to be appropriate in these cases. An example of this might include, in the absence of any other concerns, a failure to pay for a ticket covering all or part of a journey on public transport.

Ms Fairley submitted that the Tribunal acknowledged within its determination on impairment that Dr Mandal’s conduct is unlikely to be repeated. She further stated that as the Tribunal had not made a finding of impairment, it should issue a Warning to mark the seriousness of Dr Mandal’s dishonesty.

Mr McDonagh, on Dr Mandal’s behalf, did not have any submissions to make in regards to a warning but referred the Tribunal to the submissions made at the impairment stage.

The Tribunal’s Determination on Warning

The Tribunal took account of the Warnings Guidance in determining whether or not to issue a warning. It has borne in mind the paragraphs which Ms Fairley has brought to its attention during her submissions.

In all the circumstances, the Tribunal was satisfied that, given the nature of its findings in relation to Dr Mandal’s dishonest conduct, his behaviour fell below the standard expected to a degree which warrants a formal response by the Tribunal. There had been a clear and specific breach of GMP which was significant.

In considering paragraph 33 of the Warnings Guidance, the Tribunal took account of Dr Mandal’s steps to remediate his conduct and to mitigate the risk of repetition. The Tribunal considered the remorse shown, his previous good character and the supporting
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evidence he provided of being a respected clinician. The Tribunal accepted Dr Mandal's risk of repetition was low and did not warrant a finding of current impairment. However, it determined that it was necessary for it to highlight to Dr Mandal, the public, and the wider profession, that his conduct was serious and unacceptable and had the potential to bring the profession into disrepute. The Tribunal determined that it was necessary to reinforce the importance of maintaining proper professional conduct and behaviour.

8. The Tribunal therefore determined that it would be in the public interest and an appropriate and proportionate response to issue a warning in this case, to promote and maintain public confidence in the profession and declare and uphold proper conduct and behaviour for members of the profession.

9. The Tribunal anticipates that the warning will act as a deterrent and reminder to Dr Mandal that his conduct fell below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise.

10. The Tribunal has therefore determined to issue the following warning in accordance with Section 35D(3) of the Medical Act 1983. The Tribunal has therefore determined to issue the following warning:

"On one or more occasions between August 2017 and September 2017 whilst you were employed by St Helens & Knowsley Hospitals NHS Trust you used the Trust’s postal system to send one or more parcels, which you did not pay for and which were not related to your work at the Trust. You further confirmed to the Trust post department that the Parcels were for hospital business which was dishonest.

This conduct does not meet with the standards required of a doctor. It risks bringing the profession into disrepute and it must not be repeated. The required standards are set out in Good medical practice:

‘1) Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.

65) You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession.

68) You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate."
77) You must be honest in financial and commercial dealings with patients, employers, insurers and other organisations or individuals.

Whilst the above failings in themselves are not so serious as to require any restriction on your registration, it is necessary in response to issue this formal warning.

This warning will be published on the medical register in line with our publication and disclosure policy, which can be found at www.gmc-uk.org/disclosurepolicy”

11. That concludes this case.

Confirmed
Date 07 March 2019  Miss Tarryn McCaffrey, Chair