Record of Determinations – Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 09/07/2019 - 12/07/2019
Medical Practitioner’s name: Dr John LINEHAN

GMC reference number: 4778291
Primary medical qualification: MB BCh 1994 National University of Ireland (Cork)

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>Mr Tim Bradbury</th>
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<tr>
<td>Medical Tribunal Member:</td>
<td>Dr Helen Denley</td>
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<td>Medical Tribunal Member:</td>
<td>Dr Bridget Langham</td>
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</tbody>
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Tribunal Clerk: Ms Jeanette Close

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 Neil Sheldon, QC, instructed by the MDU</td>
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<tr>
<td>GMC Representative:</td>
<td>Mr Robin Kitching, 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.
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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 - 11/07/2019

Background

1. Dr Linehan qualified in 1994 from the National University of Ireland (Cork), and prior to the events which are the subject of the hearing, Dr Linehan worked in various hospitals in Ireland before commencing as an SHO in July 1997. In December 2000, after successfully completing his Specialist Registrar training, he moved to England, where in 2003 he completed his GP Registrar training and accepted a partnership at Newnham Walk Surgery (the Surgery), where he continues in practice.

2. At the time of the events, the Surgery was a training practice for medical students and Dr Linehan, who qualified as an Associate Trainer in 2015, undertook the role of clinical and educational supervisor to trainees on rotational placement attached to the Surgery.

3. The allegation that has led to Dr Linehan’s hearing can be summarised as follows; on 12 June 2018 at the conclusion of the final meeting with Dr A to sign off Dr A’s paperwork for her Annual Review of Competence Progression (ARCP), Dr Linehan acted in an inappropriate manner by holding Dr A’s face in his hands, kissing Dr A on the lips and hugging Dr A. He then allegedly commented that Dr A was blushing, or words to that effect. It is alleged that Dr Linehan’s actions were sexually motivated.

The Outcome of Applications Made during the Facts Stage

4. The Tribunal granted an application made by Mr Neil Sheldon QC, on behalf of Dr Linehan to admit portions of Dr Linehan’s evidence and that of two character witnesses which had been redacted and to include them at the facts stage, under Rule 34(1) of the General Medical Council (‘GMC’) (Fitness to Practise) Rules 2004, as amended (the Rules). The Tribunal’s full decision on the application is included at Annex A.

5. The Tribunal granted an application made by Mr Robin Kitching, Counsel on behalf of the GMC, for the evidence of Dr A to be heard via video link, under Rule 34(13) of the Rules. The Tribunal’s full decision on the application is included at Annex B.
The Allegation and the Doctor’s Response

6. The Allegation made against Dr Linehan is as follows:

1. On 12 June 2018 at Newham Newnham Walk Surgery you met Dr A in your role as their educational supervisor and you:
   Amended under Rule 17(6)
   a. held their face;  
      Admitted and found proved
   b. kissed them on their lips;  
      Admitted and found proved
   c. hugged them;  
      Admitted and found proved
   d. said they were blushing or words to that effect.  
      Admitted and found proved

2. Your conduct as described at paragraph 1 was sexually motivated.  
   To be determined

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

The Admitted Facts

7. At the outset of these proceedings, through his counsel Mr Sheldon, Dr Linehan made admissions to some 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.

The Facts to be Determined

8. In light of Dr Linehan’s response to the Allegation made against him at paragraph 2, the Tribunal is required to determine whether Dr Linehan’s actions on 12 June 2018 were sexually motivated.

Factual Witness Evidence
9. The Tribunal received evidence on behalf of the GMC from the following witnesses:

- Dr A, by video link.

10. Dr Linehan provided his own witness statement dated 14 May 2019, and also gave oral evidence on day one of the hearing. In addition, the Tribunal received evidence from the following witnesses on Dr Linehan’s behalf:

- Dr B, salaried GP and former GP Principal at the surgery, in person, along with her witness statement dated 18 May 2019;
- Mrs C, Practice Manager at the surgery, in person, along with her witness statement dated 17 May 2019.

Documentary Evidence

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

- Emails between Dr A and Dr Linehan dated 12 and 13 June 2018;
- Text messages between Dr A and Dr Linehan dated 8, 11 and 25 June 2018.

12. In his submissions, Mr Kitching explained the use of the phrase ‘sexual motivation’ in the context of the GMC’s allegation, as describing conduct that was motivated by a sexual or romantic desire and distinct from a desire to offer emotional support. Mr Kitching submitted that Dr Linehan’s actions could be described as being more carnal in nature, actions that offered more than support to a colleague who he believed was upset and about to burst into tears.

13. Mr Kitching reminded the Tribunal to have regard to the evidence in support of Dr Linehan’s good character, particularly with regard to his credibility as a witness. But he submitted that the evidence of good character was of less relevance to the issue of propensity in the particular circumstances of this case. This is because he submitted Dr Linehan had, in fact, admitted kissing Dr A in circumstances that were inappropriate, which was in itself out of character.

14. Mr Kitching submitted that Dr Linehan’s recollection of the meeting with Dr A and his interaction with her was in contrast to the recollections of Dr A herself. Dr Linehan stated that Dr A was visibly upset and about to cry, yet Dr A stated in her witness evidence that she was not upset, she knew she could see Dr Linehan again, as she could call into the practice at any time and that it wasn’t the end of an era.

15. Mr Kitching submitted that the evidence shows what was really on
Dr Linehan’s mind at the time and it was not to offer a colleague emotional support. Mr Kitching stated that the obvious and normal response when someone was upset was to say something reassuring to them, perhaps touch their arm in a reassuring way, a hug and or a peck on the cheek when saying goodbye. Mr Kitching stated, Dr Linehan went far beyond that, he cupped Dr A’s face in his hands, kissed her on the lips and hugged her without saying anything to her at that time.

Mr Kitching submitted that whether or not it was a moment of madness and totally out of character, Dr Linehan’s actions fell far below the standards and conduct expected of members of the profession and invited the Tribunal to find the outstanding Allegation proved.

Mr Sheldon submitted that there was no factual evidence to suggest that there was any sexual motive on Dr Linehan’s part and that Dr A in her witness evidence did not state that she had interpreted his actions as being sexually motivated.

Mr Sheldon further submitted that there was no evidence in the circumstances to suggest that Dr Linehan had a sexual or romantic interest in Dr A and that it was implausible for Dr Linehan to wait until the very last time they were to see each other to, completely ‘out of the blue’, make a sexual advance to Dr A. Mr Sheldon stated that throughout their interactions, in meetings, emails and in text messages, there was never any suggestion of anything other than a professional relationship of a senior doctor mentoring a junior colleague, certainly nothing to indicate there was a sexual or romantic intent on Dr Linehan’s part. Mr Sheldon submitted that if Dr Linehan had any sexual interest in Dr A he had had numerous opportunities to act on this interest but had not done so.

Mr Sheldon further submitted that there was never any report or suspicion of inappropriate behaviour by Dr Linehan in his interactions with colleagues, patients or staff, attested to by both Dr B and Mrs C, who gave evidence on behalf of Dr Linehan.

Mr Sheldon stated Dr Linehan was profoundly sorry to have caused Dr A any upset, he offered his apology to her in response to her email of that evening and has offered it since. Mr Sheldon stated that Dr Linehan was distressed, embarrassed and devastated by his actions; he has shown insight and humility, has not deflected responsibility for his actions and was remorseful and apologetic to his family and colleagues.

Mr Sheldon submitted that this was entirely consistent with the decent and honest man his colleagues attest to. Dr Linehan was trying to be supportive and offer comfort to Dr A when she was upset and in that moment of awkwardness and uncertainty he made an error of judgement that he recognised should never have happened.
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22. Mr Sheldon submitted that there was nothing within the evidence to displace the clear and credible evidence that supports a finding that there was no sexual motive on the part of Dr Linehan and that in the light of Dr Linehan’s good character the Tribunal should be slow to reject his evidence in the absence of clear evidence to support the Allegation. Mr Sheldon therefore invited the Tribunal to find the outstanding charge of the Allegation not proved.

The Tribunal’s Approach

23. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Linehan does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

The Tribunal’s Analysis of the Evidence and Findings

24. The Tribunal has considered the Allegation of sexual motivation and has evaluated the evidence in order to make its findings on the facts.

Paragraph 2

Your conduct as described at paragraph 1 was sexually motivated.

25. At the outset of the hearing the Tribunal identified that despite the fact that the evidence in the case is largely not in dispute, the issue of sexual motivation was not an easy issue to determine.

26. The GMC’s case is that the act of kissing on the lips is of itself a sexual act, and involves a degree of intimacy from which a sexual motive can be inferred. The Tribunal agreed that kissing on the lips is an intimate act and one from which a sexual motivation might readily be inferred. However, the Tribunal did not consider that a momentary kiss on the lips was an act of such intimacy that a sexual motivation must necessarily be inferred. Much would depend on the particular circumstances and context in which the kiss occurred.

27. The Tribunal determined that there was no evidence beyond the kiss itself to suggest that Dr Linehan might have had a sexual interest in Dr A at any time. On the contrary, it was accepted that he was a doctor of experience, routinely interacting with a number of female colleagues, trainees, and patients and there was never any suggestion that Dr Linehan had ever acted in an inappropriate sexual way or any suspicion thereof.

28. Dr A herself stated in her evidence that prior to the incident of
12 June 2018, her relationship with Dr Linehan had been professional, formal and friendly to the extent that she trusted him, was able to be open with him and seek advice on personal matters in his role of providing pastoral support. Dr A stated that she had never experienced inappropriate behaviour from Dr Linehan, much less sexually inappropriate behaviour from him. Dr A did not suggest that Dr Linehan had made her feel uncomfortable at any time prior to the incident on 12 June 2018.

29. With regards to Dr Linehan’s explanation for his actions, the Tribunal had difficulty in accepting that this was a ‘misjudged’ attempt to reassure an emotional trainee. The Tribunal readily accepted that in the circumstances described by Dr Linehan he may have perceived that Dr A was upset and might have thought it appropriate to give a reassuring hug. The Tribunal did not accept that someone with the knowledge and experience of Dr Linehan, particularly in the role of an educational supervisor, could ever have thought it appropriate to cup the face and kiss the lips of a trainee.

30. The Tribunal did not consider Dr Linehan’s explanation that this had been a misjudgement was disingenuous, rather it considered that it was an attempt by him to rationalise in his own mind, his uncharacteristic behaviour which he cannot adequately explain.

31. However, from this conclusion, it does not necessarily follow that his motive must therefore have been sexual. Rather the Tribunal considered it to be more likely that he did not exercise any judgement at all and that this was a spontaneous aberrant act, which cannot be readily explained. In short the Tribunal concluded that Dr Linehan in colloquial terms ‘momentarily took leave of his senses’, an act which took, in the evidence of both parties, no longer than two seconds, and was immediately regretted.

32. The Tribunal, having close regard to the burden and standard of proof, were not satisfied on the balance of probabilities that Dr Linehan’s conduct was sexually motivated.

33. In reaching this conclusion the Tribunal had particular regard to the oral evidence of Dr A who was well placed to make an assessment of Dr Linehan’s motives. Dr A said that she "did not understand his intentions or his motives". Furthermore neither in her email correspondence with Dr Linehan, or since, has Dr A ever suggested that she perceived his actions as being sexual. She referred to his conduct as being ‘not very professional of an educational supervisor’ and ‘inappropriate’.

34. For the avoidance of doubt, the Tribunal have concluded that, although it was not satisfied that Dr Linehan’s actions were sexually motivated, they were nevertheless a serious breach of professional boundaries and they were wholly
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inappropriate. The fact of which Dr Linehan with his extensive knowledge, experience and position should have been fully aware.

35. The Tribunal has found that Dr Linehan’s actions at paragraph 2 of the Allegation above were not sexually motivated. The Tribunal has therefore found Paragraph 2 not proved.

The Tribunal’s Overall Determination on the Facts

36. The Tribunal has determined the facts as follows:

1. On 12 June 2018 at Newham Newnham Walk Surgery you met Dr A in your role as their educational supervisor and you:

   Amended under Rule 17(6)

   a. held their face;  
      Admitted and found proved
   
   b. kissed them on their lips;  
      Admitted and found proved
   
   c. hugged them;  
      Admitted and found proved
   
   d. said they were blushing or words to that effect.  
      Admitted and found proved

2. Your conduct as described at paragraph 1 was sexually motivated.  
   Found not proved

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

To be determined

Determination on Impairment - 12/07/2019

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which have been admitted as set out before, Dr Linehan’s fitness to practise is impaired by reason of misconduct.

The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.
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3. Dr Linehan provided his own witness statement dated 14 May 2019 and also gave oral evidence at the hearing. In addition, the Tribunal received evidence from the following witnesses on Dr Linehan’s behalf:

- Dr B, salaried GP and former GP Principal at the surgery, in person, along with her witness statement dated 18 May 2019;
- Mrs C, Practice Manager at the surgery, in person, along with her witness statement dated 17 May 2019.

4. The Tribunal received in support of Dr Linehan, 3 testimonials from colleagues, all of which it has read:

- Testimonial statement of Dr D, dated 18 April 2019;
- Testimonial statement of Dr E, dated 2 May 2019;

5. The Tribunal also received further documentary evidence in support of Dr Linehan including:

- Colleague feedback
- Patient thank you letters and notes
- Family and friends survey
- Certificate of Attendance from the Maintaining Professional Boundaries Course
- Dr Linehan’s reflections following his attendance at the Maintaining Professional Boundaries Course
- Further reflections following his attendance on the fourth day of the Maintaining Professional Boundaries Course

Submissions

On behalf of the GMC

6. In his submissions, Mr Kitching referred the Tribunal to the Sanctions Guidance (‘SG’) (2018 version), in particular the statutory overarching objective as set out in SG and submitted that two of the three limbs were of particular significance in this case, namely:

'14 ...

... b promote and maintain public confidence in the medical profession
c promote and maintain proper professional standards and conduct for the members of the profession.’

Mr Kitching did not submit that there was risk of repetition of the admitted conduct.
7. Mr Kitching further submitted that Good Medical Practice (‘GMP’) (2013 version) was also engaged and referred the Tribunal to GMP paragraph 1, domain 3 (regarding Communication, Partnership and Teamwork) and paragraphs 35 to 38:

'1 ... establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.

Working collaboratively with colleagues
35 You must work collaboratively with colleagues, respecting their skills and contributions;
36 You must treat colleagues fairly and with respect;
37 You must be aware of how your behaviour may influence others within and outside the team;
38 Patient safety may be affected if there is not enough medical cover. So you must take up any post you have formally accepted, and work your contractual notice period before leaving a job, unless the employer has reasonable time to make other arrangements.'

8. Mr Kitching submitted that there was no doubt that Dr Linehan’s actions fell seriously below what is expected of a senior doctor and, although an isolated incident, it was nevertheless of a serious nature, one that the Tribunal and Dr Linehan acknowledge.

9. Mr Kitching submitted that Dr Linehan’s conduct represented a significant breach of trust, Dr Linehan had crossed the boundary of professionalism to a significant degree and although the impact on Dr A was not as great as it might have been, it was still an upsetting experience for her, even more so as she had developed a professional relationship with Dr Linehan based on mutual trust and respect and that trust had been betrayed.

10. Mr Kitching reminded the Tribunal of the facts to be considered when determining impairment, that rather than relying solely on a doctor’s good work record, the Tribunal was required to consider other factors such as insight, remediation, reflection and repetition.

11. Mr Kitching conceded that it was clear that Dr Linehan had undertaken a significant amount of self-reflection and attended a Professional Boundaries course, yet, he submitted, Dr Linehan was still unable to adequately explain what was on his mind at the time of the events.

12. Mr Kitching stated that in relation to paragraph 30 of the Tribunal’s determination on the facts of the case, Dr Linehan agreed with the observations of the Tribunal that he had tried to rationalise in his own mind his uncharacteristic behaviour, which he described as impulsive and inappropriate but that he still could
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not adequately explain it. In these circumstances Mr Kitching submitted that Dr Linehan still has some way to go in developing full insight into his behaviour.

13. Mr Kitching submitted that in order to uphold proper professional standards of conduct and behaviour and to maintain the public confidence in the profession, the Tribunal should find Dr Linehan’s fitness to practice currently impaired by reason of his misconduct.

On behalf of Dr Linehan

14. Mr Sheldon on behalf of Dr Linehan conceded that the conduct admitted was sufficiently serious as to amount to misconduct.

15. In his submissions, Mr Sheldon reminded the Tribunal that with regard to Dr Linehan’s current impairment it was required to look forwards and not back. Mr Sheldon submitted that Dr Linehan has spent a considerable amount of time on reflection and remediation and that the Tribunal could be confident that this conduct will never be repeated.

16. Mr Sheldon described the incident as a couple of seconds of ‘taking leave of his senses’ in an otherwise unblemished career of 25 years of invaluable service, where Dr Linehan had engaged with countless trainees, colleagues and patients, all without incident.

17. Mr Sheldon stated that whatever was or was not going through Dr Linehan’s mind at that time, there was no malicious intent or improper motive. It was understandable for Dr A to find the incident upsetting and shocking but there was no significant harm to her person or to her professional reputation.

18. Mr Sheldon also submitted that it was difficult to criticise a doctor for not having a nicely polished rationale for his impulsive and inappropriate behaviour because the very nature of an impulsive act is one that is not properly thought through, and by its very nature is often difficult to explain.

19. Mr Sheldon stated that there is tangible evidence of how Dr Linehan now regulates his workflow. Dr Linehan has given careful consideration to how he now tailors his working day and the strategies he has in place to reduce or remove stressors that he recognises could trigger such impulsive behaviour, a key point Dr Linehan has taken away with him from the Professional Boundaries course.

20. Mr Sheldon also reminded the Tribunal of the genuine and unequivocal apology Dr Linehan made to Dr A on the night of the incident and several times since, he was profoundly sorry and deeply regrets his actions and is utterly determined that he will never find himself in this situation again, nor find himself in front of his regulator.
21. Mr Sheldon stated that Dr Linehan has stepped away from his training commitments, something he thoroughly enjoys. Dr Linehan recognises the need to step back and reflect on how he spends his time with trainees, to ensure he has the right environment when mentoring so that there is no repetition of his behaviour in the future.

22. Mr Sheldon submitted that if the Tribunal were to find Dr Linehan’s fitness to practise not impaired today, there could be no suggestion at all that he had ‘got away with anything’ or had been ‘let off the hook’. He further stated that a sensible and properly informed member of the public would expect a doctor in these circumstances to be frank and honest about what they had done, offer a sincere and genuine apology, provide firm assurance that it would never happen again, and back this up with self-critical reflection, remediation and evidence of continued professional development (CPD). Mr Sheldon submitted Dr Linehan had done all of these things.

23. Mr Sheldon stated that Dr Linehan has suffered a year of regret and sleepless nights worried about his career, a job he deeply loves. He further submitted that though this is a serious matter, it has been dealt with in a serious manner by the GMC and the Tribunal. Mr Sheldon stated that the public interest was satisfied in this case and that it does not require further action. Mr Sheldon therefore, invited the Tribunal to find Dr Linehan’s fitness to practice not impaired.

The Relevant Legal Principles

24. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal’s judgement alone.

25. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first, whether the facts as found proved amounted to misconduct which was serious, and second, whether that misconduct led to a finding of impairment.

26. The Tribunal must determine whether Dr Linehan’s fitness to practise is impaired today, taking into account Dr Linehan’s conduct at the time of the events and any relevant factors since then, such as whether the matters are remediable, have been remedied and any likelihood of repetition.

27. The Tribunal has already given a detailed determination in relation to the facts of Dr Linehan’s case. It has taken those matters into account in its deliberations. It has also taken into account the submissions made by Mr Kitching and Mr Sheldon. The Tribunal noted that although it is necessary to determine whether Dr Linehan’s fitness to practise is currently impaired, looking forward, its decision will necessarily be informed by the admitted past conduct.
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28. Throughout its deliberations, the Tribunal has been mindful of its responsibility to uphold the overarching objective as set out in the Medical Act 1983 (as amended). That objective is the protection of the public and in Dr Linehan’s case particularly involves sub paragraphs b and c:

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

The Tribunal’s Determination on Impairment

Misconduct

29. The Tribunal has concluded, as has been conceded by Mr Sheldon, that Dr Linehan’s conduct did amount to conduct that fell far short of the standards of conduct reasonably to be expected of a doctor such as to amount to misconduct, and that it was serious.

30. In reaching this conclusion the Tribunal considered not only was Dr Linehan’s conduct wholly inappropriate but it had a real impact on Dr A who was naturally upset and distressed by Dr Linehan’s behaviour and breach of trust.

31. The Tribunal having found that the facts found proved amounted to misconduct it went on to consider whether, as a result of that misconduct, Dr Linehan’s fitness to practice is currently impaired.

32. The Tribunal first considered whether Dr Linehan posed a risk to patients and the public and whether there was a risk of his acting in a similar fashion in the future. In so doing the Tribunal considered the extent to which there is evidence of insight, remediation and reflection such as to satisfy itself that there was no significant risk of repetition.

33. The Tribunal in considering this issue determined that Dr Linehan has done all that could reasonably be expected of him in terms of reflection on his conduct, recognising that which was wrong and he has been proactive in identifying the means by which he would prevent a recurrence, this has included, but has not been limited to:

- Attendance at a Professional Boundaries course
- Extensive self-critical reflection
- Reducing his workload so as to reduce the stress under which he put himself
- Employing strategies to remove stressors
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34. The Tribunal was aware that at the time of this incident Dr Linehan was working at an intensity that was likely to put considerable stress on him, that could not be sustained without having an impact on XXX. The Tribunal considered that it could well be that the stress he was under at the time was a contributory factor in his behaviour, something which Dr Linehan now recognises. Dr Linehan has now introduced support systems into his working week to ensure he is mindful of his stressors and he manages them appropriately.

35. The Tribunal reminded itself of its finding that Dr Linehan was not able to adequately explain his actions at the time of the incident and noted that Mr Kitching relied on this fact to suggest that Dr Linehan’s journey of insight was incomplete. Whilst acknowledging the point made on behalf of the GMC, the Tribunal considered that it was unlikely that Dr Linehan would ever be able to adequately explain the motive behind his impulsive and inexplicable conduct. Nevertheless, he has fully reflected on his actions, acknowledged his fault and taken practical steps to remediate his conduct.

36. The Tribunal was satisfied that Dr Linehan was genuinely remorseful for his behaviour and was open and honest about his actions with family, colleagues and his regulator and he has never sought to deny responsibility or to deflect the blame onto anyone else.

37. The Tribunal recognised that Dr Linehan did apologise to Dr A soon after the event and the Tribunal accepted that his apology was genuine although at the time Dr A had considered it was inadequate.

38. The Tribunal was satisfied that Dr Linehan has been embarrassed, ashamed and shamed by the event, the whole process of being referred to the GMC has had a profound effect on him. The experience has adversely affected XXX. In these circumstances the Tribunal considered that any risk of repetition could be regarded as negligible.

39. The Tribunal next went on to consider whether, notwithstanding the risk of repetition was negligible, a finding of impairment was nevertheless necessary in order to maintain public confidence in the profession and promote and maintain proper professional standards and conduct for members of the profession.

40. The Tribunal agreed with Mr Sheldon’s analysis and considered what a sensible and properly informed member of the public would expect from a doctor who had acted in the manner admitted. Mr Sheldon submitted, and the Tribunal agreed, that such a member of the public would expect; a full and frank admission of wrongdoing, a sincere and genuine apology, firm assurance that such an incident would not happen again, supported by evidence of a mature and self-critical reflection, remediation including CPD, being open and honest around colleagues, NHS England, the GMC and those
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around him and to take appropriate, practical steps to ensure that he does not repeat the conduct.

41. The Tribunal accepted that Dr Linehan has demonstrated that he has done all of these things and in these circumstances the Tribunal determined that, although a finding of impairment might serve to underline the importance of maintaining confidence in the profession and upholding proper professional standards, such a finding was not necessary and in the circumstances of this case would be disproportionate.

42. Furthermore, the Tribunal considered that there is a greater public interest in Dr Linehan, who is an experienced and valued GP, continuing in unrestricted practice as a GP.

43. The Tribunal has therefore determined that Dr Linehan’s fitness to practise is not impaired by reason of misconduct.

Determination on Warning - 12/07/2019

1. As the Tribunal determined that Dr Linehan’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, Mr Kitching submitted that it was appropriate and proportionate for the Tribunal to issue a warning, the Tribunal having found misconduct but not having found that Dr Linehan’s fitness to practise to be impaired.

3. Mr Kitching directed the Tribunal’s attention to the Guidance on Warnings (February 2018) (the Guidance), in particular paragraphs 11, 16, 17, 19, 20 and 25, which he submitted were all engaged:

‘11 Warnings allow the GMC and MPTS tribunals to indicate to a doctor that any given conduct, practice or behaviour represents a departure from the standards expected of members of the profession and should not be repeated. They are a formal response from the GMC and MPTS tribunals in the interests of maintaining good professional standards and public confidence in doctors. The recording of warnings allows the GMC to identify any repetition of the particular conduct, practice or behaviour and to take appropriate action in that event. Breach of a warning may be taken into account by a tribunal in relation to a future case against a doctor, or may itself comprise misconduct serious enough to lead to a finding of impaired fitness to practise.

The test for issuing a warning
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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, ...

17 There is no definition of ‘significant’ in the Medical Act or in the Fitness
to Practise Rules. The paragraphs below are therefore intended to help decision
makers, at both the investigation and hearing stages, consider whether a
warning is appropriate.

19 Once the decision makers are satisfied that the doctor’s fitness to
practise is not impaired, they will need to consider whether the concerns raised
are sufficiently serious to require a formal response from the GMC or MPTS
tribunals, by way of a warning. When doing so the decision makers must have
regard to the public interest (See paragraph 10 above.)

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.

c 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.

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

25 In deciding whether to issue a warning the decision maker should apply the principle of proportionality, weighing the interests of the public with those of the practitioner. It is important to bear in mind, of course, that warnings do not restrict the practitioner’s practice and should only be considered once the decision maker is satisfied that the doctor’s fitness to practise is not impaired.’

4. Mr Kitching submitted that the facts found proved were a serious breach of GMP and well below the standards expected of a member of the profession and that a formal response is required as a signal to the profession and the wider public. Mr Kitching further submitted that the main task for the Tribunal at this point was to consider how best to promote the public interest and that was to mark it by warning Dr Linehan with regard to his unprofessional conduct, and Mr Kitching submitted, this would be a proportionate response.

5. Mr Sheldon submitted that it was unnecessary and disproportionate to issue a warning to Dr Linehan on the basis that it would act as a deterrent or because it would uphold professional standards and maintain confidence in the profession. He submitted that neither would be required in the present circumstances and, in particular, in light of the Tribunal’s findings at the impairment stage.

6. Mr Sheldon stated the rationale behind issuing a warning was to remind a doctor of his previous conduct and that it should not be repeated. Mr Sheldon submitted that the Tribunal, in their determination on impairment, stated that the chance of repetition was negligible. Mr Sheldon asserted that issuing a warning should not apply in Dr Linehan’s case as it would serve no useful function.

7. With regards to upholding public confidence in the profession, Mr Sheldon submitted that this issue has previously been addressed and dealt with in the Tribunal’s impairment determination and that this was sufficient. The Tribunal’s determination would be published and would be accessible to the public [and the profession].

8. In addition Mr Sheldon directed attention to the list of mitigating factors a Tribunal should consider when deciding to issue a warning in paragraph 33 of the Guidance:

33 However, if the decision makers are satisfied that the doctor’s fitness to practise is not impaired or that the realistic prospect test is not met, they can take account of a range of aggravating or mitigating factors to determine whether a warning is appropriate. These might include:

- the level of insight into the failings.
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a A genuine expression of regret/apology.

b Previous good history.

c Whether the incident was isolated or whether there has been any repetition.

d Any indicators as to the likelihood of the concerns being repeated.

e Any rehabilitative/corrective steps taken.

f Relevant and appropriate references and testimonials.

9. Mr Sheldon submitted that all of the listed mitigating factors were present in this case. Accordingly he submitted a warning would be both unnecessary and disproportionate.

The Tribunal’s Determination on Warning

10. In considering whether a warning was appropriate in this case, the Tribunal had particular regard to the Guidance. The Tribunal noted that a warning would be appropriate where there has been a significant departure from GMP and the criteria set out in paragraph 20 of the Guidance has been met:

‘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.

c 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
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make clear the potential impact of the conduct, behaviour or performance in question, accordingly.

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

11. The Tribunal was satisfied that the misconduct in this case plainly breaches professional boundaries to a significant degree in that:

a. It amounted to a significant breach of GMP

b. The conduct admitted, and which the Tribunal found to amount to misconduct though falling short of establishing current impairment, was nevertheless, completely unacceptable

c. The nature of the misconduct was sufficiently serious that if there were a repetition it would be likely, and in the Tribunal’s view highly likely, to result in a finding of impaired fitness to practise. Further the misconduct was of a nature that was likely to undermine public confidence in the profession and the reputation of the profession

d. The Tribunal considered that whereas the risk of repetition in this case is negligible, there is nevertheless a need to record formally the concerns to which the misconduct gives rise because, if in the event that there was a repetition of such conduct, a warning would be relevant to any subsequent proceedings. The Tribunal acknowledged that in the absence of a warning there could be reference to the Tribunal’s determination in any subsequent proceedings, however there could be no guarantee of this

12. In determining that a warning was appropriate in this case, the Tribunal accepted that the non-exhaustive list of mitigating factors identified in the guidance are present in this case. These were all matters that were fully taken into account in relation to the Tribunal’s finding on impairment. Furthermore, the presence of all these mitigating features does not, in the Tribunal’s view, mean that a warning is necessarily inappropriate. The Tribunal is required to strike a balance between the aggravating factors (namely in this case the seriousness of the incident itself) and the mitigating factors. The Tribunal having balanced the aggravating and mitigating factors concluded that a warning was appropriate.

13. The Tribunal also had regard to Mr Sheldon’s reminder to the Tribunal of its finding that the public interest has been sufficiently satisfied by reason of Dr Linehan’s insight, remediation and remorse. However, this finding was made in relation to the issue of impairment and whether a well-informed member of the public would expect a finding
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of impairment in the circumstances of this case. The Tribunal was satisfied in light of
the Guidance that there was a public interest in issuing a warning in this case as it
would serve to maintain confidence in the profession and uphold professional standards
of behaviour, and would act not only as a reminder to Dr Linehan but the profession
generally, that professional boundaries must always be respected, and that conduct
such as this is not acceptable.

14. Further, the Tribunal considered that issuing a warning was both necessary and
proportionate, particularly given that Dr Linehan’s ability to practise would not thereby
be subject to any restriction.

15. In all the circumstances, the Tribunal determined to issue a warning to Dr Linehan
in the following terms:

“Dr Linehan

On 9 July 2019 you admitted that you had:

3. On 12 June 2018 at Newnham Walk Surgery you met Dr A in your role as their educational supervisor and you:

   a) held their face;
   b) kissed them on their lips;
   c) hugged them;
   d) said they were blushing or words to that effect.

And on 11 July 2019 the MPT Tribunal found that your conduct as
admitted amounted to misconduct that was serious.

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 as set out generally in GMP and in particular in
paragraphs 35 to 37:

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

36 You must treat colleagues fairly and with respect.

37 You must be aware of how your behaviour may influence
others within and outside the team”.
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Whilst this misconduct in itself is not so serious as to require any restriction on your registration, it is necessary to issue this formal warning in response.

This warning will be published on the List of Registered Medical Practitioners (LRMP) in line with their publication and disclosure policy, which can be found at www.gmc-uk.org/disclosurepolicy.”

16. That concludes this case.

Confirmed
Date 12 July 2019  Mr Tim Bradbury, Chair
Admissibility of evidence application

Submissions
1. At the outset of the hearing Mr Sheldon, on behalf of Dr Linehan, made submissions to include text which had been redacted from the evidence Dr Linehan had provided to the GMC and was to rely upon. Mr Sheldon requested the Tribunal to consider including this text for consideration at this stage of the proceedings and submitted that the text was indeed relevant to Stage 1 of the hearing.

2. Mr Kitching, on behalf of the GMC, submitted that inclusion of the text would not assist the Tribunal in reaching its determination as to whether Dr Linehan’s actions were sexually motivated or not and was irrelevant to that issue.

The Tribunal’s decision
3. The parties agreed that in order to determine the issue of admissibility it would be necessary for the Tribunal to see and consider the very material that was in question, and that in the event that it should determine that the material was inadmissible the Tribunal would, nevertheless, continue to hear the case in these circumstances. It was implicitly accepted by the parties that a professional and experienced Tribunal would be well able to put from its mind, those matters which were said to be irrelevant at the fact finding stage.

4. Accordingly, although the Tribunal accepted that ordinarily issues of admissibility should be determined at the outset, the Tribunal considered that in the particular circumstances of this case it would not be a useful or necessary exercise to consider line by line those matters that were said to be irrelevant at the fact finding stage. It would be an idle exercise and not a productive use of the Tribunal’s time. Particularly because this is not a case where the volume of material to which objection was taken was such that its consideration during the course of the hearing would unduly add to the length of the hearing.

5. In reaching this conclusion the Tribunal was satisfied that there could be no injustice to the GMC by the Tribunal hearing the evidence during the course of stage 1 and determining for itself whether it was relevant or irrelevant to the issues that require determining. If the former, the Tribunal would attach such weight to it as it considers appropriate, if the later it would attach no weight to it at all.
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6. Furthermore the Tribunal was conscious of the fact that in light of Dr Linehan’s admissions the proceedings would inevitably lead to a determination on impairment to which the matter objected to largely related. Given that some of that evidence was to be given by witnesses who were to be called during the fact finding stage, it was obviously expedient to hear their evidence at that time, notwithstanding its relevance being confined to the impairment stage, a fact conceded on behalf of the GMC.

7. In reaching this conclusion the Tribunal did not consider that the GMC’s objection to the evidence was anything other than proper because issues of admissibility ordinarily should be determined at the outset of a hearing and it is only the particular circumstances of this case that in the Tribunal’s judgement this is unnecessary. Furthermore the Tribunal did not consider that the object taken by the GMC was an attempt to exercise a ‘veto’ on evidence to be called by Dr Linehan as it had been characterised by Mr Sheldon, QC.

ANNEX B – 11/07/19

Application to hear Dr A’s evidence via video link

1. Mr Robin Kitching, on behalf of the GMC, made an application for Dr A to give evidence via either telephone or video link, under Rule 34(13) of the General Medical Council (‘GMC’) (Fitness to Practise) Rules 2004, as amended (the Rules).

2. Mr Kitching informed the Tribunal that the GMC was not calling Dr A to give witness evidence however, Dr A was on standby and available to the Tribunal for questions and for cross examination if required.

3. Mr Neil Sheldon, on behalf of Dr Linehan did not oppose the GMC’s application.

The Tribunal’s Decision

4. The Tribunal had regard to Rule 34(13) and (14) which states:

’(13) A party may, at any time during a hearing, make an application to the Committee or Tribunal for the oral evidence of a witness to be given by means of a video link or a telephone link.

(14) When considering whether to grant an application by a party under paragraph (13), the Committee or Tribunal must—

(a) give the other party an opportunity to make representations;
(b) have regard to—
(i) any agreement between the parties, or
(ii) in the case of a Tribunal hearing, any relevant direction given by a Case Manager; and
(c) only grant the application if the Committee or Tribunal consider that it is in the interests of justice to do so.’

5. The Tribunal was mindful that the preference is to hear witness evidence in person. The Tribunal’s preference was to see Dr A whilst she gave her witness evidence rather than hear her evidence over a telephone link. However, in order to expedite matters the Tribunal determined that rather than wait for Dr A to attend the hearing in person, which may add length or delay to the hearing, it would be in the interests of justice and all parties to allow Dr A to give her evidence via video link.