Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates:
04/02/2019 - 09/02/2019, 26/02/2019 - 27/02/2019 & 20/03/2019

Medical Practitioner’s name: Dr Paul WAINMAN

GMC reference number: 6144355

Primary medical qualification: BM BCh 2006 Oxford University

Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome
Erasure
Immediate order imposed

Tribunal:

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<tr>
<th>Legally Qualified Chair</th>
<th>Mr Paul Moulder</th>
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<td>Lay Tribunal Member:</td>
<td>Mr Colin Davis</td>
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<td>Medical Tribunal Member:</td>
<td>Dr Harriet Leyland</td>
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<tr>
<th>Tribunal Clerk:</th>
<th>04/02/2019 - 09/02/2019</th>
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<td>Mr Stuart Peachey</td>
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<td>Mr Stuart Peachey</td>
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<td>20/03/2019</td>
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<td>Mrs Jo Johnson</td>
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Attendance and Representation:

<table>
<thead>
<tr>
<th>Medical Practitioner:</th>
<th>Present and represented</th>
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<tbody>
<tr>
<td>Medical Practitioner’s Representative:</td>
<td>Mr Andrew Hurst, Counsel, instructed by the MDDUS.</td>
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<td>GMC Representative:</td>
<td>Ms Louise Kitchen, Counsel.</td>
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Record of Determinations –
Medical Practitioners Tribunal

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held 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 Facts - 06/02/2019

1. This determination will be read in private. However, as this case concerns Dr Wainman’s misconduct, a redacted version will be published at the close of the hearing.

Background

2. Dr Wainman qualified in Medicine with a BA BMBCh from the University of Oxford, in 2006.

3. Between August 2006 and 2008, Dr Wainman completed his Foundation Year 1 and Foundation Year 2 training. Between August 2008 and August 2011, Dr Wainman completed the Oxford City General Practice Vocational Training Scheme, and worked as a General Practitioner (‘GP’) at various practices from 2010.

4. In May 2012, Dr Wainman became a GP Partner at XXX (‘the Practice’), and continued to work there when the alleged misconduct occurred. Dr Wainman remains a Partner at the Practice, albeit suspended from the National Health Service (‘NHS’) Performers List.

5. The initial concerns were raised with the GMC on 17 November 2017 by Dr H, GP Partner at the Practice, where a partners meeting was held prior to referral. Dr Wainman self-referred himself to the GMC on 21 November 2017.

The Outcome of Applications Made during the Facts Stage

6. The Tribunal granted Dr Wainman’s application, made pursuant to Rule 41(2) of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the
Record of Determinations — Medical Practitioners Tribunal

Rules’), for the entirety of the hearing to be held in private. The Tribunal’s full decision on the application is included at Annex A.

7. The Tribunal granted Ms Louise Kitchin’s application on behalf of the GMC, made pursuant to Rule 36(1) of the Rules, for XXX to be present during Patient A’s oral evidence before the Tribunal when in private session, and that a vulnerable witness screen be placed in the hearing room. The Tribunal’s full decision on the application is included at Annex B.

8. The Tribunal granted Dr Wainman’s application, made pursuant to Rule 34(1) of the Rules, to exclude the National Health Service England (‘NHSE’) report, save in respect of the evidence produced directly by Patient A. The Tribunal’s full decision on the application is included at Annex C.

9. The Tribunal granted Ms Kitchin’s application, made pursuant to Rule 17(6) of the Rules, to amend particulars of the Allegation and Schedules. The Tribunal’s full decision on the application is included at Annex D.

The Allegation and the Doctor’s Response

10. The Allegation made against Dr Wainman is as follows:

    1. You had contact with Patient A on a professional basis on the dates set out in Schedule 1. Admitted and found proved

    2. You engaged in an improper emotional relationship with Patient A between the dates set out in Schedule: Amended under Rule 17(6)

        a. from on or around the date set out in Schedule 2; Admitted and found proved as amended under Rule 17(6)

        b. between the dates set out in Schedule 3. Admitted and found proved as amended under Rule 17(6)

    3. Your conduct as set out in paragraph 2b was sexually motivated. To be determined

    4. Between the dates set out in Schedule 4 you engaged in a sexual relationship with Patient A. Admitted and found proved

    5. At the time of your actions as set out in paragraphs 2 to 4 above, you knew that Patient A was vulnerable due to Patient A’s history as set out in Schedule 5. Admitted and found proved
The Admitted Facts

11. At the outset of these proceedings, through his Counsel, Mr Andrew Hurst, Dr Wainman made admissions to some Paragraphs and Sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of 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.

Factual Witness Evidence

12. The Tribunal received evidence on behalf of the GMC from the following witness:

   • Patient A, by way of oral evidence on the second day of the proceedings; a witness statement, dated 10 April 2018; and a supplemental witness statement, dated 1 October 2018.

13. Dr Wainman provided his own witness statement, dated 6 January 2019 and also gave oral evidence at the hearing on the second day of these proceedings.

XXX

14. The Tribunal also received written evidence from XXX.

Documentary Evidence

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

   • Letter from Patient A to Dr Wainman, dated May 2017;
   • Patient A’s handwritten notes, dated 22 June 2017;
   • XXX messages between Dr Wainman and Patient A, dated between October and November 2017;
   • Dr Wainman’s initial referral by Dr H to the GMC, dated 17 November 2017;
   • Dr Wainman’s self-referral to the GMC, dated 21 November 2017;
   • NHSE Regulation 18 letters to Dr Wainman, dated 5 January 2018;
   • NHSE meeting notes with Patient A, dated 5 January 2018;
   • Patient A’s initial recollections, dated January 2018;
   • Patient A’s Medical Records; and
   • Email correspondence between the GMC and XXX Medical Practice, dated 12 December 2018.

The Tribunal’s Approach
16. 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 Wainman 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

Findings

17. The Tribunal has considered the outstanding paragraph of the Allegation and has evaluated the evidence in order to make its findings on the facts.

Paragraph 3

3. Your conduct as set out in paragraph 2b was sexually motivated.

18. The Tribunal had regard to Paragraph 2(b) of the Allegation (which was admitted at the outset of these proceedings by Dr Wainman), and Schedule 3 that states:

'2. You engaged in an improper emotional relationship with Patient A between the dates set out in Schedule:

... 

b. between the dates set out in Schedule 3’

'Schedule 3

1 September 2017 and 16 November 2017’

19. The Tribunal accepted Ms Kitchin’s submission on behalf of the GMC, that this is not a case of Dr Wainman engaging in grooming or predatory behaviour towards Patient A. Mr Hurst agreed with this submission and the Tribunal noted that this also accorded with XXX in the reports it had received.

Chronology

20. The Tribunal had regard to the chronology of the events prior to and during the Allegation, as set out above.
21. In November 2017, following a letter of referral by the Practice to the GMC, and Dr Wainman’s subsequent self-referral, the GMC began its investigation into his relationship with Patient A. At the time of the events, Dr Wainman was Patient A’s GP. Patient A registered with the Practice in 2011 and saw Dr Wainman in that year. In around April / May 2012, Dr Wainman became Patient A’s GP. In a consultation on 1 August 2014, Patient A mentioned to Dr Wainman that XXX.

22. XXX.

23. By 2017, Patient A was diagnosed with various health conditions for which Dr Wainman was her treating GP. On 10 May 2017, Patient A wrote to the Practice expressing her gratitude for Dr Wainman’s care and treatment of her. There was no dispute that Dr Wainman had tried to provide the best care for Patient A up until the events set out in the Allegation.

24. In or around August 2017, Patient A and Dr Wainman began an exchange of correspondence by means of the Practice’s Facebook page. XXX. The night before, she emailed Dr Wainman who responded to her with a reassuring message. On 29 August 2017, Patient A and Dr Wainman met at a XXX café after a further exchange of messages. It was common ground that the circumstances of this meeting were inappropriate.

25. On 1 September 2017, Dr Wainman attended Patient A’s home address where he discussed his personal circumstances with, and kissed, Patient A. Both Patient A and Dr Wainman continued to contact each other via the Practice’s Facebook page between 1 and 29 September 2017.

26. On 29 September 2017, Dr Wainman and Patient A met in a car XXX. They engaged in a sexual act, although it was disputed who had initiated it.

27. On 5 October 2017, XXX. It was common ground that Dr Wainman thereafter visited Patient A at her home address. On 18 October 2017, Dr Wainman and Patient A stayed in an apartment XXX where sexual intercourse took place. It was further agreed that sexual intercourse took place on a regular basis after 18 October 2017.

28. On 5 November 2017, Dr Wainman moved XXX home and stayed in a local hotel, later moving to an ‘Airbnb’ property. Patient A stayed with Dr Wainman for some of this time. On 16 November 2017, Dr Wainman met with XXX. The same evening, Patient A contacted Dr Wainman, attended Dr Wainman’s home and they met in her car and discussed their relationship. Dr Wainman ended his relationship with Patient A.

29. The next day, Dr Wainman reported the situation to his fellow GP partner, Dr H, at the Practice. Patient A also contacted Dr H, who already knew of the affair.
from Dr Wainman’s report. There was a Practice meeting and the partners agreed to make a referral to the GMC. Dr Wainman was suspended from the Practice.

Sexual Motivation

30. Tribunal at the facts stage had to determine whether Dr Wainman’s conduct within the specified date range, 1 September 2017 and 16 November 2017, was sexually motivated, the particulars of the Allegation, having been admitted for the most part.

31. The Tribunal reminded itself of the definition of ‘sexual motivation’ set out in Basson v GMC [2018] EWHC 505 Admin paragraph 14 of the report, which was conduct ‘either in pursuit of sexual gratification or in pursuit of a future sexual relationship’. The Tribunal was also aware that it had to determine the issue of Dr Wainman’s motivation as a matter of inference from the surrounding circumstances, determining what had been in his mind at the relevant time.

32. The Tribunal had regard to the XXX evidence available to it. In summary, this evidence showed that both prior to the emotional relationship with Patient A and during it, XXX.

33. The Tribunal heard evidence from Patient A of how she had become increasingly emotionally dependant on Dr Wainman. Patient A stated:

‘he made me feel special and loved. No one had ever treated me like that…He treated me like a human being. Like I actually mattered to someone’.

This had resulted in a developing relationship and dependency of increasing intensity, culminating in a full-blown sexual relationship.

34. In his evidence, Dr Wainman explained to the Tribunal that the primary reason behind his relationship with Patient A was a need for emotional gratification, and he had never been sexually motivated.

35. The Tribunal noted that there had been various ‘stages’ in the relationship. One important stage had been Patient A’s letter to the Practice, dated 10 May 2017. The Tribunal considered that this letter to the Practice had had a positive effect on Dr Wainman. By this time, Dr Wainman had been supporting Patient A, including a number of personal disclosures which he said had been an attempt to empathise with Patient A, but which he now recognises was the start of boundary crossing on his part.

36. Patient A’s letter was raised with Dr Wainman during his appraisal in July 2017 but the importance of it at that time was not sufficiently identified by anyone. The Tribunal considered that this letter was part of a developing cycle of mutual
emotional support between them, as Patient A continued to discuss her relationship difficulties with Dr Wainman.

37. XXX

38. The Tribunal noted that Paragraph 4 of the Allegation, which was admitted by Dr Wainman, concerned his engagement in a sexual relationship with Patient A between the dates of 29 September 2017 and 16 November 2017. The existence of a sexual relationship was therefore not in dispute. Nor was it disputed that this relationship was a consensual one.

39. The Tribunal considered that, in regard to Paragraph 3 of the Allegation, it had to determine the question of Dr Wainman’s motivation in the period from around September 2017. It was clear and not in dispute that Dr Wainman and Patient A had both been motivated by a desire for emotional support in their developing relationship. XXX.

40. The Tribunal accepted the evidence of XXX, before he became involved emotionally with Patient A and that continued during the development of their relationship. It was clear that XXX from his relationship with Patient A.

41. The Tribunal considered Dr Wainman’s conduct from 1 September 2017 until 16 November 2017 in the round and also in relation to the stages in the relationship as it developed. In its view, whilst it was clear that this conduct arose from a desire to continue the emotional relationship with Patient A and to satisfy her increasing demands for reassurance of his bond with her, the Tribunal was not satisfied as to the case that Dr Wainman’s motivations behind this conduct, was ‘either in pursuit of sexual gratification or in pursuit of a future sexual relationship’.

42. Dr Wainman’s conduct was consistent with the motivation of his emotional relationship and there is no positive evidence of sexual motivation beyond the mere fact of having a sexual relationship.

43. XXX

44. In all the circumstances, therefore, the burden of proving Paragraph 3 of the Allegation being upon the GMC, this paragraph was not found proved.

**The Tribunal’s Overall Determination on the Facts**

45. The Tribunal has determined the facts as follows:

1. You had contact with Patient A on a professional basis on the dates set out in Schedule 1. *Admitted and found proved*
Record of Determinations – Medical Practitioners Tribunal

2. You engaged in an improper emotional relationship with Patient A between the dates set out in Schedule: Amended under Rule 17(6)
   a. from on or around the date set out in Schedule 2; Admitted and found proved as amended under Rule 17(6)
   b. between the dates set out in Schedule 3. Admitted and found proved as amended under Rule 17(6)

3. Your conduct as set out in paragraph 2b was sexually motivated. Not proved

4. Between the dates set out in Schedule 4 you engaged in a sexual relationship with Patient A. Admitted and found proved

5. At the time of your actions as set out in paragraphs 2 to 4 above, you knew that Patient A was vulnerable due to Patient A’s history as set out in Schedule 5. Admitted and found proved

Determination on Impairment - 26/02/2019

1. This determination will be read in private. However, as this case concerns Dr Wainman’s misconduct, a redacted version will be published at the close of the hearing.

2. Having given its determination on the facts in this case, in accordance with Rule 17(2)(k) of the Rules, the Tribunal has considered whether, on the basis of the facts which it has found proved, Dr Wainman’s fitness to practise is currently impaired by reason of misconduct.

The Evidence

3. The Tribunal had regard to all of the evidence both oral and documentary adduced during the course of these proceedings. Dr Wainman and XXX gave oral evidence on day four of the proceedings.

4. The Tribunal received a stage two defence bundle that included, but was not limited to:
   - Witness Statements:
Record of Determinations – Medical Practitioners Tribunal

- Ms C, Clinical Manager at the Practice, dated 20 December 2018;
- Mr F, XXX, dated 21 December 2018;
- Ms D, Deputy Practice Manager at the Practice, dated 21 December 2018;
- Ms E, Practice Manager at the Practice, dated 26 December 2018;
- Dr H, GP Partner at the Practice, dated 27 December 2018;
- Ms G, XXX, dated 28 December 2018; and
- Dr J, XXX, dated 31 December 2018.

- A number of testimonials by colleagues and professionals attesting to Dr Wainman’s good character.

Submissions

Submissions on behalf of the GMC

5. Ms Kitchin submitted that Dr Wainman’s fitness to practise is currently impaired by reason of his misconduct.

6. Ms Kitchin acknowledged that the GMC has always accepted that at the time of the Allegation, XXX. Ms Kitchin submitted that the Allegation as admitted and found proved by the Tribunal amounted to misconduct.

7. Ms Kitchin submitted that trust is one of the fundamental tenets of the medical profession and Dr Wainman’s actions are a serious departure from GMP in his emotional and sexual relationship with Patient A. She submitted that Dr Wainman abused a position of trust. He was aware that Patient A was acutely vulnerable by the nature of her medical and health conditions, having been her GP at the Practice since 2012, and he was aware of Patient A’s fears and of her growing attachment to him.

8. Ms Kitchin submitted that Dr Wainman’s boundary violations were repeated during the course of his dealing with Patient A after 29 August 2017 and that Dr Wainman’s conduct cannot be described as a one-off incident.

9. Ms Kitchin submitted that Dr Wainman should have transferred Patient A to another doctor whilst he was on XXX leave. She submitted that Dr Wainman could have ended the relationship when he recognised his own feelings in August 2017. Given the vulnerability of Patient A, the risk of XXX was foreseeable.

10. Ms Kitchin submitted that Dr Wainman had made conscious decisions as to an inappropriate emotional and sexual relationship with a vulnerable patient. She submitted that Dr Wainman had acted so as to put a patient at unwarranted risk of
Record of Determinations –
Medical Practitioners Tribunal

harm. Patient A had described in evidence that this relationship had affected her trust in medical professionals. She stated that she felt ‘tricked’, ‘let down’, and ‘felt more vulnerable’ since the ending of the relationship.

11. Ms Kitchin submitted that Dr Wainman had brought the medical profession into disrepute and that he had accepted that his colleagues and the public would consider his conduct was inappropriate.

12. XXX

13. Ms Kitchin submitted that Dr Wainman’s actions are not actions that are easily remediable. Whilst she acknowledged that he had taken some steps to remediate his conduct, there remained a risk of repetition.

Submissions on behalf of Dr Wainman

14. Mr Hurst submitted that Dr Wainman did not contest the issue of misconduct, nor, and as a matter of general principle, did he contest the issue of current impairment. He submitted that Dr Wainman understood that the public interest outweighed his own interests and that upholding the public interest and proper professional standards ‘is at large with this case’. However, he invited the Tribunal to engage with the issue of future risk to patients and submitted that there was no real likelihood of patient safety issues.

15. Mr Hurst submitted the emotional relationship between Dr Wainman and Patient A began in August 2017. Dr Wainman had been Patient A’s treating GP since 2012. Until his first admitted boundary violations of disclosing his personal circumstances in June 2017, Dr Wainman worked with Patient A’s best interests at heart and managed her conditions appropriately.

16. Further, Mr Hurst submitted, the initial emotional relationship had not been sexually motivated. The sexual encounters began in a car park on 29 September 2017, had progressed into sexual intercourse and the relationship had lasted until 16 November 2017. Mr Hurst submitted that the sexual relationship lasted approximately six to seven weeks with sexual intercourse beginning four weeks into that. It was a matter of fact that the relationship ended on 16 November 2017. Mr Hurst accepted that the sexual conduct amounted to misconduct and that Dr Wainman accepted that he had exacerbated Patient A’s vulnerabilities.

17. Mr Hurst submitted that it is also accepted by the GMC that ahead of the emotional relationship, XXX, and it was not disputed that multiple factors led to his conduct. He submitted that there had been a number of XXX factors which were relevant; XXX, his friendships had fallen away, he was isolated, engaged with stressful building works, and that XXX. Mr Hurst also submitted that Dr Wainman had been significantly over-worked in his professional life at the time as he was very
Record of Determinations –
Medical Practitioners Tribunal

involved in the merger of two practices and their respective Information Technology systems, working as a GP trainer and conducting research.

18. Mr Hurst submitted that Dr Wainman ended up crossing a boundary, but that there was a degree of mutuality between both Dr Wainman and Patient A. They were satisfying each other’s emotional need, and it had been a ‘symbiotic’ relationship.

19. Mr Hurst submitted that this was indeed a case of a ‘perfect storm’. XXX.

20. Mr Hurst submitted that it was Dr Wainman who had ended the relationship with Patient A around 16 November 2017, and as a result, Patient A had been, in her words, ‘broken-hearted’. Dr Wainman self-disclosed XXX to Dr H. Mr Hurst submitted that Dr Wainman had then sought a variety of help, attending an intensive three-day professional boundaries course and XXX.

21. Mr Hurst submitted that Dr Wainman XXX and had sought to develop insight into what had happened. He submitted that Dr Wainman began a series of highly impressive reflections and self-assessments detailing his understanding, coping mechanisms and maturity. Mr Hurst said that no serious challenge had been made by the GMC to Dr Wainman’s development of his insight. He submitted that Dr Wainman’s reflections demonstrated his desperate desire to understand his actions and also a full and unequivocal acceptance of responsibility.

22. Mr Hurst submitted that Dr Wainman would like to work in a medical environment in some capacity, and that he will never cross boundaries again. Further, he submitted that Dr Wainman has a development plan and has made sure there are ‘safety nets’ in place.

23. XXX

24. Mr Hurst submitted that Dr Wainman has now XXX. He submitted that there is no risk of repetition and Dr Wainman has been on an impressive journey of developing insight and remediation.

The Relevant Legal Principles

25. In approaching its decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct and second: whether the doctor’s fitness to practise is currently impaired by reason of that misconduct.

26. The Tribunal was at both stages of the process mindful of the overarching objective of the GMC set out in section 1 of the Medical Act 1983 (as amended) to:
Record of Determinations – Medical Practitioners Tribunal

a. Protect, promote and maintain the health, safety and well-being of the public,

b. Promote and maintain public confidence in the medical profession, and

c. Promote and maintain proper professional standards and conduct for members of that profession.

27. In relation to the issue of what constitutes misconduct, the Tribunal was mindful of the description of misconduct given by Lord Clyde in the case of Roylance v GMC (No.2)[2000] 1 AC 311 where he stated that ‘misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances [...] it is not any professional misconduct which will qualify, the professional misconduct must be serious’.

28. The Tribunal bore in mind that there is no statutory definition of impairment. It also reminded itself of the guidance set down by Dame Janet Smith in the Fifth Shipman Report and repeated in CHRE v NMC and Paula Grant [2011] EWHC 297 Admin that the relevant considerations are whether Dr Wainman’s fitness to practise is impaired in the sense that he:

   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 or is liable in the future to bring the medical profession into disrepute; and/or

   c. Has in the past breached or is liable to breach in the future one of the fundamental tenets of the medical profession; and/or

   d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future.’

29. The Tribunal had to determine whether Dr Wainman’s fitness to practise is currently impaired by reason of misconduct, taking into account his conduct at the time of the events and any relevant factors such as whether his conduct was remediable, has been remedied, any development of insight and therefore, the likelihood of repetition in the future.

30. The Tribunal also bore in mind that, as stated in Grant, at paragraph 71, ‘it is essential when deciding whether fitness to practise is impaired, not to lose sight of fundamental considerations [...] namely the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession’, and as enshrined in the over-arching objective.
The Tribunal’s Determination

31. In considering the question of impairment, the Tribunal has taken account of all of the evidence, and the submissions of Ms Kitchin, on behalf of the GMC, and those of Mr Hurst, on Dr Wainman’s behalf.

32. XXX.

33. XXX.

Misconduct

34. In determining whether Dr Wainman’s fitness to practise is currently impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amount to professional misconduct by reference to the rules and standards ordinarily required to be followed by a medical practitioner.

35. The Tribunal considered the paragraphs of Good Medical Practice (2013 edition) (‘GMP’) which set out the standards that a doctor must continue to meet throughout their professional career. The Tribunal had particular regard to paragraphs 27, 53, 65, 72 and 73 of GMP that state:

27 ‘Whether or not you have vulnerable adults or children and young people as patients, you should consider their needs and welfare and offer them help if you think their rights have been abused or denied.’

53 ‘You must not use your professional position to pursue a sexual or improper emotional relationship with a patient…’

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

72 ‘You must be honest and trustworthy when giving evidence to courts or tribunals…’

73 ‘You must cooperate with formal inquiries and complaints procedures and must offer all relevant information while following the guidance in Confidentiality.’

36. The Tribunal applied these standards to the Allegation and the facts found proved.
Paragraph 2 of the Allegation – Engaging in an improper emotional relationship with Patient A

37. The Tribunal considered the facts in the context of Patient A’s vulnerability. It noted the developing relationship between Patient A and Dr Wainman. A particularly notable letter from Patient A to the Practice, dated 17 May 2017, should have identified to Dr Wainman Patient A’s developing dependence on him. There had been some personal disclosures by Dr Wainman during his consultations with Patient A. This had been followed by exchanges between them on the Practice Facebook page. The inappropriate Facebook exchanges began XXX when she had messaged Dr Wainman directly and he had responded to her.

38. The Tribunal noted the circumstances of the meeting where Dr Wainman had indicated to Patient A that he could meet her at XXX Café, on 29 August 2017. Dr Wainman positioned himself where he and Patient A would not be overlooked, in order for their meeting to remain private. The Tribunal considered that Dr Wainman, at that point, was putting his own needs before his patients which goes against the guidance set out in GMP, specifically paragraph 53.

39. The Tribunal had regard to the events between 1 September 2017 and 16 November 2016 (Paragraph 2(b) of the Allegation). It noted that Dr Wainman and Patient A had met at her home on 1 September 2017, and both had prepared a list of reasons why they should not have a relationship. However, despite being asked not to do so by Patient A, she and Dr Wainman kissed. They continued to meet regularly thereafter.

40. On 29 September 2017, Dr Wainman and Patient A met at XXX and engaged in a sexual act. The Tribunal noted the premeditation involved in the steps taken by Dr Wainman for that meeting. Dr Wainman and Patient A went in separate cars to meet in a dark and private place. After 29 September 2017, Dr Wainman continued to see Patient A at her home. In October 2017, Patient A stayed in an apartment with Dr Wainman, where sexual intercourse took place. In early November 2017, Dr Wainman XXX and stayed in temporary accommodation with Patient A, until 16 November 2017, during which time they engaged in further sexual intercourse.

41. The Tribunal had no doubt that Dr Wainman’s engagement in an improper emotional relationship with his patient, who he had known was vulnerable, was serious misconduct. In pursuing this relationship, he had clearly placed his own needs before the needs of his patient and had caused her emotional harm. He had not paid due regard to her welfare and had abused public trust in the profession.

42. The Tribunal was of the view that Dr Wainman should have recognised that by 29 August 2017, his relationship with Patient A had crossed the boundary from a professional relationship to an emotional relationship with a patient, breaching the fundamental tenets of the medical profession. The Tribunal found that Dr Wainman...
Record of Determinations –
Medical Practitioners Tribunal

had ample opportunity to end the growing emotional relationship and to have put his Patient’s needs above his own. Further, the Tribunal considered that Dr Wainman’s actions would be considered deplorable by fellow practitioners with Dr Wainman’s calculated and persistent actions, given his knowledge of Patient A’s vulnerability.

43. Therefore, the Tribunal concluded that Dr Wainman’s actions amounted to serious misconduct, as it relates to Paragraph 2 of the Allegation.

Paragraph 4 of the Allegation – Engaging in a sexual relationship with Patient A

44. Dr Wainman continued to carry out his function as a GP to Patient A whilst becoming involved in an emotional and sexual relationship with Patient A. The Tribunal was in no doubt that engaging in a sexual relationship with a vulnerable patient in the currency of a doctor-patient relationship was serious misconduct.

Paragraph 5 of the Allegation – Dr Wainman’s knowledge of Patient A’s vulnerability

45. It was not in dispute and the Tribunal found that in May 2017, Dr Wainman was aware of Patient A’s vulnerabilities, and in June 2017, he knew the background of her case. He had knowledge of Patient A’s diagnosis and XXX. Despite being in possession of that knowledge, Dr Wainman went on to develop an emotional and eventual sexual relationship with Patient A which aggravated his misconduct.

46. Considering the over-arching objective, the Tribunal was clear that a finding of misconduct was necessary in pursuit of all three limbs of the objective as Dr Wainman’s conduct had been contrary to the health, safety and wellbeing of his patient, had not been proper professional conduct, and was conduct which undermined confidence in the medical profession. The Tribunal found in respect of all the Paragraphs of the Allegation found proved, that Dr Wainman’s conduct fell seriously below the expected GMP standards, as set out above.

47. The Tribunal acknowledged that there was reliable evidence as to XXX at the time of the events in the Allegation. However, notwithstanding that XXX, the Tribunal determined that this was a factor in his misconduct but in no way excused what he had done. Throughout the period in question, Dr Wainman had continued to function as a GP, and had been able to make decisions about his various actions.

48. The Tribunal therefore found Dr Wainman’s conduct in respect of all the above paragraphs of the Allegation was serious misconduct.

Impairment by reason of Misconduct
Record of Determinations –
Medical Practitioners Tribunal

49. Having found that the facts found proved amounted to misconduct which was serious, the Tribunal went on to consider whether, as a result of this, Dr Wainman’s fitness to practise is currently impaired by reason of his misconduct.

50. The Tribunal first considered the question of the risk of Dr Wainman repeating his past misconduct. The Tribunal first looked for evidence of insight and remediation, and therefore the likelihood of repetition. The Tribunal considered that Dr Wainman’s misconduct, though serious, had some potential for remediation.

51. The Tribunal noted that Dr Wainman had admitted the majority of the facts of the case, had not contested that it had been misconduct, and had admitted impairment as a matter of general principle. It considered that these matters were a first step in terms of developing insight. The Tribunal noted XXX.

52. XXX.

53. The Tribunal accepted that Dr Wainman had undertaken significant steps in his remediation and development of insight. He had done a lot of work to address his misconduct. He has undertaken a significant amount of reflection and produced very considered documentation detailing that reflection. The Tribunal accepted that Dr Wainman now has a high degree of recognition of his own character traits, that he has an awareness of the potential for XXX and that he has a network of measures in place to deal with that risk. The Tribunal noted XXX. However, whilst the Tribunal considered there was a low likelihood of Dr Wainman repeating his conduct in light of the significant steps he has undertaken, it also had regard to the fact that this has yet to be tested in a clinical setting.

54. The Tribunal was of the view that Dr Wainman had significantly crossed moral boundaries, breached a number of paragraphs of GMP and also breached a number of the fundamental tenets of the medical profession. There were particular elements of the previous misconduct which the Tribunal considered to have aggravated that misconduct namely the:

- Serious nature of the breaches;
- Knowledge of Patient A’s vulnerabilities;
- Period over which his conduct was extended;
- Continuation of the conduct despite opportunities to desist;
- Abuse of trust; and
- Lack of implementation of professional boundaries.

55. The Tribunal was mindful of the need to maintain a proper view of the fundamental considerations, namely the need to protect patients and the collective need to maintain confidence in the profession, as well as declaring and upholding proper professional standards of conduct and behaviour, so as to maintain public confidence in the profession.
56. Doctors are required to act with integrity and never to abuse their patients’ trust in them and the wider profession. Dr Wainman caused serious harm to Patient A who was an acutely vulnerable patient before and during the events in question. Dr Wainman’s actions have seriously damaged Patient A’s own faith in medical professionals and she stated that she felt that she had been ‘tricked’ by Dr Wainman.

57. The Tribunal concluded that Dr Wainman’s actions have had the effect of bringing the profession into disrepute and betraying the public’s trust in the profession. Further, public confidence in the profession and the need to maintain proper professional standards and conduct for members of the profession would be undermined if a finding of impairment was not made.

58. Therefore, the Tribunal determined that Dr Wainman’s fitness to practise is impaired by reason of his misconduct.

Determination on Sanction - 20/03/2019

1. This determination will be read in private. However, as this case concerns Dr Wainman’s misconduct, a redacted version will be published at the close of the hearing.

2. Having determined that Dr Wainman’s fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

The Evidence

3. The Tribunal has taken into account all the evidence received during the hearing and its previous findings from the earlier stages in reaching a decision on sanction.

Submissions

Submissions on behalf of the GMC

4. Ms Kitchin submitted that the appropriate and proportionate sanction in this case is to erase Dr Wainman from the Medical Register. She directed the Tribunal’s attention to the Sanctions Guidance (February 2018 edition) (‘SG’) when making its determination.

5. Ms Kitchin submitted that Dr Wainman’s actions were sexual misconduct and that he had abused his position of trust. She submitted that this was not a one-off
Record of Determinations –
Medical Practitioners Tribunal

lapse of judgement and that his conduct was repeated over the duration of the relationship with Patient A, who was an acutely vulnerable patient.

6. Ms Kitchin submitted that there is little mitigation in the facts of this case, save for XXX. She submitted that Dr Wainman was not acting in Patient A’s best interests and he was capable of making, and did make, conscious decisions. He initiated the progression of the relationship on a number of occasions. Ms Kitchen submitted that Dr Wainman’s repeated actions were serious departures from GMP and breached a number of the fundamental tenets of the medical profession, including trust in the profession.

7. Ms Kitchin directed the Tribunal’s attention to the case of *GMC v XXX*. She submitted that it deals with the weight a Tribunal should attach to XXX in that it cannot be used to override the principles of public protection and public interest. Ms Kitchen suggested that the Tribunal should adopt the principles outlined in *XXX* in that the public interest is paramount.

8. XXX.

9. Ms Kitchen submitted that whatever work Dr Wainman had undertaken, his wrongdoing by boundary violations and failures in his patient’s care overrode the efforts that he had made to address XXX, and cannot justify the loss of the public’s trust arising from Dr Wainman’s actions.

10. Ms Kitchen submitted that nothing short of erasure is appropriate to protect the health, safety and wellbeing of the public; and to promote and maintain public confidence in the profession; and, to maintain proper professional standards of conduct.

Submissions on behalf of Dr Wainman

11. Mr Hurst submitted that the appropriate and proportionate sanction in this case would be to impose an order of conditions on Dr Wainman’s registration. He directed the Tribunal’s attention to the following case law when reaching its determination:

- Bawa-Garba v GMC [2018] EWCA Civ 1879; and

He submitted that in cases of substantial remediation in a case involving sexual misconduct, erasure is not the only option and that the Tribunal are entitled to consider the usefulness of a doctor when considering the issue of sanction. He submitted that each case should be approached on its individual merits.
Record of Determinations –
Medical Practitioners Tribunal

12. In relation to XXX, Mr Hurst submitted that the circumstances of XXX and Dr Wainman are different. Firstly, XXX had a sexual relationship with a vulnerable patient, but in Dr Wainman’s case it was primarily an emotional relationship with a vulnerable patient. Secondly, the relationship in XXX lasted for a period of 2 years and 10 months, whereas in Dr Wainman’s case, the relationship was for a significantly shorter period, and had only been a sexual relationship for six weeks.

13. Mr Hurst outlined that the emotional relationship began on 29 August 2017 and lasted until 16 November 2017. Mr Hurst stated that, in support of imposing an order of conditions on Dr Wainman’s registration, the Tribunal had found that Dr Wainman’s actions were not sexually motivated, his actions were ‘potentially’ remediable and he did not present a risk of repeating his actions.

14. Mr Hurst submitted that Dr Wainman has taken significant steps to gain insight and to remediate his misconduct. It was he who had ended the relationship and referred himself to the GMC.

15. Mr Hurst submitted that XXX, which predated Dr Wainman’s emotional relationship with Patient A. Further, he submitted that XXX had not been challenged by the GMC.

16. Mr Hurst directed the Tribunal’s attention to a testimonial bundle (provided to it during stage two of these proceedings) attesting to Dr Wainman’s good character. He submitted that they state that Dr Wainman was doing a good job.

17. In conclusion, Mr Hurst submitted that this is a ‘desperately sad case’ for everyone concerned, for Patient A, for Dr Wainman, for XXX and further for his colleagues and patients who miss him and wish to see him to return to practice. Mr Hurst submitted that the medical profession and the public stood to lose an ‘outstanding’ member of the profession. He submitted that Dr Wainman had gone the ‘extra mile’ in serving his patients and his colleagues.

The Relevant Legal Principles

18. The Tribunal took into account all the evidence adduced during the course of these proceedings, the submissions of Ms Kitchin, on behalf of the GMC and those of Mr Hurst, on Dr Wainman’s behalf.

19. The decision as to the appropriate sanction is a matter for this Tribunal’s own independent judgement. In reaching its decision, the Tribunal took into account the SG and the statutory over-arching objective, which involves: protecting, promoting and maintaining the health, safety and well-being of the public; promoting and maintaining public confidence in the medical profession; and promoting and maintaining proper professional standards and conduct for members of the medical profession.
20. The Tribunal recognised that the purpose of a sanction is not to be punitive, although it may have a punitive effect. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Wainman’s interests with the public interest.

21. The Tribunal had already provided a detailed determination on misconduct and impairment and it had taken those matters into account during its deliberations on sanction.

**The Tribunal’s Determination on Sanction**

22. Ms Kitchin had renewed her submissions as to the weight to attach to XXX at this stage of the proceedings. However, the Tribunal had already addressed this in its determination on impairment as set out above. The Tribunal did not consider it appropriate therefore to renew its consideration at this stage.

23. The Tribunal had not been presented with any further information to change the decision reached at the impairment stage regarding XXX. The Tribunal has attached appropriate weight to XXX, as previously outlined.

**Aggravating and Mitigating Factors**

**Aggravating Factors**

24. The Tribunal had regard to the following aggravating factors in Dr Wainman’s case:

- The serious nature of the breaches in his emotional and sexual misconduct with a vulnerable patient;
- His abuse of position of trust in the power imbalance between a doctor and a patient;
- His knowledge of Patient A’s vulnerabilities;
- Repeated opportunities to cease his relationship with Patient A and the continuation of his conduct;
- His lack of implementation of professional boundaries;
- The causation of harm to Patient A as a result of his actions;
- Patient A’s ‘devastating loss of trust’ in the medical profession;
- Continuing as Patient A’s treating GP during the index events.

**Mitigating Factors**
Record of Determinations – Medical Practitioners Tribunal

25. The Tribunal balanced those aggravating factors, with the mitigating factors present in Dr Wainman’s case:

- XXX;
- He understood XXX and sought insight and attempted to remediate;
- He had expressed regret and remorse for his actions and had accepted responsibility for them at an early stage;
- He developed considerable insight in his reflections on his reasoning as to why the events happened;
- Testimonials and character references on behalf of Dr Wainman.

The Tribunal’s Decision

26. In deciding what sanction, if any, to impose, the Tribunal reminded itself that it must consider each of the sanctions available, starting with the least restrictive, to establish which is appropriate and proportionate in this case.

No Action

27. The Tribunal first considered whether to conclude the case by taking no action.

28. The Tribunal was satisfied that there were no exceptional circumstances in Dr Wainman’s case which would justify taking no action. It determined that given the seriousness of the actions that led to a finding of misconduct, taking no action would be inappropriate, inadequate and would not be in the public interest.

Conditions

29. The Tribunal considered whether imposing an order of conditions on Dr Wainman’s registration would be appropriate. It bore in mind the submissions of Mr Hurst and Ms Kitchin in this regard that any conditions imposed should be appropriate, proportionate, workable and measurable. The Tribunal had regard to paragraphs 56(a) and (c) of the SG:

56 ‘Tribunals are also likely to take more serious action were certain conduct arises in a doctor’s personal life, such as (this list is not exhaustive)

a Issues relating to probity – i.e. being honest and trustworthy and acting with integrity.

... 

/\n
/\ c Inappropriate behaviour towards children or vulnerable adults’
Record of Determinations –
Medical Practitioners Tribunal

The Tribunal also had regard to paragraphs 80, 81 and 82 of the SG regarding circumstances where conditions might be appropriate.

30. XXX

31. The Tribunal had been provided with a copy of the judgment of the High Court in XXX. It was mindful of JJ Jay’s guidance on the proper approach to the weight to be given to XXX. The Judge had stated that there was ‘a distinction between the doctor’s moral and professional responsibilities and duties, and factors which XXX. The Judge had gone on to acknowledge a link between the two aspects but stated in the circumstances of that case such link could only have been ‘modest.’ Further, he stated, that ‘in this disciplinary context, personal mitigation carries far less weight than it might in the domain of the criminal law, because all three elements of the tripartite public interest are always in play’.

32. XXX.

33. The Tribunal accepted XXX. However, whilst acknowledging that XXX gave an explanation of the doctor’s motivations at the relevant time, the Tribunal was of the view that the link in this case to his moral and professional responsibilities was modest. In this case Dr Wainman had not been acting under impulse or on the spur of the moment. He had had several opportunities to desist from his misconduct and to cease from its escalation. The inappropriateness of his behaviour had been clearly in Dr Wainman’s mind as demonstrated by the lists of reasons, both he and Patient A produced, in September 2017, for not engaging in an emotional relationship with each other. During the course of these events Dr Wainman continued to work and function as a GP to Patient A and his other patients.

34. The Tribunal accepted Dr Wainman’s evidence demonstrated that he had attempted to remediate his misconduct and demonstrated insight. However, notwithstanding this, the Tribunal determined that Dr Wainman’s conduct displayed considerable breaches of GMP and the fundamental tenets of the profession, specifically:

- Paragraph 65 – His actions resulted in a serious detrimental effect on the public’s trust in the profession and undermined Patient A’s trust in it.
- Paragraph 53 – He had pursued an improper emotional relationship with a patient, which escalated into a sexual relationship.
- Paragraph 27 – He put his own needs in front of those of his patient.

35. The Tribunal accepted that Dr Wainman’s misconduct had occurred, in respect of the emotional relationship from 29 August until 16 November 2017, and that it had been a sexual relationship for 6 weeks. However, the engagement in both an emotional and sexual relationship was a very serious abuse of trust by the doctor.
Record of Determinations –
Medical Practitioners Tribunal

which had involved an acutely vulnerable patient, whose vulnerabilities were well
known to Dr Wainman. He had ignored several opportunities to disengage in the
face of Patient A’s obviously increasing dependence on him. Whilst the Tribunal
accepted that XXX, he had been fully conscious of his actions. Dr Wainman
continued to develop the relationship further with Patient A for his own personal
needs.

36. The Tribunal determined that no appropriate conditions could be formulated
that would adequately address the main concerns raised in Dr Wainman’s case,
namely protection of the public, the maintenance of public confidence in the medical
profession and the maintenance of proper professional standards and conduct for
members of the profession. In the Tribunal’s view the gravity of the misconduct was
too serious for conditions to be appropriate.

Suspension

37. The Tribunal went on to consider carefully, whether a period of suspension
would be an appropriate and proportionate sanction to impose on Dr Wainman’s
registration. The Tribunal noted the SG which states:

91 'Suspension has a deterrent effect and can be used to send out a signal to
the doctor, the profession and public about what is regarded as behaviour
unbefitting a registered doctor. Suspension from the medical register also has
a punitive effect, in that it prevents the doctor from practising (and therefore
from earning a living as a doctor) during the suspension, although this is not
its intention.’

92 'Suspension will be an appropriate response to misconduct that is so
serious that action must be taken to protect members of the public and
maintain public confidence in the profession. A period of suspension will be
appropriate for conduct that is serious but falls short of being fundamentally
incompatible with continued registration (ie for which erasure is more likely to
be the appropriate sanction because the tribunal considers that the doctor
should not practise again either for public safety reasons or to protect the
reputation of the profession).’

38. The Tribunal had regard to parts of the SG which related to the need to take
more serious action and in particular paragraphs 142, 143, 145(a)(e), 146 and 150
of the SG which state:

142 ‘Trust is the foundation of the doctor-patient partnership’

143 ‘Doctors must not use their professional position to pursue a sexual or
improper emotional relationship with a patient or someone close to them.’
Record of Determinations –
Medical Practitioners Tribunal

145 ‘Where a patient is particularly vulnerable there is an even greater duty on the doctor to safeguard the patient. Some patients are likely to be more vulnerable than others because of certain characteristics or circumstances, such as:

XXX.’

146 ‘Using their professional position to pursue a sexual or improper emotional relationship with a vulnerable patient is an aggravating factor that increases the gravity of the concern and is likely to require more serious action against the doctor.’

150 ‘Sexual misconduct seriously undermines public trust in the profession. The misconduct is particularly serious where there is an abuse of the special position of trust a doctor occupies, or where a doctor has been required to register as a sex offender. More serious action, such as erasure, is likely to be appropriate in such cases’.

39. The Tribunal noted the presence of a number of the guidance factors which indicated that suspension might be appropriate, namely:

97 ‘…
e no evidence that demonstrates remediation is unlikely to be successful…’

f no evidence of repetition of similar behaviour since incident

g the Tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.’

40. The Tribunal considered that Dr Wainman had demonstrated the potential for remediation of his conduct. There was no evidence of him having engaged in similar behaviour and the Tribunal accepted that he had developed significant insight into the causes of his misconduct and taken steps to prevent its recurrence. However, it also noted that Dr Wainman has not been in practice since the end of his relationship with Patient A.

41. The Tribunal also noted paragraph 97a which states that suspension may be appropriate in cases involving:

‘a serious breach of Good Medical Practice but where the doctor’s misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the Medical Register would not be in the public interest…’
Record of Determinations –
Medical Practitioners Tribunal

42. The Tribunal had concluded that Dr Wainman’s actions had the effect of damaging both Patient A’s and the general public’s trust in the medical profession. Dr Wainman carried out his misconduct with an acutely vulnerable patient, with knowledge of her vulnerabilities. In doing so, he put his own interests above that of his patient. The misconduct was at the serious end of the spectrum and brought significant damage to the reputation of the medical profession.

43. In the Tribunal’s view Dr Wainman’s misconduct was so serious that it raised the issue of being fundamentally incompatible with continued registration. Therefore, the Tribunal went on to consider whether it was necessary to erase Dr Wainman’s name from the Medical Register.

Erasure

44. The Tribunal had regard to paragraphs 109(a)(d)(e) and (i) of the SG which state:

109(a)(d)(e)(i) ‘Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).

a. A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor

b. A deliberate or reckless disregard for the principles set out in Good Medical Practice/or patient safety

c. Doing serious harm to others (patients or otherwise), either deliberately or through incompetence and particularly were there is a continuing risk to patients...

d. Abuse of position/trust (see Good medical practice, paragraph 65: ‘You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession’).

e. Violation of a patient’s rights/exploiting vulnerable people (see Good medical practice, paragraph 27 on children and young people, paragraph 54 regarding expressing personal beliefs and paragraph 70 regarding information about services).

...

i. Putting their own interests before those of their patients (see Good medical practice paragraph 1: – ‘Make the care of [your] patients [your] first concern’ and paragraphs 77–80 regarding conflicts of interest).’
45. The Tribunal determined that Dr Wainman’s departure from the principles of Good Medical Practice were particularly serious. In its view in carrying on the relationship Dr Wainman had displayed at least a reckless disregard for the principles set out in GMP. As a result, Patient A had suffered mental harm and lost her trust in the profession. Due to Dr Wainman’s ongoing position as her GP this was a clear case of an abuse of trust. The rights of Patient A to expect appropriate and proper treatment had been violated. At the time Dr Wainman had prioritised his own interests over those of his patient, and sought to satisfy his own emotional needs. These factors indicated to the Tribunal that erasure was the appropriate sanction.

46. The Tribunal acknowledged that the public interest may also include retaining the services of a competent doctor. It recognised that erasure would result in the loss of Dr Wainman’s career, his source of income and public and professional standing. Having determined this case on its own merits the Tribunal concluded that the interests of the public in promoting and maintaining public confidence in the profession and proper professional standards and conduct for its members outweighed the serious effects on Dr Wainman.

47. Taking the above factors into account, the Tribunal concluded that Dr Wainman’s misconduct was fundamentally incompatible with continued registration. Therefore the Tribunal determined that suspension would not be sufficient to protect the public interest as set out above.

48. Therefore, the Tribunal determined that it was necessary in the public interest to direct that Dr Wainman’s name be erased from the Medical Register. In the light of all the evidence presented to it, the Tribunal is satisfied that erasure is the necessary, proportionate and appropriate sanction.

**Determination on Immediate Order - 20/03/2019**

1. This determination will be read in private. However, as this case concerns Dr Wainman’s misconduct, a redacted version will be published at the close of the hearing.

2. Having determined to erase Dr Wainman’s name from the Medical Register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Wainman’s registration should be subject to an immediate order.

**Submissions**

3. In summary, on behalf of the GMC, Ms Kitchin submitted that it was necessary to impose an immediate order of suspension on Dr Wainman’s registration. She submitted that it was necessary to protect patients and was in the public interest. Ms Kitchin
Record of Determinations –
Medical Practitioners Tribunal

referred the Tribunal to the paragraphs relating to immediate orders in the Sanction
guidance. She reminded the Tribunal of the aggravating factors in Dr Wainman’s case.

4. On behalf of Dr Wainman, Mr Hurst told the Tribunal that its decision to erase his
name from the Medical Register had come as a great shock to Dr Wainman. Mr Hurst
submitted that an immediate order should not be imposed on Dr Wainman’s
registration. He reminded the Tribunal that Dr Wainman had never effectively sought to
contest the allegation. Mr Hurst told the Tribunal that Dr Wainman has been removed
from the performers list and that matter is currently subject to an appeal. Therefore, he
cannot currently work as a GP. Mr Hurst reminded the Tribunal that Dr Wainman has interim
conditions on his registration and that they had been deemed sufficient. He
submitted that a reasonable and informed member of the public aware of Dr Wainman’s
interim order of conditions would not lose confidence in the profession if an immediate
order was not imposed today. It was Mr Hurst’s submission that it would be
disproportionate to immediately suspend Dr Wainman’s registration today. Finally, Mr
Hurst referred the Tribunal to XXX and how the imposition of an interim order could
affect XXX.

The Tribunal’s Determination

5. In reaching its decision the Tribunal referred to the relevant paragraphs of
the Sanctions guidance. It exercised its own judgement and had regard to the
principle of proportionality. It also took into account the submissions made by both
Ms Kitchin on behalf of the GMC and by Mr Hurst on behalf of Dr Wainman.

6. The Tribunal noted that the interim order of conditions had been imposed
before the Tribunal had made its findings of fact and decisions on misconduct,
impairment and sanction.

7. The Tribunal did not consider it necessary to impose an immediate order on
the basis that it was necessary for the protection of the public. It found that there
was a low risk of repetition of his previous misconduct and it did not find this was of
a level to make it necessary for an immediate order on that ground.

8. However, the Tribunal reminded itself of its findings that Dr Wainman’s
actions had the effect of damaging both Patient A’s and the general public’s trust in
the medical profession. The misconduct was at the serious end of the spectrum and
brought significant damage to the reputation of the medical profession. Given the
seriousness of its findings the Tribunal concluded that it would not be appropriate
for Dr Wainman to continue in unrestricted practice before the substantive order
takes effect. This would lead to public confidence in the profession being
undermined and therefore an order for immediate suspension was otherwise in the
public interest.
Record of Determinations –
Medical Practitioners Tribunal

9. This means that Dr Wainman’s registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from today, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

10. The interim order currently imposed on Dr Wainman’s registration will be revoked with immediate effect.

11. That concludes this case.

Confirmed
Date 20 March 2019

MRP: Dr WAINMAN

Mr Paul Moulder, Chair
Record of Determinations –
Medical Practitioners Tribunal

ANNEX A – 04/02/2019

Application under Rule 41(2) – 04/02/2019

1. Mr Andrew Hurst, Counsel, on behalf of Dr Wainman made an application under Rule 41(2) of the General Medical Council (‘GMC’) (‘Fitness to Practise’) Rules 2004 (as amended) (‘the Rules’) for the hearing to be heard wholly in private.

2. Rule 41(2) of the Rules states:

'41

...(2) The Committee or Medical Practitioners Tribunal may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the particular circumstances of the case outweigh the public interest in holding the hearing in public.’

Submissions

Submissions on behalf of Dr Wainman

3. Mr Hurst submitted that witness Patient A has been presented as a vulnerable person XXX, and that she should be entitled for the hearing to be heard in private.

4. Mr Hurst submitted that there is supporting documentation from XXX that at the time of the events, XXX. He submitted that it will be inevitable that Dr Wainman is going to need to explain to the Tribunal what had happened, why it happened and why there is no risk of repetition in the future.

5. Mr Hurst submitted that it would be impractical to ‘jump between public and private’ session during Patient A and Dr Wainman’s evidence due to the circumstances surrounding XXX. He submitted that this case would require a determination at Stage 3 and that the ‘public will not be left in the dark’ and the ‘public interest will be served and protected’.

Submissions on behalf of the General Medical Counsel (‘GMC’)

6. Ms Louise Kitchin submitted that the GMC are neutral on Mr Hurst’s application under Rule 41(2).
Record of Determinations –
Medical Practitioners Tribunal

7. Ms Kitchin submitted that Patient A has been described as an acutely vulnerable witness and there are a number of documents which outline issues relating to XXX. She acknowledged in the circumstances of this case, it would be as difficult to ‘jump between public and private’ session in respect of Patient A’s evidence, as it would be in respect of Dr Wainman.

The Tribunal’s Decision

8. The Tribunal considered that much of the evidence in this case relates to the XXX, and that Patient A has been described as an acutely vulnerable witness.

9. The Tribunal determined that, XXX. It was aware that the evidence related to details of an alleged intimate, emotional and sexual relationship. XXX. The Tribunal considered that the quality of the witness’ evidence may be adversely affected if the hearing were to be heard in public and they may be reluctant to give a full account. It considered that it would be difficult to manage the hearing fairly by moving in and out of public session continually and this might also confuse the witnesses. The Tribunal was satisfied that the circumstances of the case outweighed the general public interest in holding the hearing either in public or partly in private.

10. The Tribunal therefore determined to hear the entirety of the proceedings in private, exercising its discretion under Rule 41. However, as this case concerns Dr Wainman’s alleged misconduct, a redacted version of this or any determination, will be published after the hearing.

ANNEX B – 04/02/2019

1. This determination will be read in private. However, as this case concerns Dr Wainman’s misconduct, a redacted version will be published at the close of the hearing.

Application under Rule 36(1) – 04/02/2019

2. Ms Louise Kitchin, Counsel, on behalf of the GMC made an application under Rule 36 of the Rules.

3. Rule 36(1) of the Rules states:

   '36

   1. In proceedings before the Committee or a Tribunal, the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as a vulnerable witness
... e. any witness, where the allegation against the practitioner is of a sexual nature and the witness was the alleged victim; and’

3. Measures adopted by the Committee or Tribunal may include, but shall not be limited to

... d. use of screens…”

Submissions

Submissions on behalf of the GMC

4. Ms Kitchin said that Patient A had requested that XXX, who will be accompanying her to the hearing, sit at the back of the hearing whilst Patient A gives evidence. She submitted that XXX would only be there as a matter of support for Patient A in what will be a difficult process for her in these proceedings. As the hearing was now being conducted in private, the Tribunal would have to make a ruling for this permission to be given.

5. Ms Kitchin informed the Tribunal that there is no longer a witness support service at the GMC, which now means that there would not be anybody independent who could sit with a witness whilst they give evidence (to which they would ordinarily be entitled).

6. Ms Kitchin submitted that measures could be taken in-between the breaks in Patient A’s evidence to prevent the case being discussed between Patient A and XXX, such as being situated in separate break rooms. She submitted that this would alleviate any fears about discussion of the evidence.

Submissions on behalf of Dr Wainman

7. Mr Andrew Hurst did not object to the GMC’s application under Rule 36(1) of the Rules.

8. Mr Hurst submitted that the Tribunal could be reassured in the knowledge as he understood it, XXX, and therefore is more likely to understand her responsibilities.

9. Mr Hurst suggested that the best course of action when the Tribunal comes to a break in Patient A’s evidence, that some form words are used in addition to
emphasise XXX’s responsibility to not discuss anything relating to the case, with Patient A.

**The Tribunals Decision**

10. The Tribunal determined that Patient A was a vulnerable witness pursuant to Rule 36(1)(e).

11. The Tribunal had regard to Pre-Hearing Case Management documentation, which stated that it had been agreed that a vulnerable witness screen may be required and considered that this was an appropriate measure. It went on to consider Patient A’s request for XXX to remain in the hearing room during Patient A’s oral evidence.

12. Given that there has been no objection from Dr Wainman, the Tribunal determined that in light of the outlined acute vulnerability of Patient A, the support of XXX would allow for a better quality of evidence, in what could be a stressful environment of appearing before a Tribunal. However, the Tribunal determined that both Patient A and XXX should be accommodated in their own respective retirement rooms during breaks in Patient A’s oral evidence, to avoid any risk of contamination of the evidence.

13. Therefore, the Tribunal acceded to the GMC’s application for XXX to be present during Patient A’s oral evidence before the Tribunal when in private session and that a vulnerable witness screen placed in the hearing room for the benefit of Patient A.

**ANNEX C – 04/02/2019**

1. This determination will be read in private. However, as this case concerns Dr Wainman’s misconduct, a redacted version will be published at the close of the hearing.

**Application under Rule 34(1) – 04/02/2019**

2. Mr Andrew Hurst, Counsel, on behalf of Dr Wainman made an application under Rule 34(1) of the Rules that the following documents that the GMC propose to adduce, were inadmissible and should not be seen by the Tribunal:

   a. NHS England (‘NHSE’) Meeting notes with Dr Wainman, dated 19 January 2018;

   b. NHSE investigation report, dated 10 March 2018; and
Record of Determinations –
Medical Practitioners Tribunal

c. Dr Wainman’s comments on the NHSE investigation report, dated March 2018

3. Rule 34(1) of the Rules states:

'Rule 34

1. The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.’

Submissions

Submissions on behalf of Dr Wainman

4. Mr Andrew Hurst submitted the documentation was inadmissible because it lacked relevance to the issues in the case, as it consisted in the main of the determination of another administrative body. He said that the material in question, including reports from other agencies had little or no evidential relevance to a Medical Practitioners Tribunal Service (‘MPTS’) Fitness to Practice Hearing. He said that the Tribunal had to determine the case on the evidence it heard from the respective witnesses, and read in the expert reports and contemporaneous medical records; a report commissioned by another agency was irrelevant to the Tribunal’s deliberations.

5. Mr Hurst submitted that for any evidence to be admissible it had firstly to be relevant. The GMC had not explained why the NHSE Report is relevant to the Tribunal’s functions. Such reports are prima facie inadmissible: Enemuwe v NMC [2015] EWHC 2081. If it later occurred that, for example, Dr Wainman was inconsistent between his evidence to the Tribunal and any earlier explanation given to the NHSE investigation, such material may then become relevant and admissible. Likewise, any suggestion by the defence of recent fabrication would be rebuttable by reliance on earlier material that suggested consistency. At this stage, the material was therefore inadmissible until such a situation had arisen.

6. Mr Hurst maintained his objection in law to the NHSE material going before the Tribunal, as a matter of principle. He submitted that it was important that the Tribunal be seen to be taking a fresh view of matters.

7. Mr Hurst submitted that, even with the redactions that GMC Counsel had fairly made of the conclusions of the NHSE report findings, the continued inclusion of the narrative of the report created a risk of importing the findings of that body into the evidence before this Tribunal. However, he did concede that standalone documents generated by Patient A, included in the NHSE report, may be admissible.
Submissions on behalf of the GMC

8. Ms Kitchin submitted that the NHSE documents (as outlined at paragraph 1 of this determination) ought to be admitted under Rule 34(1).

9. Ms Kitchin submitted that the evidence contained within the documents sought to be admitted was fair and relevant to the case. Further, it was important explanatory evidence and was necessary evidence which would enable the Tribunal to put the case against Dr Wainman into context.

10. Ms Kitchin submitted in order to fully investigate the concerns, NHSE interviewed numerous witnesses and recorded their responses in line with their Terms of Reference. NHSE also obtained additional material as detailed at paragraph 5 above. The statements provided to NHSE by Patient A and Dr Wainman are their first detailed accounts of the events which occurred leading to the present allegations.

11. Ms Kitchin submitted that the report was important evidence containing first-hand accounts from all of those involved. As such it was relevant to the Tribunal’s determination in this case, not only in respect of the facts (at stage 1) but also in the latter stages of the hearing.

12. Ms Kitchen submitted that the central purpose of admitting such evidence was so that the Tribunal would understand the full details and background to the case including the nature and circumstances of the relationship between Patient A and Dr Wainman, over and above those contained within the initial referral to the GMC.

13. Ms Kitchin submitted that she did not rely on any of the findings made by NHSE in its report or conclusions of those investigating on behalf of NHSE. She had redacted these findings. She submitted that the GMC sought to put before the Tribunal as evidence solely the factual matters referred to in the report, recorded accounts and statements of those concerned.

14. Ms Kitchin submitted that any unfairness or irrelevance had been avoided by redacting the report. Accordingly, she submitted it was both fair and relevant for the evidence to be admitted.

The Tribunal’s Decision

15. The Tribunal took account of the overarching objective and that the admission of further evidence is a matter for the Tribunal to assess with regard to the questions of fairness and relevance. The Tribunal had regard to Rule 34(1) of the Rules.
16. The Tribunal had been informed that a number of the facts of the case were going to be admitted. The allegation of sexual motivation was very much in issue. The Tribunal was aware that it would have to make findings of fact as to Dr Wainman’s state of mind at the relevant times. It would do that by inference from the evidence that it would receive in the course of the hearing. The Tribunal considered that the NHSE report could contain opinions of third parties and their inferences, which could potentially influence the Tribunal in its deliberations.

17. The Tribunal noted that Patient A referred in her witness statement, to other statements she that had given to the NHSE investigation, which was therefore included in the NHSE investigation report. The Tribunal considered that this material was relevant to these proceedings and that it would also be fair to include this material, as she could be cross-examined on it. Furthermore, the Tribunal understood that these statements were Patient A’s own comments as prepared by her, and not likely to be the subject of any third party opinion. Therefore, the Tribunal determined to admit any statement or comment made by Patient A concerning the events as was included in the NHSE report.

18. The Tribunal concluded that the remainder of the documents in the NHSE Report contained material which would not be fair and relevant to admit. The NHSE interview of Dr Wainman had not been formally recorded and notes had been written by someone where there was risk of inaccuracy by having placed their own interpretation on what had been said. The Tribunal bore in mind that, in the event that a witness gave an inconsistent account, the NHSE documents may then become admissible for the purposes of impugning the credibility of the witness, or could be used to rebut any allegation of recent fabrication.

19. The Tribunal therefore acceded to the application to exclude the NHSE report, save in respect of the evidence of Patient A referred to above. It was of the view that this course would alleviate any risk of potential contamination by the opinion of third parties. This would allow it to reach a fresh view on the facts and the question of Dr Wainman’s motivation.

ANNEX D – 05/02/2019

1. This determination will be read in private. However, as this case concerns Dr Wainman’s misconduct, a redacted version will be published at the close of the hearing.

Application under Rule 17(6) – 05/02/2019

2. Ms Louise Kitchin, Counsel, on behalf of he GMC made an application under Rule 17(6) of the Rules to amend Paragraph 2 and Schedule 2 of the Allegation.
Submissions

Submissions on behalf of the GMC

3. Ms Kitchin submitted that, following Patient A’s oral evidence, the following changes can be made without any injustice to Dr Wainman:

Paragraph 2

Paragraph 2 currently reads:

2. You engaged in an improper emotional relationship with Patient A between the dates set out in Schedule:

   a. 2;

   b. 3.

to:

2. You engaged in an improper emotional relationship with Patient A between the dates set out in Schedule:

   a. from on or around the date set out in Schedule 2;

   b. between the dates set out in Schedule 3.

Schedule 2

Schedule 2 currently reads:

   June 2017 and August 2017

to:

   June 2017 and 29 August 2017

Submissions on behalf of Dr Wainman

4. Mr Andrew Hurst did not oppose the GMC’s application to amend the Allegation and encouraged the Tribunal to grant this application.

The Tribunal’s Decision
5. Given that there was no opposition to the proposed changes, the Tribunal considered that Ms Kitchin’s application was fair on Dr Wainman and it therefore acceded to Ms Kitchin’s application under Rule 17(6) of the Rules.

6. Paragraph 2 and Schedule 2 of the Allegation will now read as follows:

Paragraph 2

2. You engaged in an improper emotional relationship with Patient A between the dates set out in Schedule:

   a. from on or around the date set out in Schedule 2;
   b. between the dates set out in Schedule 3.

Schedule 2

June 2017 and 29 August 2017
Record of Determinations – Medical Practitioners Tribunal

SCHEDULE 1

XXX

SCHEDULE 2

June 2017 and 29 August 2017

SCHEDULE 3

1 September 2017 and 16 November 2017

SCHEDULE 4

29 September 2017 and 16 November 2017

SCHEDULE 5

XXX