Record of Determinations – Medical Practitioners Tribunal

PUBLIC RECORD

The GMC successfully appealed decisions of this Tribunal. The Judge ordered that:

- the determination on the facts in relation to paragraphs 3(a), 3(b) and 4 of the Allegation be quashed;
- the determinations on impairment and sanction be quashed; and
- paragraphs 3(a), 3(b) and 4 of the Allegation on the facts, and the issues of impairment and sanction be remitted to a Medical Practitioners Tribunal to determine.

Dr Walton’s case will be relisted in due course.

Dates: 10/06/2019 - 18/06/2019

Medical Practitioner’s name: Prof Robert WALTON

GMC reference number: 2805795

Primary medical qualification: MB BS 1983 University of London

Type of case: Outcome on impairment

New - Misconduct

Impaired

Summary of outcome

Suspension, 6 months

Tribunal:

<table>
<thead>
<tr>
<th>Legally Qualified Chair</th>
<th>Mr Damian Cooper</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lay Tribunal Member:</td>
<td>Ms Val Evans</td>
</tr>
<tr>
<td>Medical Tribunal Member:</td>
<td>Dr Ronan Brennan</td>
</tr>
</tbody>
</table>

Tribunal Clerk: Ms Jennifer Hatch

Attendance and Representation:

<table>
<thead>
<tr>
<th>Medical Practitioner:</th>
<th>Present and represented</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Practitioner’s Representative:</td>
<td>Mr Nicholas Peacock, Counsel, instructed by Medical Protection</td>
</tr>
<tr>
<td>GMC Representative:</td>
<td>Mr Christopher Hamlet, Counsel</td>
</tr>
</tbody>
</table>
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 public.

Overarching Objective

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

Determination on Facts - 17/06/2019

Background

1. Prof Walton qualified with an MB BS in 1983 and has worked as a General Practitioner in Oxford since 1988. In addition, since 2009 he has held the position of Clinical Professor of Primary Medical Care at Barts and The London School of Medicine and Dentistry, Queen Mary University of London.

2. It is alleged that, between 2 May and 16 November 2017, whilst employed as a full-time Professor of General Practice at Warwick Medical School, University of Warwick (‘the University’), Prof Walton also undertook paid private work on a regular basis for Summertown Health Centre (‘the Health Centre’) and Queen Mary University of London (‘Queen Mary’). It is also alleged that Prof Walton was given advice on two occasions by the Dean of Warwick Medical School, Prof A, (Dr A) that he would need to make an application to undertake private work. It is alleged that Prof Walton knew that he was subject to terms of employment which required him to make such an application and declare any conflict of interest but that he failed to do so. It is alleged that these actions were dishonest.

3. It is also alleged that Prof Walton’s actions were dishonest when he informed Prof B (Dr B) that it had been agreed with Prof A that payment from the Health Centre could be paid directly to him. It is further alleged that his actions were dishonest when he knew that he had been working for the Health Centre for two days per week during his employment at the University but completed an application which requested approval for one half day a week of private work at the Health Centre. It is also alleged that Prof Walton’s actions were dishonest in that he told Prof B that he had been working at the Health Centre for one day a week during his employment at the University.
4. The initial concerns were raised with the GMC on 17 November 2017 by Prof B.

The Outcome of Applications Made during the Facts Stage

5. The Tribunal granted an application made by Mr Christopher Hamlet, Counsel, pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ("the Rules"), to amend the Allegation. The Tribunal’s full decision on the application is included at Annex A.

6. The Tribunal granted Mr Hamlet’s application, made pursuant to Rule 34(1) of the Rules, to admit the witness statement of Dr C into evidence. The Tribunal’s full decision on the application is included at Annex B.

7. The Tribunal refused Mr Peacock’s application, made pursuant to Rule 34(1) of the Rules, to admit email correspondence into evidence. The Tribunal’s full decision on the application is included at Annex C.

The Allegation and the Doctor’s Response

8. The Allegation made against Prof Walton is as follows:

1. Between 2 May 2017 and 16 November 2017 while employed as a full-time Professor of General Practice at Warwick Medical School, University of Warwick ("the University") you also undertook paid private work at for:

   Amended under Rule 17(6).

   a. Summertown Health Centre ("Health Centre") for up to two days a week; Admitted and found proved

   b. Queen Mary University of London for one day a week. Admitted and found proved

2. You:

   a. were given advice by Dr A that you would need to make an application to undertake private work ("the Application") on:

      i. a date unknown between November 2016 and January 2017; To be determined

      ii. 16 January 2017; Admitted and found proved

   b. knew you were subject to terms of employment at the University which required you to:

      i. make the Application; To be determined
ii. declare any conflict of interest. **To be determined**

3. Prior to undertaking the work described at paragraph 1, you failed to:
   a. make the Application; **Admitted and found proved**
   b. declare any conflict of interest. **To be determined**

4. Your action as set out at paragraph 1 and 3 were dishonest by reason of paragraphs 2a and 2b. **To be determined**

5. On 6 October 2017, you informed Dr B that you had agreed with Dr A that payment from the Health Centre could be paid directly to you, or words to that effect. **Admitted and found proved**

6. On 21 October 2017, you completed the Application which requested approval for one half day per week of private work at the Health Centre. **Admitted and found proved**

7. On 16 November 2017, you informed Dr B that you had been working at the Health Centre for one day per week during your employment at the University, or words to that effect. **Admitted and found proved**

8. You knew that:
   a. Dr A had not agreed that the payment from the Health Centre could be paid directly to you; **To be determined**
   b. you had been working at the Health Centre for up to two days per week during your employment at the University. **Amended under Rule 17(6). To be determined**

9. Your action as set out at paragraph 5 was dishonest by reason of paragraph 8a. **To be determined**

10. Your actions as set out at paragraphs 6 and 7 were dishonest by reason of paragraph 8b. **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**

9. At the outset of these proceedings, through his counsel, Mr Nicholas Peacock, Prof Walton 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
Record of Determinations –
Medical Practitioners Tribunal

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

10. In light of Prof Walton’s response to the Allegation made against him, the Tribunal is required to determine whether, on a date between November 2016 and January 2017, Prof Walton was given advice by Prof A that he would need to make an application to undertake private work. It must also determine whether Prof Walton knew that he was subject to terms of employment at the University which required him to make such an application and which required him to declare any conflict of interest, and whether he failed to declare such conflict of interest.

11. The Tribunal must determine whether Prof Walton acted dishonestly by undertaking private work and failing to make an application to undertake private work when he had received advice to do so from Prof A. It must also determine whether Prof Walton acted dishonestly by failing to declare any conflict of interest when he knew that he was subject to terms of employment which required him to do so in addition to making an application to undertake private outside work.

12. Further, the Tribunal must determine whether Prof Walton knew that Prof A had not agreed that the payment from the Health Centre could be paid directly to him, and whether he knew that he had been working for the Health Centre for up to two days per week during his employment at the University. The Tribunal must determine whether Prof Walton acted dishonestly by informing Prof B that he had agreed with Prof A that payment from the Health Centre could be paid directly to him. Further, it must determine whether Prof Walton acted dishonestly by completing the Application requesting approval for one half day per week and informing Prof B that he had been working at the Health Centre for one day per week during his employment at the University when he had actually been working for the Health Centre for up to two days per week.

Factual Witness Evidence

13. The Tribunal received witness statements and oral evidence on behalf of the GMC from the following witnesses:

- Prof A, Dean of Warwick Medical School and Professor of Medicine, in person;
- Mr D, Head of Human Resources at Warwick Medical School, in person;
- Prof B, Head of Division of Health Sciences at the University of Warwick, in person.
14. The Tribunal also received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Ms E, Faculty Strategic Human Resources Partner at Queen Mary;
- Dr C, Senior General Practitioner Partner at the Health Centre.

15. Prof Walton provided his own witness statement, dated 10 May 2019 and also gave oral evidence at the hearing. In addition, the Tribunal received evidence from the following witnesses on Prof Walton’s behalf:

- Prof F, former Director of Postgraduate Education at Warwick Medical School, in person;
- Mr G, Chief Executive Officer, T T S Pharma, in person.

**Documentary Evidence**

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

- Job vacancy advert for the position of ‘Professor of General Medical Practice at Warwick Medical School;
- Offer letters addressed to Prof Walton relating to the above post;
- Email correspondence between Prof Walton and Warwick Medical School regarding the post;
- Email from Prof Walton to Prof A regarding resignation;
- University of Warwick policy documents including ‘Terms of Employment’, ‘Conflicts of Interest’ and ‘Financial Procedure 10 – Private Work and Other Appointments’;
- Prof Walton’s Curriculum Vitae;
- Induction pack received by Prof Walton;
- Copy of Prof Walton’s electronic diary;
- Testimonials.

**The Tribunal’s Approach**

17. 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. Prof Walton 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 as alleged.

18. The Tribunal had regard to the authorities referred to during submissions. In particular, with regards to dishonesty, the Tribunal had regard to the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 in which it is indicated that
Record of Determinations – Medical Practitioners Tribunal

when dishonesty is in question the Tribunal must first ascertain the actual state of the individual’s knowledge or belief as to the facts. Once his actual state of mind as to the knowledge or belief as to the facts is established, the question as to whether his conduct was honest or dishonest is to be determined by applying the standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.

19. In determining parts of the Allegation in which Prof Walton is alleged to have ‘failed’ to do something, the Tribunal must be satisfied that he had a requirement or an obligation to do it in the first place.

The Tribunal’s Analysis of the Evidence and Findings

20. The Tribunal went on to consider each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

Sub-paragraph 2.a.i.

2. You:

   a. were given advice by Dr A that you would need to make an application to undertake private work (‘the Application’) on:

      i. a date unknown between November 2016 and January 2017;

21. It was accepted by both Prof Walton and Prof A that, on an unknown date between November 2016 (when he was offered the role) and January 2017 (when he indicated his inclination to accept the role), a telephone conversation had taken place between them. Prof Walton had initiated the phone conversation as he wanted to discuss the role and the salary. It was agreed that it was likely this conversation had taken place sometime between the first offer letter (8 November 2016) and second offer letter (15 November 2016) being issued.

22. Prof Walton’s evidence was that he recalled Prof A informing him during the telephone conversation that Prof Walton would need to ask for permission to undertake private work. However, he did not recall Prof A stating that he would need to make an application, or providing specific detail about how he might obtain such permission (i.e. via a specific application form).

23. Prof A’s evidence was that Prof Walton had mentioned during the telephone conversation that he was undertaking other work including a research project he had recently started in London and clinical work as a GP at the Health Centre. He recalled having informed Prof Walton that his work at the Health Centre would be over and above his full-time role at the Medical School and he would have to apply for permission to continue the work. Prof A stated in oral evidence that he would
Record of Determinations –
Medical Practitioners Tribunal

have said that Prof Walton could apply to have two days per month consultancy, as the University policy states that this is the maximum number of days allowed per month.

24. The Tribunal noted that there was agreement that Prof A had advised Prof Walton that he would need to ask for permission to undertake private work. The disagreement relates to whether the advice specified that an application was required. The Tribunal was of the view that, regardless of whether the word ‘application’ was used by Prof A, it was clear that he advised Prof Walton that there was a requirement to obtain permission to undertake private work. It considered that, though Prof A may not have spelt out exactly how permission should have been sought, ‘seeking permission’ and ‘applying’ have the same broad meaning. It determined that, on the balance of probabilities, the advice that Prof A gave during the telephone conversation equated to informing Prof Walton of the need to make an application.

25. Accordingly, the Tribunal therefore found sub-paragraph 2.a.i. of the Allegation proved.

Sub-paragraphs 2.b.i. and ii.

b. knew you were subject to terms of employment at the University which required you to:

   i. make the Application;

   ii. declare any conflict of interest.

26. The Tribunal had regard to the job offer letters dated 8 November 2016 and 15 November 2016, both of which included ‘Terms of Employment’ as an enclosure.

27. Prof Walton’s evidence was that he did not read the Terms of Employment. He stated that he assumed that details relating to his private work would be ratified when he started work at Warwick, possibly as part of the induction process at the University.

28. In his evidence, Mr D stated that specific forms relating to private outside work and conflicts of interest were not sent to new employees. He stated that the onus was on the new employee to look up the relevant procedures and fill in any relevant forms.

29. The Tribunal considered that there was some confusion about who was responsible for ensuring relevant procedures were followed and forms were filled in. In the Tribunal’s view, it is a reasonable expectation on the part of employers that new employees will read the terms of employment to which their employment is subject. Although it may be considered that Prof Walton ought to have read, or at
least been familiar with, the Terms of Employment, this is not what is alleged. In
addition, although he was aware of the need for an application from his pre-
employment discussions, that did not mean he knew his Terms of Employment
would necessarily contain such an obligation.

30. Furthermore, there is nothing in the evidence to suggest that specific parts of
the Terms of Employment that may have been relevant to Prof Walton had been
drawn to his attention. There is very limited detail about what was covered at Prof
Walton’s induction, and his line management appears to have been unstructured,
further adding to the confusion over who was responsible for ensuring such
administrative tasks were completed.

31. In any case, Prof Walton’s evidence was that he did not read the Terms of
Employment, and the Tribunal was of the view that there is nothing to indicate that
Prof Walton is being untruthful about this statement.

32. On the balance of probabilities, the Tribunal determined that it was more
likely than not that Prof Walton did not know that he was subject to terms of
employment at the University which required him to make the Application and
declare any conflict of interest. It therefore found sub-paragraphs 2.b.i. and 2.b.ii. of
the Allegation not proved.

Sub-paragraph 3.b.

3. Prior to undertaking the work described at paragraph 1, you failed to:

b. declare any conflict of interest.

33. In his witness statement, Prof Walton stated that ‘I did not see either my
work with Summertown or Queen Mary as a conflict of interest with Warwick.
Maintaining both of these external relationships was strongly in Warwick’s interests’.

34. In determining whether Prof Walton had ‘failed’, the Tribunal first considered
whether he had a requirement or obligation to declare any conflict of interest prior
to undertaking the work described at paragraph 1.

35. The Tribunal had regard to the Conflicts of Interest Policy, which states
‘...members of staff are required to disclose any interests which could result in or
could be perceived to result in a conflict...’. It was of the view that Prof Walton’s
private work at the Health Centre and Queen Mary may have been perceived as
resulting in a possible conflict of interest, and so would need to be declared.
However, it had seen no evidence that an obligation to make any such declaration
arose prior to Prof Walton starting work at the University in May 2017. It could only
see that the obligation would arise upon commencement of employment as a term
of that employment. A new employee at the University would not be subject to the
Terms of Employment until they began their role. It therefore determined that it was
not a requirement for Prof Walton to have declared his private work prior to starting his role at the University.

36. As such, the Tribunal found sub-paragraph 3.b. of the Allegation not proved.

Paragraph 4

4. Your action as set out at paragraph 1 and 3 were dishonest by reason of paragraphs 2a and 2b.

37. Sub-paragraphs 3.b. and 2.b (i. and ii.) have already been found not proved. The Tribunal therefore considered whether Prof Walton’s action as set out at paragraph 1 and 3.a. were dishonest by reason of 2.a. It is alleged that Prof Walton was undertaking private outside work at the Health Centre and Queen Mary whilst employed full-time at the University, and failed to make an application to undertake the private work prior to starting work at the University. It is further alleged that he was dishonest by reason of having been given advice on two occasions by Prof A that he would need to make an application to undertake private work.

38. The Tribunal noted that Prof Walton, through his counsel, admitted to sub-paragraph 3.a. at the outset of the hearing, and that sub-paragraph was therefore subsequently announced as found proved. However, after reviewing the evidence, and as explained in its reasoning for sub-paragraph 3.b, the Tribunal could find no evidence that there was a requirement or obligation for Prof Walton to make such an application to undertake private work prior to starting his post at the University. In the absence of any such duty, it was not necessary to consider any failure to comply. As a result, the Tribunal determined that there was no basis on which it had to proceed to consider dishonesty.

39. It therefore found paragraph 4 of the Allegation not proved in its entirety.

Sub-paragraph 8.a.

8. You knew that:

a. Prof A had not agreed that the payment from the Health Centre could be paid directly to you;

40. Prof Walton’s evidence was that, after speaking to Prof A on the telephone and being advised that he would need to seek permission to undertake private outside work, he sent an email request to Prof A on 16 January 2017. Prof Walton stated that he believed this to be his application. In that email, Prof Walton stated ‘I just wanted to check that it would be possible for me to keep earnings from my practice as my two days a month consultancy which would form part of my employment contract at Warwick?’ Prof A responded on the same day as follows:
Record of Determinations – Medical Practitioners Tribunal

'It is an application you need to make under ‘private outside work’ where you would state it would not interfere with your academic duties. If you applied I cant think of a reason for me to object so you can expect it will be approved…'.

41. The Tribunal considered that, although Prof A had indicated in his email response that Prof Walton could expect to receive approval, he also made it clear that there were further steps he must take in order to obtain such approval.

42. The Tribunal noted that, even if Prof Walton had misinterpreted Prof A’s email response as being sufficient approval for earnings from the Health Centre to be paid directly to him, Prof Walton’s work at the Health Centre in January 2017 was actually four days per month on average and not two days per month as outlined in Prof Walton’s email of 16 January 2017. This increased further in April 2017 to eight days per month. Even if there had been some form of agreement, it was on the basis of two days per month. Therefore, when Prof Walton started work at the University in May 2017, the request he had made in his email in January 2017, and any response received, was even less reflective of his circumstances upon starting the post at the University. Prof A was clear in his witness statements and oral evidence that, had he known Prof Walton was working two days per week (eight days per month) for the Health Centre, he would never have agreed to this as this would have been outside the University policy.

43. The Tribunal determined that, on the balance of probabilities, Prof Walton knew that Prof A had not agreed that the payment from the Health Centre could be paid directly to him.

44. Accordingly, it found sub-paragraph 8.a. of the Allegation proved.

Sub-paragraph 8.b.

b. you had been working at for the Health Centre for up to two days per week during your employment at the University.

45. Prof Walton’s evidence was that ‘sessions’ did not equate to a particular period of time, but rather an expectation to complete particular tasks. He stated that he worked at the Health Centre for one day per week on Mondays, and was paid for additional responsibilities which the Health Centre asked him to undertake.

46. The Tribunal had regard to Dr C’s witness statement, in which she states that Prof Walton was paid for two sessions per week from November 2016 to 27 March 2017 and four sessions per week after that. In her exhibit entitled ‘PM1’ dated 2 April 2017, it confirms that Prof Walton’s job plan for the Health Centre was to undertake two clinical sessions per week (one session on a Monday morning and one session on a Monday afternoon) and two other sessions per week on a flexible basis. It was stated that the flexible sessions may include research meetings, other projects, St Anthony’s welfare meetings, occasional extra clinical sessions, research liaison and attendance at Practice Educational meetings including mandatory training.
47. The Tribunal noted that Dr C referred to a ‘session’ equating to a ‘morning’ or an ‘afternoon’. Furthermore, the claim forms for the Health Centre states that ‘A session is defined as a notional half-day of 3.5 hrs’.

48. The Tribunal noted that Dr C confirmed in her witness statement that Prof Walton also undertook extra clinical sessions, all at the Health Centre, on the following dates:

- Wednesday 17 May 2017, morning session
- Friday 2 June 2017, morning session
- Tuesday 13 June 2017, afternoon session
- ...

49. The Tribunal accepted that Prof Walton may not have attended the Health Centre in person for two whole days per week either regularly or at all. However, it considered that, based on the evidence and exhibits provided by Dr C, on the balance of probabilities, Prof Walton did work at the Health Centre for up to two days per week, and certainly more than one day per week on occasions, given the extra clinical sessions noted. It is unclear how much time he spent working for the Health Centre outside of the clinical sessions, but it is clear that he was paid for four sessions per week.

50. The Tribunal concluded that, on the balance of probabilities, Prof Walton had been working for the Health Centre for up to two days per week during his employment at the University. It therefore found sub-paragraph 8.b. of the Allegation proved.

Paragraph 9

9. Your action as set out at paragraph 5 was dishonest by reason of paragraph 8a.

51. In its deliberations on dishonesty, the Tribunal took into account the evidence in relation to Prof Walton’s character, both as relevant to propensity and truthfulness. This included the testimonials from a number of individuals including colleagues at various levels and friends. The Tribunal learned that Prof Walton has a history of good character and high integrity.

52. Prof Walton’s evidence was that he genuinely believed from his phone and email conversations with Prof A that Prof A was happy for him to keep the earnings from the Health Centre. It was his position that he was not dishonest when he informed Prof B that Prof A had agreed that the payment from the Health Centre could be paid directly to him.

53. The Tribunal noted that in his phone and email conversations with Prof A, Prof Walton had asked whether it would be possible to keep his earnings from his practice as his ‘two days a month consultancy’, and Prof A’s response was on the basis of this. However, at the time of the email to Prof A in January 2017, Prof Walton was working four days per month at the Health Centre. By the time he started work at the University, Prof Walton’s commitments for the Health Centre had increased to eight days per month. The Tribunal was of the view that Prof Walton cannot have genuinely held a
belief in January 2017 that Prof A had agreed in his email that he could be paid directly for his earnings from the Health Centre. It was more likely than not that, by October 2017, he knew that the request made to Prof A in January 2017 regarding two days per month was even less reflective of his circumstances and any purported agreement given at that time and on that basis was no longer valid.

54. The Tribunal then went on to consider whether, objectively, an ordinary decent person would find Prof Walton’s conduct to be honest or dishonest. Prof Walton informed Prof B that Prof A had agreed that his payment from the Health Centre could be paid directly to him. At the time, he knew that his request to Prof A did not reflect his circumstances accurately, both in January 2017 and in October 2017. In the Tribunal’s view, this conduct would be regarded as dishonest by the standards of an ordinary decent person.

55. As such, the Tribunal found paragraph 9 of the Allegation proved.

Paragraph 10

10. Your actions as set out at paragraphs 6 and 7 were dishonest by reason of paragraph 8b.

Paragraph 10 in relation to paragraph 6

56. It was Prof Walton’s position that he completed the Application in October 2017 on a prospective, not retrospective, basis knowing the University’s usual monthly limit on outside work and with the intention of the Application prompting a discussion with senior University staff about what may be negotiable in his case. In oral evidence, he expressed that his intention had been to reduce his commitments at the Health Centre and Queen Mary to comply with his completed Application.

57. The Tribunal had seen no evidence of Prof Walton’s intended reduction in his external commitments. When asked, the example he gave in evidence was that his commitment to the Health Centre may reduce because the University required it. However, the Tribunal noted that the terminology used in the application form may lead any applicant to think it requires details of work intended to be undertaken in the future, rather than work currently being undertaken. The Tribunal believed Prof Walton’s account to be plausible in relation to why he completed the Application as he did. On that basis, the Tribunal was satisfied that, on the balance of probabilities, Prof Walton’s belief in relation to the Application was genuine.

58. Given that belief, the Tribunal did not consider Prof Walton’s conduct would be regarded as dishonest by the standards of ordinary decent people.

59. The Tribunal therefore found paragraph 10 not proved in relation to paragraph 6.
Paragraph 10 in relation to paragraph 7

60. Prof Walton, Prof A, Mr D, Prof B and Mr H were present at the meeting which took place on 16 November 2017.

61. Prof Walton’s evidence was that he believed that he was representing the truth when he informed Prof B at the meeting that he was working at the Health Centre for one day per week during his employment at the University.

62. The Tribunal had regard to the minutes of the meeting, taken by Mr D, in which the purpose of the meeting was stated as being ‘to ascertain Walton’s working practices and associated income streams’. The Tribunal had no reason to doubt the accuracy of the minutes or the credibility of Mr D.

63. The Tribunal considered that, in stating that he had been working for one day per week at the Health Centre, Prof Walton led the people at the meeting to believe that he was only receiving payment from the Health Centre for working one day per week. However, the reality was that he knew he was being paid for four sessions per week for the Health Centre and also undertaking additional duties at Queen Mary for a further one day per week. Despite this, the minutes of the meeting record that ‘Walton admitted that he is employed externally for two days per week’ only and said he worked ‘at a general practice on Monday afternoons’. The Tribunal considered that, especially in the context of the prior meeting with Prof B, the attendees would have a reasonable expectation that Prof Walton would be fully open about his additional income streams. Indeed, in the Tribunal’s view, it was a further opportunity for Prof Walton to be perfectly frank about his various income streams outside of the University. It considered the approach he took to disclosure of his outside interests at the meeting on 16 November 2017 to be disingenuous.

64. The Tribunal noted Prof B’s minutes of her meeting with Prof Walton and Mr H of 6 October 2017. Despite noting Prof Walton’s disagreement with the contents of the minutes in oral evidence, the Tribunal considered that there was no reason for it to doubt the accuracy of these minutes or the credibility of Prof B. The minutes record that Prof Walton told Prof B that he was ‘working a day a week as a GP in the practice’ and that ‘The practice is paying you for one session a week.’ Despite having been invited by Prof B to correct any inaccuracies in the minutes of this meeting, Prof Walton did not seek to do so until cross-examination at this hearing.

65. The Tribunal was particularly concerned that, on the evidence before it, Prof Walton appears at no point between January 2017 and 16 November 2017 to have been fully open with the University management about the extent of his external earnings.

66. The Tribunal then went on to consider whether, objectively, an ordinary decent person would find Prof Walton’s conduct to be dishonest. Objectively, the
Record of Determinations –
Medical Practitioners Tribunal

Tribunal was of the view that informing Prof B that he had been working at the Health Centre for one day per week during his employment at the University when this was not fully reflective of his actual circumstances would be regarded as dishonest by the standards of an ordinary decent person.

67. The Tribunal therefore found paragraph 10 proved in relation to paragraph 7.

The Tribunal’s Overall Determination on the Facts

68. The Tribunal has determined the facts as follows:

1. Between 2 May 2017 and 16 November 2017 while employed as a full-time Professor of General Practice at Warwick Medical School, University of Warwick (‘the University’) you also undertook paid private work at for: Amended under Rule 17(6).
   a. Summertown Health Centre (‘Health Centre’) for up to two days a week; Admitted and found proved
   b. Queen Mary University of London for one day a week. Admitted and found proved

2. You:
   a. were given advice by Dr A that you would need to make an application to undertake private work (‘the Application’) on:
      i. a date unknown between November 2016 and January 2017; Determined and found proved
      ii. 16 January 2017; Admitted and found proved
   b. knew you were subject to terms of employment at the University which required you to:
      i. make the Application; Determined and found not proved
      ii. declare any conflict of interest. Determined and found not proved

3. Prior to undertaking the work described at paragraph 1, you failed to:
   a. make the Application; Admitted and found proved
   b. declare any conflict of interest. Determined and found not proved
4. Your action as set out at paragraph 1 and 3 were dishonest by reason of paragraphs 2a and 2b. **Determined and found not proved**

5. On 6 October 2017, you informed Dr B that you had agreed with Dr A that payment from the Health Centre could be paid directly to you, or words to that effect. **Admitted and found proved**

6. On 21 October 2017, you completed the Application which requested approval for one half day per week of private work at the Health Centre. **Admitted and found proved**

7. On 16 November 2017, you informed Dr B that you had been working at the Health Centre for one day per week during your employment at the University, or words to that effect. **Admitted and found proved**

8. You knew that:

   a. Dr A had not agreed that the payment from the Health Centre could be paid directly to you; **Determined and found proved**

   b. you had been working at for the Health Centre for up to two days per week during your employment at the University. **Amended under Rule 17(6). Determined and found proved**

9. Your action as set out at paragraph 5 was dishonest by reason of paragraph 8a. **Determined and found proved**

10. Your actions as set out at paragraphs 6 and 7 were dishonest by reason of paragraph 8b. **Determined and found not proved in relation to paragraph 6. Determined and found proved in relation to paragraph 7.**

**Determination on Impairment - 18/06/2019**

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 it has found proved as set out before, Prof Walton’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. It did not receive any further evidence at this stage.

**Submissions**
Mr Hamlet

3. In summary, on behalf of the GMC, Mr Hamlet submitted that Prof Walton’s dishonest conduct amounts to misconduct, and that his fitness to practise is impaired by reason of that misconduct.

4. He submitted that Prof Walton’s dishonest conduct is aggravated since it was repeated and cannot be put down to a momentary lapse of judgement since it was in the context of formal meetings with senior colleagues. He submitted that Prof Walton has not remedied his wrongdoings, and that there is a real risk of repetition since Prof Walton lacks insight into his dishonesty, which he did not admit to at this hearing.

Mr Peacock

5. On behalf of Prof Walton, Mr Peacock submitted that he did not wish to make specific submissions in relation to misconduct and impairment. He instead stated that Prof Walton is a man who, having acted out of character, is likely to revert to his usual honest behaviour. He submitted that there is no suggestion that there is a risk of repetition in this case.

The Relevant Legal Principles

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

7. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved were a sufficiently serious breach of the standards expected of doctors as to amount to misconduct and then whether the finding of that misconduct could lead to a finding of impairment.

8. The Tribunal must determine whether Prof Walton’s fitness to practise is impaired today, taking into account Prof Walton’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 are likely to be repeated.

The Tribunal’s Determination on Impairment

Misconduct

9. At this stage, the Tribunal considered each of the paragraphs of the Allegation which were admitted and found proved or determined and found proved. Paragraphs 1 and 2.a. of the Allegation do not, of themselves, give rise to any breach of expected professional standards. The Tribunal therefore determined that it was not necessary for
Record of Determinations – Medical Practitioners Tribunal

it to make any determination on misconduct or impairment in relation to these paragraphs.

10. With regard to sub-paragraph 3.a. of the Allegation, the Tribunal has already found that, despite the admission made, it could find no evidence that there was a requirement or obligation for Prof Walton to make such an application to undertake private outside work prior to starting his post at the University. The Tribunal has already found that, in the absence of any such duty, it would not consider any failure to comply, or proceed to consider dishonesty. The Tribunal determined that, at this stage, it follows that there is no basis to consider sub-paragraph 3.a. in relation to any possible finding of misconduct.

11. The Tribunal considered that paragraphs 5, 6, 7 and 8 provide the context for its findings at paragraphs 9 and 10 (in relation to paragraph 7), and they could not, of themselves alone, give rise to any issue of a breach of standards of Good Medical Practice (2013 Edition) ('GMP'). It therefore went on to consider whether the facts found proved at paragraphs 9 and 10 (in relation to paragraph 7) of the Allegation are a sufficiently serious departure from the standards reasonably expected of Prof Walton as a registered medical practitioner as to amount to misconduct.

12. In its deliberations, the Tribunal had regard to GMP and the paragraphs relevant to this case. In particular, it noted paragraphs 1, 65, and 77. These state:

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

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

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

13. The Tribunal was of the view that Prof Walton’s conduct was a clear departure from these principles of GMP. He informed Prof B that he had agreed with Dr A that payment from the Health Centre could be paid directly to him when no such agreement had been made. Further, Prof Walton informed Prof B that he had been working at the Health Centre for one day per week during his employment at the University when he had actually been working there for up to two days per week.

14. In all the circumstances, the Tribunal was satisfied that Prof Walton’s actions were serious departures from the standards expected of him and amounted to misconduct.
Impairment

15. Having found that the facts found proved amounted to misconduct, the Tribunal went on to consider whether, as a result of that misconduct, Prof Walton’s fitness to practise is currently impaired.

16. The Tribunal considered that Prof Walton’s dishonesty was serious and constituted a breach of a fundamental tenet of the profession, namely acting with honesty and integrity. The public must have confidence that doctors will at all times act with honesty. Prof Walton did not do this.

17. The Tribunal took into account that Prof Walton repeatedly asserted that he would behave differently if faced with similar situations in the future. The Tribunal had no reason to doubt Prof Walton’s apparent insight into his own personal shortcomings in terms of administration. However, this does not explain his conduct in relation to the findings of dishonesty and he has continued to deny that he acted dishonestly. It considered that, though possible, dishonest conduct is difficult to remediate. Given his denial of dishonesty, at present there is no evidence before the Tribunal to indicate that Prof Walton has reflected on, or taken steps to remedy, his misconduct. Indeed, Prof Walton has not asserted that he has undertaken any remediation. In those circumstances, the Tribunal could not be satisfied that there is no risk of repetition of his dishonest conduct.

18. The Tribunal acknowledged and accepted that this is not a case where a finding of impaired fitness to practise is required in order to protect the public. However, honesty and integrity are fundamental tenets of the medical profession. The Tribunal considers that Prof Walton’s actions are sufficiently serious that a finding of impairment of his fitness to practise is required in order to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for the members of the profession.

19. The Tribunal therefore determined that Prof Walton’s fitness to practise is currently impaired by reason of misconduct.

Determination on Sanction  - 18/06/2019

1. Having determined that Prof Walton’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
Record of Determinations –
Medical Practitioners Tribunal

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

3. The Tribunal received further evidence on behalf of Prof Walton. This consisted of the emails referred to at Annex C.

Submissions

Mr Hamlet

4. In summary, on behalf of the GMC, Mr Hamlet submitted that erasure is the most appropriate response in this case given the seriousness of the misconduct, which involves dishonesty in the context of formal meetings with senior colleagues, and the limited mitigating features.

5. Mr Hamlet invited the Tribunal to take into account that Prof Walton has had an otherwise unblemished record, his misconduct has not been repeated and he has engaged fully with the GMC proceedings. However, he submitted that Prof Walton’s dishonest misconduct was not isolated, it undermined public confidence in the medical profession, Prof Walton benefitted financially from it, he continues to deny it, and there is a risk of repetition given his lack of reflection, remediation and insight.

6. Mr Hamlet submitted that erasing Prof Walton’s name from the Medical Register is necessary in order to meet the overarching objective.

Mr Peacock

7. In summary, on behalf of Prof Walton, Mr Peacock submitted that the circumstances of this case, when balancing the interests of Prof Walton with those of the public and profession, warrant the retention of his name on the Medical Register, and the ultimate sanction of erasure is not justified.

8. Mr Peacock referred the Tribunal to the case of Giele v General Medical Council [2006] 1 W.L.R 942 (2005), which addresses the issue and relevance of giving appropriate weight to testimonial evidence in cases relating to doctors and the relevance of the skills of the practitioner when considering the public interest and the loss of his services. He submitted that Giele highlights relevant factors to consider when determining how to dispose of a case. Mr Peacock described Prof Walton’s skills and experience and the importance, in particular, of the continuation of his research work to the wider public interest.

9. Mr Peacock submitted that the Tribunal should take into account the character testimonials provided on behalf of Prof Walton, which are of an extremely good quality, and indicate that Prof Walton acted out of character and has the capability to
demonstrate insight. He submitted that the likelihood of Prof Walton repeating his behaviour is slim to none.

The Tribunal’s Determination on Sanction

10. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement. The Tribunal considered the sanctions available, starting with the least restrictive. It has borne in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although it may have a punitive effect. If it chooses to impose a sanction, the sanction should be appropriate and proportionate, although the reputation of the profession as a whole is more important than the interests of any individual doctor.

Aggravating and Mitigating Factors

11. The Tribunal carefully considered and balanced the aggravating and mitigating factors in Prof Walton’s case.

12. The Tribunal noted that Prof Walton has an otherwise unblemished record, his dishonest conduct took place over one and a half years ago and there has since been no repetition. Prof Walton has fully engaged with the GMC investigation and with this hearing. There is an extensive amount of overwhelmingly positive testimonial evidence which attest to Prof Walton’s otherwise good character. The evidence suggests that Prof Walton is a highly skilled academic and clinician who is eminent in his field. The misconduct took place in the context of an environment in which Prof Walton’s line management appeared to be unstructured and it was unclear what was covered in his induction.

13. However, the Tribunal has already found that Prof Walton’s conduct was a clear departure from a number of principles of GMP, and that acting dishonestly is a serious matter which undermines the trust in the medical profession. Prof Walton was dishonest on two occasions, albeit in relation to common circumstances, namely his external earnings from private outside work. Prof Walton benefitted financially from his dishonest actions. The Tribunal has already found that, given his denial of dishonesty, there is no evidence before the Tribunal to indicate that Prof Walton has reflected on, or taken steps to remedy, his misconduct.

No action

14. In reaching its decision as to the appropriate sanction, if any, to impose in Prof Walton’s case, the Tribunal first considered whether to conclude the case by taking no action. Taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.
15. The Tribunal determined that there are no exceptional circumstances in this case and that it would not be sufficient, proportionate or in the public interest to take no action.

**Conditions**

16. The Tribunal next considered whether it would be appropriate to impose conditions on Prof Walton’s registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

17. Given the nature of Prof Walton’s misconduct, which involves dishonesty, the Tribunal could not formulate appropriate conditions which would be workable. Further, given the serious nature of Prof Walton’s misconduct, the Tribunal did not consider that conditions would be sufficient to mark the gravity of the misconduct, to uphold public confidence in the medical profession or to maintain proper professional standards and conduct for the members of the profession.

**Suspension**

18. The Tribunal then went on to consider whether a period of suspension would be an appropriate and proportionate sanction to impose on Prof Walton’s registration.

19. The Tribunal acknowledged that suspension has a deterrent effect and can be used as a signal to the doctor, the profession and the public about what is regarded as behaviour unbefitting of a registered doctor. It also acknowledged that suspension is an appropriate response to misconduct which is sufficiently serious that action is required in order to protect members of the public or maintain public confidence in the profession.

20. The Tribunal took into account that Prof Walton was dishonest on more than one occasion, so his misconduct cannot be described as isolated. However, it noted the instances of his dishonesty were in relation to common circumstances, namely his external earnings from private outside work. It was not persuaded that the dishonesty was persistent such that it necessitated or warranted erasure from the Medical Register.

21. In its previous determination, the Tribunal stated that it could not be satisfied that there is no risk of repetition of his dishonest conduct. It took into careful consideration the testimonials provided on Prof Walton’s behalf. It was of the view that these provided a wealth of good quality evidence of Prof Walton’s otherwise good character, the majority of the authors of the testimonials being aware of the allegations. The testimonial evidence satisfied the Tribunal that Prof Walton’s dishonest conduct was wholly out of character. It was of the view that, based on the evidence, it would be likely that Prof Walton would revert back to his usual good
character should similar circumstances arise in the future. As such, it was satisfied that the risk of repetition was minimal.

22. Having had regard to the circumstances of this case, the Tribunal was satisfied that Prof Walton’s misconduct is not fundamentally incompatible with continued registration. It was of the view that erasing Prof Walton’s name from the Medical Register would be disproportionate, punitive and not in the public interest.

23. The Tribunal determined that a period of suspension would be an appropriate and proportionate sanction that would protect the public confidence in the medical profession and promote and maintain proper standards and conduct for the members of the profession. At the same time, a period of suspension would also mark the gravity with which the Tribunal viewed such misconduct.

24. In considering the appropriate period of suspension, the Tribunal was aware that the maximum period of suspension is 12 months. The Tribunal bore in mind the seriousness of Prof Walton’s misconduct, and balanced this with the mitigating factors in this case. In particular, the Tribunal considered the positive testimonials provided of Prof Walton’s behalf, which suggest that Prof Walton is an otherwise respected practitioner.

25. The Tribunal concluded that suspending Prof Walton’s registration for a period of six months would be sufficient to mark the seriousness of his misconduct, and to send a message to the profession that dishonesty by a doctor cannot be tolerated under any circumstances. This would also serve to reassure the public and to uphold the reputation, and expected standards, of the profession. At the same time, the public interest will be served by not taking an otherwise highly valued academic and clinical practitioner out of practice for a disproportionate amount of time.

26. The Tribunal considered whether it was necessary to direct a review hearing. It bore in mind that no concerns have been raised in relation to Prof Walton’s clinical practice, and the Tribunal has already determined that it is satisfied that the risk of repetition is minimal. In these circumstances, the Tribunal has determined that it is not necessary to direct a review hearing.

27. The effect of the foregoing direction is that, unless Prof Walton exercises his right of appeal, his registration will be suspended 28 days from the date on which written notice of this decision is deemed to have been served upon him. A note explaining his right of appeal will be sent to him.

**Determination on Immediate Order - 18/06/2019**
Record of Determinations –
Medical Practitioners Tribunal

1. Having determined that Prof Walton’s registration be suspended for a period of six months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Prof Walton’s registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Mr Hamlet submitted that it is not necessary to impose an immediate order in this case.

3. On behalf of Prof Walton, Mr Peacock submitted that it would be difficult to justify the requirement of an immediate order in this case.

The Tribunal’s Determination

4. The Tribunal considered the seriousness of the matter and whether it would be appropriate to immediately suspend Prof Walton’s registration. As it has previously determined, there are no issues of patient safety arising in this case. It is not therefore necessary for the Tribunal to impose an immediate order of suspension in order to protect the public. Neither is it otherwise in the public interest, or in the interests of Prof Walton, to do so. The Tribunal concluded that the substantive and severe suspension of six months will serve to maintain public confidence in the profession and uphold proper standards and conduct for members of the profession. It therefore determined that it was not necessary to impose an immediate order of suspension.

5. There is no interim order to revoke.
Record of Determinations –
Medical Practitioners Tribunal

Confirmed
Date 18 June 2019 Mr Damian Cooper, Chair

ANNEX A – 11/06/2019
Application to amend the Allegation

1. At the outset of the hearing, Mr Christopher Hamlet, Counsel, on behalf of the GMC, made an application under Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), to amend the stem of paragraph 1 and sub-paragraph 8.b of the Allegation by replacing ‘at’ with ‘for’ as follows:

‘1. Between 2 May 2017 and 16 November 2017 while employed as a full-time Professor of General Practice at Warwick Medical School, University of Warwick (‘the University’) you also undertook paid private work at for:

a. Summertown Health Centre (‘Health Centre’) for up to two days a week;

b. Queen Mary University of London for one day a week.’

‘8. You knew that:

a. Dr A had not agreed that the payment from the Health Centre could be paid directly to you;

b. you had been working at for the Health Centre for up to two days per week during your employment at the University.’

2. Mr Hamlet submitted that these amendments were necessary to accurately reflect Prof Walton’s pattern of work. He submitted that the amendments could be made without injustice.

3. Mr Nicholas Peacock, Counsel, on behalf of Prof Walton, did not object to the amendments.

4. The Tribunal was of the view that the amendments provided clarification and noted that they were agreed by both parties. It was satisfied that the amendments could be made without causing injustice and so determined to amend the Allegation as above.

ANNEX B – 11/06/2019
Record of Determinations – Medical Practitioners Tribunal

Application to admit evidence

1. At the outset of the hearing, Mr Hamlet, on behalf of the GMC, made an application under Rule 34(1) of the Rules to admit further evidence. The evidence consisted of a witness statement from Dr C.

2. Mr Hamlet submitted that the statement reflects material that has already been disclosed. He confirmed that it has been provided since the witness who was previously going to provide this evidence is unable to attend this hearing. Dr C has provided the evidence instead.

3. Mr Peacock, on behalf of Prof Walton, did not object to the witness statement being admitted.

4. The Tribunal was of the view that the witness statement was relevant to the case and noted that there was no objection from Mr Peacock, on Prof Walton’s behalf, to it being admitted into evidence. In the interests of fairness, the Tribunal determined to admit the witness statement into evidence.

ANNEX C – 17/06/2019

Application to admit further evidence

1. Shortly before the Tribunal was due to hand down the Facts determination, Mr Peacock, on behalf of Prof Walton, made an application to admit further evidence. The evidence consisted of an email from Prof Walton to Mr H dated 23 November 2017 and email correspondence between Prof Walton and Prof A following Prof Walton’s resignation email of 16 November 2017.

2. Mr Peacock submitted that the evidence, which had only very recently come to his attention, provides support for what Prof Walton said in his witness statement. He submitted that, should the Tribunal determine to admit the evidence, it may be that Prof Walton should be recalled to adduce the evidence and to be subject to any questions regarding it.

3. Mr Hamlet, on behalf of the GMC, submitted that the evidence does not raise any question of unfairness as it does not require recalling any GMC witnesses. He submitted that the Tribunal needs to determine whether the evidence is relevant to the facts of this case and, if the Tribunal does consider that it is relevant, he would not oppose the admission of the evidence. Mr Hamlet agreed that, if the evidence is admitted, Prof Walton should be recalled as a witness.

4. Having had sight of the emails, the Tribunal was of the view that, based on the wording of the Allegation, their content was not sufficiently relevant to the determination it is required to make at this stage of the hearing for it to be
Record of Determinations – Medical Practitioners Tribunal

admitted. It noted that Mr Peacock would have the opportunity to adduce the evidence on Prof Walton’s behalf at a later stage during the hearing if he wished.