

Fitness to Practise Determination

The following case was heard by a Fitness to Practise Panel. It is presented here to give an example of one possible outcome of breaching a principle in *Good Medical Practice*. It is not intended to give a clear threshold between acceptable and unacceptable behaviour. Each case which comes before a Fitness to Practise Panel is judged on its own merits and assessed on the particular circumstances of the case.

Summary

The doctor was convicted of two counts of sexual assault on a female, relating to two separate offences against two colleagues.

Relevant paragraphs of *Good Medical Practice*

The case relates to the *Working with colleagues* section of GMP, specifically paragraph 46 on respect for colleagues. It also relates to the *Probity* section, specifically paragraph 57 on being honest and trustworthy.

Determination on impaired fitness to practise

Ms B: Dr X is not present or represented at today's proceedings. The Panel was satisfied that the notice of hearing was served on Dr X. In making this decision the Panel considered all the information placed before it, including the UPS documentation, which confirms that the GMC Notice of Hearing dated [*date removed*], was signed for by 'X' on [*date removed*]. It has also noted the letter dated [*date removed*] from Dr X with regard to the hearing today.

The Panel next considered whether or not it should proceed with this case today in light of Dr X's absence from these proceedings. Under Rule 31 of the Procedure Rules, it has a discretionary power to do so. In deciding whether or not to proceed, the Panel had regard to the letter from Dr X dated [*date removed*]. The Panel determined that it would proceed. In reaching this conclusion, it balanced the need for fairness to the doctor, including his right to be present and to receive a fair hearing, with the public interest.

At the outset of the hearing the Panel, having had sight of Dr X's Certificate of Conviction, found that the convictions were proved.

The Panel then considered whether, on the basis of the allegations found proved, Dr X's fitness to practise is impaired pursuant to Section 35C (2) (c) of The Medical

Act 1983, as amended, by reason of Dr X's conviction. In doing so it has considered your submissions on behalf of the General Medical Council and all the documentation before it.

The Panel has heard that, on [date removed] at XXXX Crown Court Dr X was convicted upon indictment on his own confession of two counts of Sexual Assault on a female. On [date removed] Dr X was sentenced as follows:

- 28 weeks imprisonment suspended for two years each to run concurrently;
- ordered to participate in the Northumberland Sex Offender Group Programme and attend as directed by the Supervising Officer at times and places for 2 years;
- ordered to sign the Sex Offender Register for 7 years.

The Panel has had to determine whether, on the basis of the convictions found proved, Dr X's fitness to practise is impaired because of his convictions. In doing so it has taken into account all the evidence before it, including your submissions on behalf of the GMC.

You have directed the panel to the Indicative Sanctions Guidance, in particular, paragraph 11, page S1-2 which states:

“Neither the Act nor the Rules define what is meant by impaired fitness to practise but for the reasons explained below, it is clear that the GMC's role in relation to fitness to practise is to consider concerns which are so serious as to raise the question whether the doctor concerned should continue to practise either with restrictions on registration or at all.”

Further, the Panel has noted paragraph 57, page S3-14, which states:

“All human beings make mistakes from time to time. Doctors are no different. While occasional one-off mistakes need to be thoroughly investigated by those immediately involved where the incident occurred and any harm put right, they are unlikely in themselves to indicate a fitness to practise problem. *Good Medical Practice* puts it this way:

‘Serious or persistent failures to meet the standards in this booklet may put your registration at risk’”

Paragraph 58, page S3-14 and 15 goes on to state that:

“A question of impaired fitness to practise is likely to arise if:

- A doctor has behaved dishonestly, fraudulently or in a way designed to mislead or harm others;
- The doctor's behaviour was such that public confidence in doctors generally might be undermined if the GMC did not take action.”

The Panel is particularly concerned that Dr X's conviction is for offences committed against two female colleagues, which was a grave abuse of the position of trust held by Dr X as a Registrar in Obstetrics and Gynaecology. The inability of medical colleagues to work safely together is likely to compromise patient safety and must compromise public confidence in the medical profession.

The Panel has noted the sentencing remarks of Judge Byrne at Preston Crown Court, who stated that:

“...nobody should underestimate the long standing effect that conduct of this sort has had upon your two victims. It has left a profound effect upon those who are entitled to receive respect and recognition from doctors with whom they work...”

The Panel are concerned that these were two separate offences against female colleagues committed only two months apart.

The Panel notes that there was a degree of persistence in Dr X's actions against the women and that, until the morning of trial, Dr X had denied the charges against him.

The Panel has further noted that in his letter dated [*date removed*] to GMC Legal, Dr X states that:

“I have also acknowledged that my fitness to practise has been impaired as a result.”

In the light of Dr X's convictions, and the suspended custodial sentences arising out of those convictions, the Panel has determined that his fitness to practise is impaired by reason of his conviction, pursuant to Section 35C(2)(c) of the Medical Act 1983, as amended.