

Public Minutes of the Investigation Committee

Date of hearing: 29 & 30 March 2021

Name of Doctor	Dr Adel Al-Dujaili
Doctor's UID	6062208

Committee Members	Dr Richard Khoo
	Dr Andrew Leahy
	Ms Toni Foers

Legal Assessor	Mr David Swinstead
Panel Secretary	Ms Gemma Wolstenholme

Attendance and Representation

GMC Representative	Mr Alan Taylor
Doctor's attendance	Did not attend
Doctor's representative	Not represented

Outcome	Warning
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Determination

Dr Al-Dujaili,

- 1 At today's hearing the Investigation Committee carefully considered all the material before it including the submissions made by **you** in your email correspondence and those made on behalf of the GMC by **Mr Alan Taylor, GMC Counsel**. It has accepted the advice of the Legal Assessor.

Background

- 2 On the 25 September 2016, Police Officers were called to your house following reports of a domestic incident. You were then cautioned and interviewed at Staines Police Station after being arrested for resisting arrest and assaulting police.
- 3 On 17 August 2017, you attended Guildford Magistrates Court where you were found guilty of obstructing/resisting a constable in the execution of his duty contrary to Section 89(2) of the Police Act 1996. A community order was made for 100 hours unpaid work and you were charged a surcharge of £85 to fund victim services along with Crown Prosecution Services costs of £620.
- 4 An appeal was received by email on 23 August 2017 at the Magistrates Court and sent to Guilford Crown Court on 29 August 2017. The appeal was heard at Guildford Crown Court on 27 February 2018. The Court dismissed the appeal against your conviction. The Court allowed your appeal against sentence and substituted a conditional discharge of 6 months for the community order.
- 5 On 2 March 2020, the GMC wrote to you in accordance with Rule 11 of the Rules and advised you that the Case Examiners were minded to issue you with a warning. You indicated on 29 March 2020, that you were not prepared to accept the proposed warning, and on 22 June 2020 and on 17 September 2020, the GMC advised you that your case had been referred to this Committee.
- 6 On the 05 November 2020, an Investigation Committee hearing was held where it was determined that the Committee would not be proceeding in your absence and that the hearing would be adjourned to a later date.
- 7 On the 15 February 2021, following the previous adjournment, formal notice of today's hearing was served via your registered email address.

Proceeding in the practitioner's absence

- 8** Mr Taylor on behalf of the GMC, made an application to proceed in your absence in accordance with Rule 31. Mr Taylor confirmed to the Committee that he had not received any further instruction or confirmation from the GMC that you would be attending, indeed that you had previously indicated that you wished not to attend the hearing today.
- 9** Mr Taylor directed the Committee to the email correspondence between you and the GMC in the service bundle. He submitted that you had been formally sent the Notice of Hearing for today's proceedings on 15 February 2021, which clearly sets out that the hearing is listed for today commencing at 09:30. You had also sent considerable correspondence in the intervening period up until today, where the GMC treated your emails as an application for postponement which were considered by an IC chair independent of this hearing and was refused.
- 10** Mr Taylor submitted that the GMC being in communication with you clearly demonstrated that you were well aware of this hearing and that as notice was served to you via the email that the GMC holds for you for this purpose, this provides proof of service that notice was served to you correctly.
- 11** The GMC accepted the advice from the Legal Assessor who directed the committee to Rule 11(5) and advised that the Committee must be satisfied that the Notice of Hearing has been served in accordance with Rule 40, in particular, notice given via electronic mail.
- 12** The Committee determined that it was satisfied that the Notice of Hearing had been served correctly and to consider whether to proceed in your absence.
- 13** Mr Taylor submitted that firstly this would be the second adjournment to these proceedings, as the Committee is aware from your letter sent this morning that a previous IC hearing had been adjourned on 05 November 2020 and the Committee had sight of the previous IC determination in the hearing bundle. Mr Taylor submitted it is relevant that similar issues were considered at the previous hearing and that we are now four months on, and nothing has changed.
- 14** Mr Taylor made reference to the cases of R v Jones [2002] UKHL 5; [2003] 1 AC 1 and GMC v Adeogba [2016] EWCA Civ 162. Mr Taylor submitted that the Committee must consider the extent you are disadvantaged in being unrepresented and not being able to present your case. There is general public interest in the issues being resolved in a timely manner and the case before the Committee today is not a case of involuntary absence. Mr Taylor submitted that you have voluntarily absented yourself by stating that this hearing should not be going ahead at all, that it is illegal and should proceed when the pandemic is over.
- 15** Mr Taylor submitted that you have waived your right to attend and to be represented in today's proceedings and invited the Committee to consider what purpose an adjournment today would achieve. Mr Taylor further submitted that your application

to adjourn today was vague in nature, and should the matter be adjourned we would be in this position again. He submitted that the public interest requires hearings to proceed expeditiously, there has been enough delay and today's proceedings should therefore go ahead in fairness to the public and the regulator.

- 16** Mr Taylor reiterated that the postponement application was refused, it had been noted that you suggested you were unable to attend due to your medical duties particularly that you were 'on call' and that you were requested to provide evidence of these difficulties.
- 17** The Committee accepted advice from the Legal Assessor in considering whether to proceed in the doctor's absence under Rule 31 and reminded the Committee of its overarching duties in the public interest.
- 18** The Legal Assessor advised that there is an expectation for a doctor to engage with their regulator in order to deal with allegations against them and reminded the Committee that it has the discretion to proceed, and in exercising its discretion that it must take great care in considering fairness to the doctor but also fairness to the regulator and public. The Committee was advised also to consider that if it were to adjourn today, whether there was a realistic possibility you would attend a further hearing. Proceeding in your absence would mean that it would not have the opportunity to hear your submissions.
- 19** The Committee Chair confirmed that the Committee had sight of your submissions sent by email to the Investigation Committee Secretary and the service bundle. The Committee adjourned to give their full consideration to proceeding with the hearing today having received and accepted the advice of the Legal Assessor.

Committee Determination

- 20** The Committee is aware that it must have in mind the GMC's role of protecting the public, which includes:
 - a. Protecting, promoting and maintaining the health, safety and well-being of the public
 - b. Promoting and maintaining public confidence in the medical professions, and
 - c. Promoting and maintaining proper professional standards and conduct for members of that profession
- 21** The Committee took into consideration the letter provided by you, where you described your difficulties in accessing the hearing due to your shared accommodation and being unable to access wifi. This despite being previously offered alternative means of accessing this hearing by telephone. The Committee also considered the emails you have sent to the GMC. It also considered Mr Taylor's submissions and had regard to the GMC's overarching objective and to the public interest in the expeditious disposal of this case.

- 22** The Committee concluded that you have had sufficient time to make arrangements to attend this hearing remotely and that the GMC have provided ample opportunity and support for you to attend today's proceedings. The Committee is not satisfied that should another adjournment be granted today, a different outcome would be achieved.
- 23** The Committee considered your submission that you are on call today, however, is satisfied that sufficient notice has been served for you to arrange cover in order to attend today's proceedings. The Committee also considered your submission that you do not have a suitable location to attend. The Committee is satisfied that the GMC has offered appropriate assistance with this and again that you have had ample time to arrange a suitable location at your work premises. In regard to your submission that today's hearing should be adjourned until after the pandemic, the Committee does not know when the pandemic will be over and is satisfied that hearings across many regulators are being held virtually in order to effectively deal with these matters. The Committee would have expected contact from your employers should they be unable to release you from your duties or be unable to provide you with a suitable room.
- 24** The Committee noted that you have not to this date, provided a great deal of information in support of the claims made via email in relation to your workload, however are sensitive to the issues raised regarding your current place of work and fully understand the very challenging issues that you may be facing in your role.
- 25** The Committee, having been satisfied that you were properly served with notification of today's hearing in accordance with Rules 11 and 40, carefully balanced your interests with that of the public and determined that on this occasion and in the circumstances given today, it was fair to proceed in your absence today.

GMC Submissions

- 26** Under Rule 11 (7) (a), Mr Taylor on behalf of the GMC, took the Committee through the history of the case as outlined above. It would then be for you to outline your submissions to the background of this case under Rule 11 (7) (b), however you have absented yourself.
- 27** Under Rule 11 (7) (c), Mr Taylor proceeded to outline why a warning was appropriate in this case. Mr Taylor accepted that there is no definition of 'significant' in the Medical Act or in the Fitness to Practise Rules. However, he directed the Committee to the GMC guidance on warnings which is intended to help decision makers, at both the investigation and hearing stages, consider whether a warning is appropriate. Paragraph 25 refers to cases unrelated to practice which are low level in nature, for example police cautions. Mr Taylor reminded the Committee that this was not a caution, that this is a case where a conditional discharge has been imposed.

- 28** Mr Taylor submitted that there has been a clear and specific breach of Good Medical Practice (GMP) of paragraphs 65. Mr Taylor directed the Committee's attention to the test for issuing a warning at paragraph 16 of the GMC's Guidance on Warnings [March 2021] and submitted that a warning is appropriate when there has been a significant departure from GMP and that a formal response by way of a warning is a key way for the GMC to declare and uphold standards of behaviour expected from doctors.
- 29** Mr Taylor submitted that the concerns raised in this case are sufficiently serious and if repeated would amount to impairment. Your conduct and behaviour leading to the conditional discharge fell far short of what is expected of a registered medical practitioner. Mr Taylor submitted that kicking out, spitting, and resisting arrest represented multiple significant breaches of the standards of good conduct expected of a registered medical practitioner.
- 30** Mr Taylor submitted that the Committee should take into consideration any remediation provided. Mr Taylor submitted that you have shown no insight into your failings and indeed you do not accept the decision of the Crown Court, the concerns expressed by the Judge and the concerns from the GMC. Mr Taylor submitted that as far as remorse is concerned, you have shown none in this case.
- 31** Mr Taylor submitted that though it appears that the incident is isolated and that you have no previous history, given your lack of insight the Committee cannot be satisfied there is no risk of repetition. He submitted that you have taken no rehabilitative or corrective steps and do not accept any wrongdoing, nor do you accept that the regulator has any legitimate concerns.
- 32** Mr Taylor invited the Committee to conclude that a warning is necessary and proportionate. Your conduct does not meet the standards expected of a doctor and a warning would serve to maintain the public's confidence in the profession, promote the standards expected of a doctor and send a message to the wider profession that this conduct is not acceptable.

Committee Determination

- 33** The Committee is aware that it must have in mind the GMC's role of protecting the public, which includes:

Protecting, promoting and maintaining the health, safety and well-being of the public

Promoting and maintaining public confidence in the medical professions, and

Promoting and maintaining proper professional standards and conduct for members of that profession

- 34** At the outset the Committee wished to note your clear passion and commitment to your work and that the conduct which has brought you before it today is entirely unrelated to your clinical practice.
- 35** The Committee must be satisfied that the particular conduct, behaviour or performance approaches, but falls just short of, the threshold for the realistic prospect test. The realistic prospect test requires a genuine possibility of a finding of impaired fitness to practise, justifying action on the doctor's registration.
- 36** The Committee was satisfied that your conduct which lead to the conditional discharge represents a significant departure from Good Medical Practice under paragraph 65 as it does not meet the standards expected of a Doctor and could serve to damage the public's trust and confidence in the profession. Having understood the details of your behaviour leading to your arrest, the Committee decided that your conduct approaches but falls just short of the threshold for the realistic prospect test. If your conduct was to be repeated, it would likely result in a finding of impaired fitness to practice which requires the Committee to consider how this conduct may affect public confidence in the profession and the reputation of the profession. The Committee determined that the test for a warning in this case has been met.
- 37** In deciding whether to issue a warning the Committee must apply the principle of proportionality and balance the interests of the public with those of the practitioner.
- 38** The Committee has taken into account the mitigating factors in this case and accepted that you have a previous good history and that this appears to be an isolated incident. However, the Committee notes that you have not provided it with any evidence today to suggest that you would not act in the same way nor any further explanation or mitigation for your actions. As far as the Committee is aware, you have not acknowledged your actions nor provided any positive testimonials. You have shown an inability to accept any responsibility for your actions, rather placing the onus on others. The Committee cannot therefore be satisfied that there is no risk of repetition in this case.
- 39** You have engaged in the sense that you have responded to the GMC's emails, but the Committee today do not have the benefit of your engagement with this process which may have assisted it in coming to its decision.
- 40** The Committee considered the fairness of issuing you with a warning and noted that a warning does not prevent a doctor from holding a licence to practise and does not place any restrictions on their registration. Although warnings do not restrict a doctor's practice, they should nonetheless be viewed as a serious response, appropriate for those concerns that fall just below the threshold for a finding of impaired fitness to practise.
- 41** The Committee has carefully considered all the facts and has concluded that on balance the aggravating factors outweigh the minimal mitigating factors provided in

this case. The Committee has considered whether in all the circumstances a warning is proportionate and has determined that the nature of your conduct was so serious that a warning is necessary to declare and uphold proper standards and highlight to the wider profession the standards to be expected of a doctor.

42 The warning will be documented as follows:

'On 27 February 2018 you were made the subject of an order for conditional discharge for a period of six months in respect of resisting or obstructing a constable.

This conduct does not meet with the standards required of a doctor. It risks bringing the profession into disrepute and it must not be repeated. The required standards are set out in Good medical practice and associated guidance. In this case, paragraph 65 of Good medical practice is particularly relevant.

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

Whilst this failing in itself is not so serious as to require any restriction on your registration, it is necessary in response to issue this formal warning.

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

43 The GMC shall serve written notification of the Committee's decision upon the practitioner as soon as reasonably practicable.

That concludes the determination of the Investigation Committee in this case.