**Public Minutes of the Investigation Committee**

**Date of hearing:** 01 December 2021

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<tr>
<th>Name of Doctor</th>
<th>Dr Derfel ap Dafydd</th>
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<tr>
<td>Doctor’s UID</td>
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<th>Committee Members</th>
<th>Mr David Hull</th>
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<td>Dr Zahir Mohammed</td>
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<td>Ms Toni Foers</td>
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<th>Legal Assessor</th>
<th>Mr David Marshall</th>
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<td>Panel Secretary</td>
<td>Ms Gemma Wolstenholme</td>
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**Attendance and Representation**

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<th>GMC Representative</th>
<th>Ms Katie Nowell</th>
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<td>Doctor’s attendance</td>
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<td>Doctor’s representative</td>
<td>Ms Lydia Barnfather</td>
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**Determination**

Dr Derfel ap Dafydd,

1. At today's hearing the Investigation Committee carefully considered all the material before it including the submissions made by **Lydia Barnfather** on your behalf and
those made on behalf of the GMC by Katie Nowell. It has accepted the advice of the Legal Assessor.

Background

2 At the time of the alleged events, you worked as a consultant radiologist for the Royal Marsden NHS Foundation Trust. You also had practising privileges with HCA Healthcare. On 20 February 2021, you accepted a community resolution disposal (‘CR’) from the police for possession of cannabis. You reported the matter to the GMC on 22 February 2021. The police also reported the matter to the GMC.

3 An investigation was opened by the GMC in relation to XXX misconduct. XXX.

4 Following the conclusion of the investigation process, the GMC wrote to you on 30 July 2021 to inform you that the case examiners were minded to issue you with a warning.

5 Your legal representative replied on your behalf requesting that the case should be closed with advice at the most, and that they did not agree a warning was appropriate. Your representatives confirmed that should the Case Examiners decide to issue a warning, you would not accept the warning and instead, request the case be heard by the Investigation Committee (IC).

6 On 14 October 2021, the GMC responded to acknowledge you were not prepared to accept the warning and that the Case Examiners have considered your comments and decided to refer the matter to the Investigation Committee.

GMC Submissions

7 Ms Nowell, on behalf of the GMC, took the Committee through the history of the case as outlined above. She drew attention to your statement made at the Rule 7 stage where it sets out the mitigation in this case which clearly occurred at a difficult and stressful time in your life for which the GMC have every sympathy. Ms Nowell pointed out that the circumstances leading to you being issued with a CR were that you were stopped by the police in a public place who noticed the smell of cannabis. She further submitted that your statement showed this was not a ‘one off’ incident, you had admitted to using cannabis previously and she asked the Committee to take this into account.

8 Ms Nowell submitted that the GMC agrees this is not a fitness to practice issue and there is no reasonable prospect of finding your fitness to practice impaired. It is however contended that there has been a significant breach of GMP, sufficiently serious to warrant some action on your registration, namely a warning. Ms Nowell stated that your misconduct, by way of engaging in illegal behaviour represents a significant departure from GMP and that a warning would be an appropriate and proportionate response to your conduct.
Ms Nowell submitted that this behaviour 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 (GMP) and associated guidance. In this case, paragraph 65 of GMP 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.’

Ms Nowell submitted that you chose to engage in illegal behaviour which resulted in action by the police. Such conduct has the potential to undermine the public’s trust in the profession and reflects a failure to maintain proper standards and conduct for members of the profession.

Ms Nowell noted your concerns about the impact of a warning on your practice and your assurance that there is no risk of future repetition. She submitted that this conduct was fairly recent and of a type that is difficult to remediate.

Ms Nowell stated that it is of concern to the GMC that you turned to using cannabis in order to cope with the life stressors that occurred during this time rather than to reach out to family, friends or your GP. Coupled with your admitted previous use of cannabis, Ms Nowell submitted that it is too early to ensure you have fully remediated at this time.

Ms Nowell submitted that in all of the circumstances of this case and notwithstanding any mitigation present, a warning was necessary and proportionate. Your conduct did not meet the standards expected 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 such conduct is not acceptable.

Defence Submissions

At the outset of her submissions, Ms Barnfather took the Committee through your professional background. Ms Barnfather drew the Committee’s attention to the multisource feedback and a number of testimonial letters that attest to your professionalism and describing you as ‘a highly regarded’ consultant and training director. Your speciality work deals with tumours, specifically sarcoma’s, neck tumours and robotic neck surgery which is indeed specialised work. Your employers did not feel any necessity to take any action in relation to these concerns and there has been no loss of confidence in your clinical abilities. Ms Barnfather also highlighted your employers’ testimonials in light of your exemplary contributions during the pandemic as being ‘instrumental in the provision of new protocols’ required at this time.

Ms Barnfather wished to remind the Committee that the allegation itself concerns a single incident of [you] being found to be in possession of a small amount of cannabis rolled into cigarettes. In respect of that allegation, Ms Barnfather requested
that the Committee are reminded of this, rather than proceed on the ‘mistaken basis’
that you are, or were, an ‘habitual user’ of cannabis, which is not the allegation
before the Committee today.

16 On the day in question, you were fully cooperative and were dealt with the police
‘there and then’ with the incident being able to be disposed of by a CR. The matter
was concluded with the lowest level of police disposal for the possession of cannabis.
There is nothing before the Committee today to suggest you are a long-standing user
of cannabis.

17 A CR is categorised as an informal, non-statutory disposal, used by the police to deal
with minor matters e.g., anti-social matters. You were not arrested and do not have a
criminal record. These orders fall to the lower end of misconduct. Ms Barnfather drew
the Committee’s attention to the GMC Guidance on convictions, cautions,
determinations and other methods of police disposal insofar that the GMC will not
generally investigate these issues, however, can use their discretion if there are
aggravating factors.

18 Ms Barnfather stated that you have apologised deeply for your conduct and that you
have taken responsibility for your actions, accepting that there was no excuse for this
behaviour. However, while you have accepted, ‘previous occasional use of cannabis’
Ms Barnfather requested that the wider circumstances leading up to February 2021
be taken into account.

19 Ms Barnfather submitted that your personal use at a weekend has been termed as
recreational. She urged the Committee to not make a link between recreational and
habitual. Ms Barnfather submitted that whilst you had accepted previous ‘occasional’
use of cannabis, you had been so profoundly affected by the GMC proceedings that
you can reassure the Committee that you will never use cannabis again.

20 XXX.

21 Ms Barnfather submitted that, were a warning to be given today, it would have a
detrimental effect on your work. There is an element of concern from your colleagues
about what effect a warning would have and drew the Committee’s attention to the
testimonial from Professor Nutting where he hoped the Committee would consider
the consequences of a warning and the potential impact this may have on his team at
the trust. Ms Barnfather explained that any insurance company with whom a
practitioner has an arrangement for private work was likely to withdraw approval for
undertaking that work if a GMC warning is imposed. Ms Barnfather submitted that
this would have serious ramifications on your NHS post including the private work you
undertake there, due to the unique integrated nature of NHS and private patients
across all your work.

22 Ms Barnfather submitted that, to issue a warning, the concerns needed to fall, ‘just
below’ the threshold for a finding of impairment.’Whilst you have accepted that this

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conduct was wrong, you clearly had a lapse of judgement on 20 February. Ms Barnfather submitted that this behaviour did not amount to such a ‘sufficiently significant’ departure from GMP that a warning is an appropriate or proportionate response. It does not fall just below the threshold for a finding of impairment; therefore, your conduct does not meet the test for a warning to be issued today.

23 Ms Barnfather rebutted the GMC submission regarding your use of cannabis to deal with stress and the risk of repetition this displays. Ms Barnfather argued that you have dealt with the stress of this investigation and these proceedings today. Ms Barnfather stated that you have been entirely open with your employer and have been candid with the GMC as demonstrated through your self-referral. She submitted that you have provided extensive remediation through discussing the community resolution and the GMC investigation openly with your appraiser and reflection on how you will avoid any similar situation ever arising again, undertaking a relevant course on wellbeing. You have learnt a very stark lesson, the investigation itself and today's proceedings have been salutary lessons in themselves.

24 XXX.

25 Ms Barnfather reiterated that there was no risk of repetition, noted the abundant mitigation in this case and invited the Committee to take into account the extenuating circumstances in your personal life. In summary, Ms Barnfather's submission was that in all the circumstances, your conduct did not fall below the standard expected to a degree requiring a warning and further that any warning given today would be a disproportionate response and would serve as a punitive measure.

Committee Determination

26 At the outset, the Committee are mindful that your possession of drugs happened at a time when you were suffering from extreme stress. The Committee wish to extend their condolences for what must have been a difficult time for you.

27 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 profession, and
   c. Promoting and maintaining proper professional standards and conduct for members of that profession.

28 The Committee has concluded that in this case your actions breach Paragraph 65 of GMP. It has seen evidence before it today that you have been found in possession of, and admitted to having been, in possession of cannabis. This represents a clear and specific breach of Paragraph 65 of GMP.
29 The Committee accepts there is no definition of ‘significant’ in the Medical Act or in the Fitness to Practice Rules, however, your possessing of an illegal substance represents a significant departure from GMP 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. The Committee determined that your possessing of a Class B drug, namely cannabis coupled with your admission to having had five cigarettes laced with cannabis in your possession when stopped by the police, renders your conduct all the more significant.

30 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. The Committee is satisfied that the realistic prospect test in this case is not met, there is no evidence before it today that you are currently impaired by way of your misconduct.

31 The Committee also took note of the Guidance on convictions, cautions, determinations and other methods of police disposal as highlighted by Ms Barnfather in her submissions. Whilst disposal methods may change over time, the fact remains you were in possession of a Class B controlled drug, which is unlawful.

32 The Committee are aware that though this is not a conviction case, the illegality of the substances possessed does approach the realistic prospect test however falls just short of reaching it in this case. The Committee has determined that the concerns displayed are sufficiently serious that if there were repetition, they would likely result in a finding of impairment. Repetition of your behaviour could affect patient and public confidence in the profession and the reputation of the profession. Therefore, for the reasons above, the test for issuing a warning is met and indeed appropriate in this case.

33 In deciding whether it is appropriate to issue a warning the Committee must apply the principle of proportionality and balance the interests of the public with those of the practitioner.

34 The Committee accepts the personal mitigation present in this case, your candour XXX, showing genuine remorse and regret at an early stage. It also had regard to the many exemplary and powerful testimonials provided by your colleagues which attest to your good character, integrity, and professionalism. Certainly, the importance of your role within your team and your reliability has been duly noted by the Committee today. The Committee determined you have demonstrated extensive remediation to your credit.
The Committee noted that there has not been any repetition of your conduct at this point, accepting that during this period you had suffered great loss and were admittedly under a lot of stress. Whilst the Committee cannot be satisfied that there is no risk that something similar may happen again, your extensive insight and remediation encourages the Committee that this risk is greatly reduced.

The Committee today has heard your previous admission of using cannabis occasionally in the past prior to this investigation, however they have no evidence before it today as to when or where this may have been. The Committee has considered the appropriateness of a warning solely on the allegation before it today.

The Committee determined that a warning is unlikely to affect your career prospects as put forward by Ms Barnfather. Certainly, the glowing testimonials seen today attest to your current healthy work relationships with your colleagues. The Committee sees no detriment to your career by issuing you with a warning today.

Despite the powerful mitigation provided and the genuinely exceptional circumstances that led to your conduct, the Committee must balance the interest and safety of the public with proportionality in this case. On the specific facts seen before it today, the Committee has determined that your conduct did not justify your patients' trust in you and the public's trust in the profession. The Committee did not find your actions acceptable, especially for a registered doctor in your esteemed position to conduct yourself in this way.

Despite the compelling mitigation described in this case, the possession of illegal drugs runs the risk of damaging public confidence in the profession and does not meet with the standards required of a doctor. The Committee has determined that a warning would be appropriate and proportionate in this case 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.

The warning will be documented as follows:

‘On 20 February 2021 you accepted a Community Resolution after being found in the possession of cannabis.

This behaviour 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.

While 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.gmc-uk.org/disclosurepolicy. You will be notified of this decision in writing within the next two working days.'

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