

Dr Diana WARNER (2580395)

DETERMINATION ON SANCTION – 15/08/2024

1 Having determined that Dr Warner’s fitness to practise is impaired by reason of misconduct and conviction, 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 Outcome of Applications Made during the Sanction Stage

2 The Tribunal granted Dr Warner’s application, made pursuant to Rule 34(1) of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), that an article be admitted into evidence. There was no objection from the GMC.

The Evidence

3 The Tribunal received further evidence on behalf of Dr Warner. It received a Liberties Article titled ‘14 Principles of Democracy’, dated 12 April 2022.

Submissions

On behalf of the GMC

4 On behalf of the GMC, Ms Widdett submitted that suspension is the appropriate and proportionate sanction. Ms Widdett referred throughout to The Sanctions Guidance (2024) (‘the SG’). Ms Widdett submitted that the aggravating factors in this case are that Dr Warner has limited insight, has undertaken no remediation, and there remains a risk of repetition. She further submitted that there are no mitigating factors.

5 Turning to the available sanctions, Ms Widdett submitted that there are no exceptional circumstances in this case which justify taking no action. She submitted that conditions would not be workable, given Dr Warner’s lack of insight. She further submitted that conditions would not be appropriate as there is no evidence to demonstrate that remediation is likely to be successful, no identifiable areas of Dr Warner’s practice which require assessment or supervision, and a period of

retraining and supervision would not address the concerns, nor can the Tribunal be satisfied that Dr Warner would comply with conditions of practice.

6 With regard to suspension, Ms Widdett submitted that despite Dr Warner's failure to acknowledge her misconduct, and the risk of repetition, the misconduct and conviction are not fundamentally incompatible with continued registration as a medical practitioner. She therefore submitted that suspension is the appropriate and proportionate sanction. She submitted that whilst this was a serious departure from GMP, the matters are easily remediable and complete removal from the register would not be in the public interest. However, a sanction less than suspension would not be sufficient to protect the public. She submitted that while there is evidence that remediation is unlikely to be successful, due to Dr Warner's lack of insight and the significant risk of future repetition, there has been no evidence of similar behaviour since the incidents.

7 With regard to erasure, Ms Widdett submitted that despite the deliberate disregard for the principles set out in GMP and the persistent lack of insight into the consequences of her actions, erasing Dr Warner's name from the medical register would be disproportionate, taking into account that the behaviour is not fundamentally incompatible with continued registration.

Dr Warner's Submissions

8 Dr Warner submitted that the appropriate sanction in this case is either no action or a short suspension of one month. She submitted that while she is not willing to make promises not to act in this way again, her conduct is not incompatible with her working as a doctor in the future. Dr Warner stated that she is retired and currently has no plans to return to work.

9 Turning to the available sanctions, Dr Warner submitted that there are exceptional circumstances which mean that the appropriate sanction is to take no action. She submitted that the Tribunal has heard evidence that the climate and ecological catastrophes already underway are being ignored by the government. She submitted that the government has now begun to backtrack on its policies and is failing in its statutory duty to keep the UK within its legally required carbon budget. She submitted that her motivations form exceptional circumstances which mean taking no action is appropriate.

10 She submitted that there is substantive evidence that disruptive protests like the ones she engaged in are effective where other methods have failed. She submitted that government has failed to protect the public and has instead imposed increasingly harsh sentences on climate activists. She further stated that the GMC is

intent on sanctioning doctors who, to protect human life and as a last resort, take to peaceful but disruptive civil resistance and are imprisoned as a result, rather than the GMC taking action to protect the public.

11 She submitted that these proceedings flout the fundamental principles of democracy, namely, that all people be treated equally, and no one is above the law. She submitted that the government and other institutions like the GMC are failing to deliver on their legal requirements. She referred to the Medical Act 1983 and submitted that the GMC is failing to use its regulatory powers to protect the public from the existential threat posed by climate change as well as other threats which result from human action.

12 Dr Warner submitted that she was acting as a whistleblower and that it is necessary for the GMC to respond as they would to a whistleblower who was calling the GMC out for failing in their overarching duty. She submitted that the lack of action on climate change may be judged as ‘deplorable’, ‘disgraceful’ and ‘morally culpable’, breaching a fundamental tenet of the profession, which is to act within the law. She submitted that the risks to public health and safety due to this oversight are enormous.

13 Finally, she submitted that if the Tribunal were to censure her as the GMC have submitted, the GMC will be able to carry on with business as usual and nothing will change. She submitted that the Tribunal should send a message to the GMC about how it must act in respect of climate activists. She submitted that a short period of suspension of one month or no action would challenge the GMC’s complicity in not taking effective action on the climate crisis.

The Tribunal’s Determination on Sanction

14 The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken the SG into account and has borne in mind the overarching objective.

15 The Tribunal reminded itself that the main reason for imposing any sanction is not to punish or discipline doctors, even though the sanction may have a punitive effect. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Warner’s interests with the public interest. The Tribunal bore in mind that the interest of the medical profession as a whole was more important than that of an individual doctor.

16 The Tribunal first considered and balanced the aggravating and mitigating factors in this case.

Aggravating Factors

17 The Tribunal found the following aggravating factors were present. Dr Warner lacks insight into the adverse ramifications of her actions in respect of patient trust in her as a medical practitioner and public trust in the medical profession. She has refused to apologise or show remorse for her actions.

18 Dr Warner's actions showed a repeated and deliberate failure to adhere to the standards set out in GMP (2013). She has refused to accept in these proceedings that she failed to adhere to paragraphs 1 and 65 of GMP (2013) and has further refused to exclude the possibility that she will undertake illegal activism in the future.

19 There remains a significant risk of repetition, as Dr Warner has refused to remediate her misconduct and conviction. The Tribunal noted in particular the risk which remains to the public from her actions when engaging in disruptive activism.

Mitigating Factors

20 The Tribunal found the following mitigating factors were present. Dr Warner admitted the Allegation in its entirety at the earliest opportunity, the Rule 7 Response stage, and has maintained that admission, throughout these proceedings.

21 Dr Warner has upheld her personal promise to the Court not to breach the Order, although the Tribunal noted that Dr Warner's promise was confined to the narrow issue of the M25 and Southeast England road network which the Order was concerned with.

22 Dr Warner self-referred to the GMC on each occasion. The Tribunal bore in mind that this was her duty as a registered medical practitioner, however it considered that she had made efforts to ensure referrals were made and thereafter engaged with the regulatory process.

23 Dr Warner has had no personal gain from her actions, in fact, she has suffered financial and personal losses, including substantial time spent in prison, fines and health difficulties. She believes that she has acted on the risk to public health posed by climate change and therefore has acted out of concern for her patients and the wider public despite the potential consequences to her. The Tribunal noted that she had a previously unblemished career and had risked the public disgrace of being erased or suspended from the medical register as a result of the unlawful nature of her actions pursuing her climate change activism. The

Tribunal considered the testimonials which Dr Warner provided, and noted the statement of Rabbi Newman, who stated,

'I find Dr Warner's words and actions to be entirely consistent with her background and story. Her integrity is evident in that she has practised for many years as a Buddhist. Her actions as a Peace Activist, and on behalf of the climate and environment, have been the result of beliefs formed by her Jewish background and Buddhist convictions. Consciously or not they also informed her throughout her work as a GP.'

24 The Tribunal further took into account the statement of Mr Holmquist, who has known Dr Warner since childhood. He stated,

'My perception of Diana from the start, was as someone who may present as gentle and unassuming, but who possesses great integrity, strength of character and independence of thought. Over a number of years, I have seen Diana become increasingly involved in political action, stemming from her passion and commitment to the environment.'

25 The Tribunal found that it had evidence of Dr Warner's family history and journey into activism and had acknowledged that her views on the public health implications of climate change are genuinely held. The Tribunal found that Dr Warner was motivated by a desire to act on behalf of others, often to her own detriment. It found that this was a mitigating factor in this case.

No action

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

27 The Tribunal bore in mind that a sanction can serve a deterrent effect and can be used to send a signal to the doctor regarding what behaviour is unbecoming a registered doctor. The Tribunal considered that Dr Warner has spent substantial periods in prison as a result of her actions, and it therefore found that she had already faced personal sanction which amounted to a severe deterrent for her unlawful actions. It was mindful that despite the sanctions she has already faced, she is not deterred from acting the same way in the future. Bearing in mind that a sanction would therefore likely not serve any deterrent to Dr Warner, the Tribunal carefully considered whether to take no action in this case and whether there were any 'exceptional circumstances' to justify that position.

28 The Tribunal took into account the paragraphs of the SG relevant to criminal convictions:

'116 The purpose of the hearing is not to punish the doctor a second time for the offences they were found guilty of. The purpose is to consider whether the doctor's fitness to practise is impaired as a result. If so, the tribunal then needs to consider whether to restrict the doctor's registration to protect the public (who might come to the doctor as patients) and to maintain the high standards and good reputation of the profession. The tribunal should take account of paragraphs 81–85 of Good medical practice [2024] regarding the need to be honest and trustworthy, and to act with integrity.'

29 The Tribunal further noted paragraph 81 of GMP (2024), which is identical to paragraph 65 of GMP (2013):

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

30 The Tribunal, in its determination on impairment, has found that Dr Warner had failed to adhere to paragraph 65 GMP (2013) and that her actions have the potential to damage her patient's trust in her and the public's trust in the profession. It found that if it were to take no action against Dr Warner's registration, this would not uphold the overarching objective to protect the public, which includes promoting and maintaining public confidence in the medical profession and promoting and maintaining proper standards and conduct for members of the profession.

31 The Tribunal therefore found that taking no action would not be appropriate in this case.

Conditions

32 The Tribunal next considered whether it would be appropriate to impose conditions on Dr Warner's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

33 The Tribunal noted paragraph 81 of the SG:

'81 Conditions might be most appropriate in cases:

a involving the doctor's health

b involving issues around the doctor's performance

c where there is evidence of shortcomings in a specific area or areas of the doctor's practice

d where a doctor lacks the necessary knowledge of English to practise medicine without direct supervision.'

34 The Tribunal found that none of the circumstances which might indicate conditions were appropriate were present in this case. There are no concerns about Dr Warner's health, performance, or her knowledge of English. It further noted that Dr Warner is now retired, and considered the nature of her actions leading to the finding of misconduct and conviction and therefore decided that any conditions the Tribunal may impose would not be workable or measurable.

35 The Tribunal therefore found that conditions would not be appropriate, workable or measurable in this case.

Suspension

36 The Tribunal considered the relevance of the following paragraphs of The Sanctions Guidance (2024) ('SG'):

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

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

93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions (see paragraphs 24–49).'

37 The Tribunal further bore in mind that Dr Warner has not shown insight into her misconduct, nor has she remediated the concerns, and it has therefore concluded that there remains a significant risk of repetition. The Tribunal further found, in its determination on impairment, that there has been a serious departure from paragraphs 1 and 65 of GMP (2013). The Tribunal was mindful that these factors may indicate a more serious sanction was appropriate. However, it took into account the mitigating factors in this case, in particular that Dr Warner's motivations for acting in the way she did were her genuinely held beliefs about the urgency of what she believed to be the need for action on climate change. The Tribunal considered that whilst such factors did not amount to justification for her actions in their finding of impairment those factors were relevant when considering the appropriate sanction in this matter. The Tribunal also took into consideration that Dr Warner had maintained her personal promise to the Court made in February 2022 and that it had no evidence of similar behaviour since these incidents.

38 The Tribunal therefore found that the misconduct and conviction are so serious that a suspension is the least restrictive sanction required to maintain public confidence in the profession and uphold proper professional standards and conduct.

Erasure

39 Before determining that a suspension was the appropriate sanction, the Tribunal considered the sanction of erasure.

40 The Tribunal considered that Dr Warner has stated that she took part in these protests as part of her obligations as a medical practitioner to protect public health. The Tribunal found that Dr Warner's actions, given her motivations and the fact that she has been punished by the criminal justice system, were not fundamentally incompatible with continued registration. It therefore found that erasure would be a disproportionate sanction to impose on a doctor who believed she was acting in her patient's best interests and to further the cause of action on climate change. The Tribunal considered that her actions damaged the public trust in the profession but not to the extent that erasure from the medical register was required to protect the public, as per the statutory overarching objective.

Sanction determination

41 The Tribunal therefore determined that a period of suspension was the appropriate and proportionate sanction in this case.

Length of suspension

42 When considering the length of suspension, the Tribunal found that a period of suspension less than the maximum 12 month suspension period was proportionate in these circumstances. The Tribunal was mindful that these were serious matters which involved a conviction for a criminal offence and two breaches of an Order of the High Court. However, it took into account that Dr Warner has already spent a substantial period of time in prison as a result of her actions that led to the Allegation, and the purpose of this suspension was to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. The Tribunal decided that a three month suspension was sufficient to serve this purpose and to protect members of the public and maintain public confidence in the profession. It further considered that a lengthier period of suspension would be disproportionate, given the motivation and mitigation in this case.

43 The Tribunal therefore found that a suspension of three months was the proportionate and appropriate sanction.

Review hearing

44 The Tribunal determined not to direct a review of Dr Warner's case. The Tribunal considered paragraph 164 of the SG:

'164 In some misconduct cases it may be self-evident that, following a short suspension, there will be no value in a review hearing. ...'

45 The Tribunal, in its determination on impairment, has found that Dr Warner's belief that her actions were the right thing to do is highly unlikely to change in the future. The Tribunal found that a review hearing would give an opportunity for Dr Warner to show any development of insight and remediation. However, Dr Warner's position is that her misconduct was justified and her stance in this regard is unlikely to change. The Tribunal therefore determined not to direct a review hearing, as it would serve no purpose in this particular case.