MPTS Medical Practitioners Tribunal Service

Record of Determinations
Doctors Tribunal
Preliminary

PUBLIC RECORD

Dates: 17/11/2025 - 19/11/2025

Doctor:	Dr Neill GARRARD
GMC reference number:	6159385
Primary medical qualification:	MB BS 2007 University of London
Type of case	MPT - Preliminary

Tribunal:

Legally Qualified Chair	Ms Louise Sweet
Lay Tribunal Member:	Mr Matthew Fiander
Registrant Tribunal Member:	Dr Amir Zafar

Tribunal Clerk:	Mrs Jennifer Ireland

Attendance and Representation:

Doctor:	Not present, represented
Doctor's Representative:	Mr Michael Rawlinson, Counsel, instructed by Weightmans
GMC Representative:	Mr Christopher Hamlet, Counsel

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 Preliminary Matters - 19/11/2025

Admissibility of Evidence

1. Dr Garrard is due to attend a Medical Practitioners Tribunal hearing in January 2026 to face an allegation of misconduct ('the 2026 Tribunal'). This hearing was convened to discuss preliminary matters relating to the substantive case.

Background

2. In November 2023, Dr Garrard attended a Medical Practitioners Tribunal hearing ('the 2023 Tribunal') facing allegations of sexual motivated misconduct towards two patients.

3. On 13 December 2023, the facts alleged by the GMC were found not proved by the 2023 Tribunal and Dr Garrard was found not impaired by reason of misconduct.

4. After the conclusion of the hearing, the Professional Standards Authority ('PSA') appealed, on the grounds that the 2023 Tribunal had been wrongly directed and had wrongly applied the legal test for the potential for cross-admissibility of the evidence relating to the two patients.

5. The appeal was heard by the High Court on 28 January 2025 and was upheld in full. The High Court directed that the hearing should be remitted to be heard by a differently constituted Tribunal, with a direction that the Tribunal applies the correct legal approach to cross-admissibility and comes to a fresh decision.

6. On 25 February 2025, a further High Court hearing took place, as parties were unable to agree the terms of the remittal, particularly in respect of the form of the evidence to be

heard at the fresh tribunal. In his judgment, Macdonald J set out that he was '*satisfied that it is a matter for that tribunal to decide…how the rehearing is to proceed'.*

7. Further, Macdonald J stated:

> *'the differently constituted tribunal that is tasked with rehearing the matter will be far more appropriately placed to determine applications to admit evidence and to decide on whether oral evidence with cross-examination is required…*
>
> *Beyond the general assertion regarding the undesirability of vulnerable witnesses having to give evidence again, there is no evidence before this court to support the appellant's key contention that there is a risk that the two witnesses in question would not participate in a rehearing or that they would be adversely affected by having to give evidence again beyond the ordinary upset associated with that course of action. Further, there is no evidence that the two witnesses are in any way reluctant or unwilling to attend the tribunal to give evidence again. Against this position, weight must be attached the procedural safeguards to which the registrant is entitled, both at common law and under Art 6 of the ECHR.*
>
> *… the differently-constituted tribunal can be properly appraised on the position of the witnesses and can take an informed decision as the tribunal charged with making the substantive determination of fact as to whether further oral evidence and cross examination is required and possible.*
>
> *… not be appropriate for this court to take decisions as to wider issues of admissibility in place of the differently-constituted tribunal hearing the matter. Matters of admissibility are generally for the tribunal dealing with the rehearing, rather than for the appellate court that directs the re-hearing, save where the question of admissibility is the subject of the appeal.*
>
> *…Finally, I shall direct the questions of the admissibility of evidence and case management, including the need for oral evidence with cross-examination at the rehearing, shall be matters to be determined by the tribunal in accordance with the relevant rules.'*

8. On that basis, this hearing considered the following preliminary applications made by the GMC:

a) An application for the hearing to receive transcripts of oral evidence (including the cross-examination conducted on behalf of Dr Garrard) given at the 2023 Tribunal, in relation to both Patients A and B;
b) An application for anonymity for both Patients A and B.

The Evidence

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

a) High Court Judgment, dated 14 February 2025;
b) High Court Judgment, dated 25 February 2025;
c) Telephone note of a conversation between the GMC and Patient B, dated 5 March 2025; and
d) Email from Patient B to the GMC, dated 6 March 2025.

10. The Tribunal also received written and oral submissions from both parties in relation to the application.

Submissions

11. On behalf of the GMC, Mr Hamlet submitted that transcripts of the oral evidence of Patients A and B obtained during the 2023 Tribunal should be presented to the next Tribunal in place of them giving further oral evidence. He referred the Tribunal to the appeal decisions and the basis on which the appeal was upheld, namely that the only criticism arising from the 2023 Tribunal was the cross-admissibility direction and its proper application.

12. Mr Hamlet submitted that justice can and will be served more effectively by way of a rehearing on the transcripts alone. He stated that it was not about '*mere inconvenience*' to the witnesses, but recognition of the practical and legal consequences of requiring two vulnerable witnesses to be the subject of cross-examination again, without it bringing any clear benefit to the fairness of the proceedings and instead giving rise to significant potential disadvantages. He submitted that Patient A, whilst prepared to attend to give oral evidence again, is a vulnerable witness who has already given her account under oath and been subject to comprehensive questioning by Mr Rawlinson at the 2023 Tribunal.

13. In respect of Patient B, Mr Hamlet submitted that she has indicated she will not return to give evidence again. Therefore, if the Tribunal was to direct that she must provide oral evidence, that would result in the loss of her evidence altogether. He submitted that this would have a consequential impact on the GMC case, which would no longer be able to draw upon two independent complaints which are potentially cross-admissible. He stated that that would undermine the very basis for the appeal and the purpose of the remittal.

14. Mr Hamlet further submitted that an obvious and significant impact of a direction to re-hear all oral evidence would be that Dr Garrard would be afforded a second '*bite at the cherry*'. He submitted that Dr Garrard would be able to tailor his questions and indeed his own evidence, to the answers provided at the first hearing of the matter.

15. Mr Hamlet reminded the Tribunal that the remittal was directed squarely at the 2023 Tribunal's approach to the law, not the evidence. He submitted that there is no identifiable prejudice to Dr Garrard in re-hearing the facts stage of this matter on the basis of the transcripts of the evidence heard at the 2023 Tribunal. He submitted that it would be open to parties to make fresh submissions on that evidence and on the law.

16. Mr Hamlet submitted that if the Tribunal was to direct a full re-hearing, including all of the witnesses, it would likely have a significant adverse impact on the fairness of the proceedings by curtailing the evidence the GMC is able to call in support of its case and conferring an unfair and unnecessary advantage to Dr Garrard in his response to the remaining evidence.

17. Mr Hamlet invited the Tribunal to direct as follows:

i. The Tribunal reconvene at the Rule 17(2)(a) phase of Stage 1 of the proceedings (clarified in oral submission to be at the end of the evidence);
ii. There be no requirement for oral evidence from any witness who gave evidence to the original Tribunal;
iii. All such evidence referred to at ii) to be admitted in the form of transcripts – and afforded equivalent evidential status to that given under oath;
iv. Legal submissions by the parties and advice from the LQC are to be heard afresh; and
v. An entirely fresh determination on the facts is to be made.

18. Mr Hamlet submitted that, should the Tribunal consider it necessary to allow or direct oral evidence to be adduced from some or all witnesses, it is submitted that Patient B's evidence ought to be excluded from such a direction and be received in the form of her written account and the transcript of her cross-examination. He stated that to direct otherwise would have the effect of ruling her evidence out of the case altogether, with the significant and unfair consequences for the overall case brought by the GMC.

19. On behalf of Dr Garrard, Mr Rawlinson opposed the application. He invited the Tribunal to consider the principles set out in *R (Bonhoeffer) v GMC* [2011] EWHC 1585 (Admin). He submitted that the decision of Macdonald J was for a newly constituted Tribunal to make an entirely '*fresh decision on the facts'*. He stated that the starting point is therefore that the new Tribunal is not concerned with merely reversing or *'rubber stamping'* the 2023 Tribunal's decision, reviewing legal submissions, or ensuring the correct approach to cross-admissibility, but to start from the beginning. He stated that, in effect, the Tribunal is being asked to determine a hearsay application in relation to the transcripts.

20. Mr Rawlinson submitted that it was unclear upon what procedural basis the Tribunal is being asked to '*prevent*' either Patient A, Patient B or Dr Garrard giving live evidence, even if some or all of the previous transcripts were admitted. He stated that the usual pre-condition for the admission of such evidence is the unavailability, unwillingness or non-engagement of a witness which, only potentially, vaguely applies with respect to Patient B. He submitted that it was a decision for each side to choose which evidence to call and witnesses to deploy. He stated that, if the GMC does not call witnesses, the only alternative is an application pursuant to Rule 34(1) to admit some or all of their evidence. He submitted that the GMC are trying to effectively circumvent the consequences of their own application i.e. the potential that the evidence of Patient A and B is afforded less weight if admitted as hearsay.

21. Mr Rawlinson submitted that the core mechanism for testing evidence is the calling of witnesses accompanied by cross-examination, with all of those features plainly contemplated as occurring before the Tribunal that is making the primary decision on the facts. He stated that the High Court has specifically and repeatedly upheld a doctor's right to have a witness testify and be subjected to cross-examination in relation to charges of professional misconduct concerning sexual allegations. He submitted that in the absence of exceptional circumstances, compelling evidence or other matters to displace the usual position, the

GMC's application has no proper legal or factual basis and is an attempt to improperly circumvent established procedures and artificially extend the Rules.

22. Mr Rawlinson submitted that the GMC is essentially making what amounts to a hearsay application in respect of the entirety of the contested evidence in the case, including from Patients A and B and seemingly from Dr Garrard.

23. Mr Rawlinson submitted that, in considering the fairness of admitting hearsay evidence, it was important for the Tribunal to apply the legal principles derived from the case of *Bonhoeffer.* He stated that the reconstituted hearing is, in effect, a *de novo* hearing and the evidence of Patients A and B is clearly the sole and decisive evidence in this '*new*' case.

24. Mr Rawlinson also submitted that a significant part of the forensic value of cross-examination in this exercise involving the calling of live evidence also includes an assessment of a witness's demeanour by the Tribunal hearing the case. In this case, he stated that whilst there is an audio recording, there is no video recording of the evidence showing demeanour, body language and the like.

25. Mr Rawlinson stated that the fact that the previous evidence was given under oath and was tested by cross-examination before the 2023 Tribunal, does not affect the proposition that all the evidence heard before is still hearsay for the purposes of these proceedings. He submitted that to accede to the admission of the hearsay evidence, to the extent and in the manner sought by the GMC, would be nothing short of extraordinary. He reminded the Tribunal of the principles for accepting hearsay evidence and submitted that there is simply no precedent or authority to support such an approach. He submitted that the principle of the admission of hearsay evidence is not intended as a substitute for live oral testimony, especially where witnesses are both available and willing to give evidence.

26. Mr Rawlinson submitted that, in simple terms, the GMC appear to be conflating two issues: the potential admissibility and/or weight to be attached to the previous transcripts in respect of various issues and the separate issue of whether, in light of their potential admission, potential live witnesses should be effectively '*prevented*' from giving such live evidence. He stated that there is no authority in fact or law, or under the Rules for such an approach.

27. Mr Rawlinson submitted that the GMC's application lacks a procedural basis for preventing live evidence, a proper evidential foundation for the admission of hearsay evidence and seeks to displace or ignore the presumption in favour of live evidence in serious misconduct cases. He stated that, should the Tribunal accede to the application, it would set a worrying precedent that undermines the presumption in favour of live evidence and cross-examination in serious misconduct cases. He submitted that it would have a *'chilling effect'* on procedural fairness and signal to regulators that hearsay can routinely replace oral testimony, even when witnesses are willing and available. He stated that there would be a systemic weakening of adversarial testing of evidence, contrary to both common law principles and Article 6 rights.

28. Mr Rawlinson invited the Tribunal to apply the *Bonhoeffer* principles rigorously and to dismiss the GMC's application.

The Tribunal's Approach

29. The test for admitting evidence in hearings, is set out in Rule 34(1):

> *'The Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law'.*

30. The Tribunal also took into account Rule 36(2):

> *'Upon hearing representations from the parties, the Committee or Tribunal shall adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness.'*

31. The Tribunal was directed as to Dr Garrard's rights as encapsulated in Article 6(3)(d) ECHR …. *'to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him'.*

32. The Tribunal was directed that it must balance Dr Garrard's rights against those of the wider public interest, applying the statutory overarching objective of the GMC set out in Section 1(1B) of the Medical Act 1983 to:

a) Protect, promote and maintain the health, safety and well-being of the public;
b) Promote and maintain public confidence in the medical profession; and

c) Promote and maintain proper professional standards and conduct for members of that profession.

33. The Tribunal was directed to the legal principles derived from the case of *Bonhoeffer* which set out three questions that a Tribunal should consider when deciding whether to allow or exclude evidence from an absent witness ('hearsay evidence'):

a) was there a good reason for non-attendance (and, consequently, for the admission of the absent witness's untested statements as evidence)?
b) whether the evidence of the absent witness constitutes the sole or decisive basis for the factual finding(s)?
c) are there sufficient counter-balancing factors to ensure a fair hearing?

The Tribunal's Determination

34. The Tribunal considered that the hearing and testing of live evidence from contested witnesses before a fact finding tribunal must always be the starting point, unless there is good reason for there not to be and that the hearing remains fair, in the event of evidence being adduced in an alternative form.

35. The Tribunal noted that it was being invited by Mr Rawlinson to apply the criteria set out in *Bonhoeffer*, which relates to the admission of hearsay evidence. The Tribunal accepted that Patient A was willing to return for cross-examination. The Tribunal accepted that Patient B had given her reasons for non-attendance; namely her life had moved on, she did not want it hanging over her and she would not want to return. The Tribunal accepted that Patient B provides the sole evidence of her complaint.

36. The Tribunal, however, was of the view this evidence fell into a different category to that envisaged by *Bonhoeffer* which involved the adducing of untested hearsay evidence. The evidence sought to be adduced by the GMC was evidence that had been rigorously tested by way of cross-examination on behalf of Dr Garrard at the 2023 Tribunal.

37. The question for the Tribunal was not whether the witnesses could return for a second cross-examination but whether it was necessary for either of them to do so to safeguard the fairness of the hearing.

38. The Tribunal acknowledged that this would mean the 2026 Tribunal would not hear live evidence from Patient A or B if the application were granted.

39. The Tribunal was of the view that the transcripts were relevant to the 2026 Tribunal, as they contained the factual record of the evidence given at the 2023 Tribunal and from which the 2026 Tribunal is going to be asked to make findings of fact applying the cross-admissibility direction appropriately.

40. The Tribunal next considered the issue of fairness in admitting the transcripts. It carefully considered fairness to both parties. It noted that Patient B has indicated that she does not intend to give further evidence which would mean the complete loss of her evidence if ordered to do so. Further, it accepted that Patient B's evidence is the sole evidence supporting her allegations. The Tribunal was of the view, nonetheless, she should be required to do so if it was necessary to ensure a fair hearing.

41. The Tribunal took into consideration that both Patient A and Patient B were vulnerable witnesses, as they make sexually motivated complaints, both had already attended and given oral evidence under oath/affirmation before a Medical Practitioners Tribunal and were subject to questions from the 2023 Tribunal and representatives for both parties. They both had other aspects of their medical history, that need not be recited, that made them vulnerable.

42. The Tribunal noted that there was no specific special measure that allowed pre-recorded evidence instead of live evidence for vulnerable witnesses as there are in other jurisdictions. However, the Tribunal also noted that Rule 16(g) allowed for case management decisions to be made as to how evidence from vulnerable witnesses '*should be obtained or presented to the MPT*' and Rule 36(2) states '*upon hearing representations from the parties the Committee or Tribunal shall adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness.*' In the Tribunal's judgment, it was rarely satisfactory or in the public interest to demand a vulnerable witness to return for further cross-examination unless it were necessary to safeguard the interests of a fair hearing.

43. In considering fairness to Dr Garrard, the Tribunal took into account that the transcripts are of evidence given under oath or affirmation, before a Medical Practitioners Tribunal, during the course of a hearing subject to the same rules as this Tribunal and the 2026 Tribunal. It also noted that there has been no change to the Allegation faced by Dr Garrard since the 2023 Tribunal.

44. The Tribunal noted that there was no criticism of the evidence or how it was received and no suggestion that there was a lack of opportunity for Dr Garrard's representatives to put questions to the witnesses. In that sense, there was no suggestion that Dr Garrard's Article 6(3)(d) rights had not been properly protected during the 2023 Tribunal.

45. In short, the error which lead to the appeal, had come at the point of legal advice regarding the cross-admissibility direction, after the close of the evidence. Therefore, this was a very unusual remittal, as it did not concern a criticism of the evidence at all.

46. The Tribunal also noted the passage of time since the consultations that give rise to the Allegation (2021) and the 2023 Tribunal. As any further questions or cross-examination would take place in 2026, the Tribunal was of the view, there was very little, if any, weight to be placed on the demeanour of witnesses. Mr Rawlinson had stated that his cross-examination would be largely on the '*same themes'* save for questions about matters noted in a telephone note relating to her non-attendance. Mr Rawlinson accepted that he was alive to the potential for cross-admissibility before he cross examined in 2023. The Tribunal was, therefore, of the view there was little to be gained in the repeat of cross-examination where memories will have faded further still and where not doing do would result in no unfairness to Dr Garrard.

47. Whilst reminding itself of the seriousness of the allegations, the Tribunal formed the view, that on all of the facts, there was no need for further cross-examination of Patient A and Patient B to protect the fairness of the hearing for Dr Garrard. The Tribunal would allow the evidence to be presented in transcript form exercising its powers under Rule 34(1).

48. The Tribunal considered the other applications for directions made by the GMC. No power could be pointed to as to how to direct Dr Garrard to conduct his case at the 2026 Tribunal. It noted that the GMC had indicated, that should Dr Garrard choose not to give evidence and he ask that the transcript of his evidence from the 2023 Tribunal stand in lieu of live evidence at the 2026 Tribunal, then his transcript would be afforded the same status as the transcripts of Patient A and Patient B. The GMC indicated that no adverse inference would be invited or would be appropriate. The Tribunal was of the view that the presentation of evidence was a matter for Dr Garrard and his representatives in due course.

49. The Tribunal was also of the view that the assessment of the evidence, including that presented in transcript form from 2023, would be a matter for the 2026 Tribunal after hearing fresh closing submissions and being the subject of proper legal directions.

50. Therefore, the Tribunal determined that the transcripts of Patient A and Patient B's evidence should stand in lieu of them being the subject of further cross-examination at the 2026 Tribunal. It determined to give no direction as to the weight to be attached to the evidence adduced, including the transcripts, at the 2026 Tribunal. The Tribunal further determined to give no direction as to how Dr Garrard should choose to present his case at the 2026 Tribunal.

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Application for Anonymity of Witnesses – Rule 35(4)

51. The Tribunal also received an application on behalf of the GMC under Rule 35(4) of the Rules that the witnesses, Patient A and Patient B, be granted anonymity throughout the proceedings. This application is made at a preliminary hearing for a substantive hearing due to take place in January 2026.

Submissions

52. On behalf of the GMC, Mr Hamlet submitted Rule 35(4) of the Rules allows a witness's identity not to appear in public. The application is made as both witnesses were patients of Dr Gerrard and consultations are private and should remain so.

53. Further Mr Hamlet submitted that pursuant to Rule 36(3)(e) of the Rules both witnesses are to be treated as vulnerable witnesses as the allegations they make are sexual in nature and so should be anonymised to ensure that their privacy is preserved.

54. On behalf of Dr Garrard, Mr Rawlinson did not oppose the application.

The Tribunal's approach

55. Rule 35(1) allows the Tribunal to permit witnesses' names to be anonymised for the purpose of the public record of the hearing. The Tribunal noted that the starting point must always be that hearings are held in public, which means witnesses are referred to by name

and their evidence be given in public unless there is good reason not to and the fairness of the proceedings will not be affected by the granting of the application for anonymity.

56. The Tribunal noted that both witnesses were patients and were therefore bound to refer to information arising out of confidential medical consultations. Both witnesses were also to be treated as vulnerable in that the allegations they make are sexually motivated.

57. Dr Garrard's representatives do not suggest the application is not made for good reason nor do they suggest there will be an adverse impact on the fairness of the proceedings.

The Tribunal's decision

58. The Tribunal found the application to be properly made and determined to grant the application.