

Statement from Derek Keilloh. 17/01/13

Dear Supporters and Friends,

I wish to take this opportunity to explain my position regarding my Medical Practitioner Tribunal Service (MPTS) hearing and my reaction to the support publicly demonstrated.

It will be understood that the findings and outcome of my hearing decided upon in December were a massive disappointment.

It is with a heavy heart that I am not able to lodge an appeal to the findings and outcome of my hearing. This position may cause many of you to be confused and feel let down. To help understand the position my legal representatives have provided a synopsis - accompanying.

I wish to make it clear that the support which has been co-ordinated and displayed visibly has not been futile. I recognise the collective efforts of you writing to the MPTS.

Unfortunately despite the public opinion – strong as it is – it could not influence or assist the decision of appeal.

The benefit which the support has delivered has been greatly welcomed by my family and me. I have been overwhelmed by the volume and sincerity of support.

For me to hear statements of good, from the public of North Yorkshire whom I have served as a trusted General Practitioner has given me strength and great consolation.

May I thank you all,

Yours Aye,
Derek Keilloh.

.....
Legal synopsis.

A doctor who has appeared before a Fitness to Practise panel in a hearing at the Medical Practitioners Tribunal Service has the right to appeal against any factual findings made by the panel, as well as a finding of impairment of his fitness to practise, and he can also appeal against any sanction that the panel impose. Such an appeal would be to the High Court, and would involve a High Court Judge reviewing any transcripts of evidence given at the panel hearing, and considering any legal arguments advanced on the doctor's behalf.

In Dr Keilloh's case the Fitness to Practise panel heard from many witnesses as to the events in Basra, Iraq during September 2003 when Dr Keilloh was serving as a Regimental Medical Officer with the Queen's Lancashire Regiment ("1 QLR"). During the late summer of 2003, following the fall of the regime of Saddam Hussein, the British army was engaged in Iraq in a containment operation, seeking to maintain the essential services and utilities for the civilian population, whilst also dealing with former regime loyalists and criminals. There were ethnic and religious tensions amongst the Iraqi population, giving rise to many threats to civilians. British soldiers frequently came under attack. 1 QLR had a base known as BG Main in Basra, where Dr Keilloh was deployed. His principal role was to care for British troops at the army base.

The case brought before the Medical Practitioners Tribunal Service centred upon the treatment by British soldiers of a group of Iraqi civilians who had been detained in a military operation and brought to BG Main. Baha Mousa was part of this group. Dr Keilloh had no dealings with Baha Mousa until he was called to the detention facility after Mr Mousa had collapsed. Dr Keilloh gave mouth to mouth resuscitation, and he and his team of medics then gave cardio pulmonary resuscitation, but they were unable to revive him. The panel heard evidence of Dr Keilloh's statement to the Royal Military Police following the death of Baha Mousa, as well as his statements made for, and Dr Keilloh's evidence during, a Court Martial (in which he was called as a prosecution witness) and the Baha Mousa Public Inquiry. The central issues in the case were (i) Dr Keilloh's knowledge of the extent of injuries to Baha Mousa and

other Iraqi civilians who had been detained, (ii) Dr Keilloh's subsequent actions with regard to the other detainees, and (iii) the truthfulness of Dr Keilloh's written statements and evidence in the Court Martial and Public Inquiry as to (i) and (ii).

Factual findings made in professional disciplinary proceedings are made to the standard of proof that applies to civil proceedings ("more likely than not", rather than to the criminal standard ("beyond reasonable doubt"). The panel at the Medical Practitioners Tribunal Service made factual findings adverse to Dr Keilloh to the effect that he had been aware of more extensive injuries to Baha Mousa than he had said in his statements and previous evidence, and also that Dr Keilloh had failed to take appropriate steps to care for the remaining detainees. Character witnesses had been called by the defence to attest to Dr Keilloh's honesty and integrity but the panel nonetheless found that he had acted dishonestly with regard to a) his account as to any injuries he had seen on the body of Baha Mousa and b) as to injury seen on the back of another detainee.

Having made those factual findings, the panel then went on to consider whether Dr Keilloh's fitness to practise was impaired. In so doing the panel considered evidence as to Dr Keilloh's deployment to Iraq, including the following factors: he had had insufficient medical training and experience to be deployed at all; he had no pre-deployment training; he had no proper induction on his arrival in Basra and no supervision by senior doctors during his time there. No one had mentioned to Dr Keilloh that part of his role might involve dealing with detained civilians, and the British Army had no protocols or operating practices for dealing with such civilians. The panel also heard, from the team of medics that Dr Keilloh had led in Basra, that he was highly regarded and conscientious in performing his duties. Notwithstanding these matters, the panel found Dr Keilloh's fitness to practise to be impaired because of his failure to ensure that the detainees had been safeguarded following Baha Mousa's death and because of his untrue accounts as to injuries he had seen, repeated over a number of hearings (including the Fitness to Practise panel hearing itself). The panel expressed the view that Dr Keilloh had breached two of the fundamental tenets of the medical profession: making his patients his first concern and being honest.

The panel then considered whether it should impose a sanction, given the findings that it had already made as to facts and impairment of Dr Keilloh's fitness to practise. The legal principles that panels should apply, when considering sanction, concern the individual doctor's competence and his ability to practise medicine safely, the wider public interest in the reputation of the medical profession and the maintenance of proper standards amongst medical practitioners. The General Medical Council provides written guidance to panel members as to sanction, in a document called Indicative Sanctions Guidance (latest version dating from March 2012) and which includes the following (at paragraph 111) "Dishonesty, especially where persistent and/or where covered up, is likely to result in erasure."

Three large ringbinders of testimonial letters were provided to the panel, those being letters from patients and professionals, such as doctors, nurses and care home managers, who spoke of his care of patients in Northallerton. The panel had no doubt as to Dr Keilloh's skills and expertise as a GP, describing him at one point in the hearing as an excellent doctor, and it recognised that there would be a considerable loss to the medical community and the public if he were unable to practise. In all the circumstances the panel concluded, with regret, that to impose a period of suspension, even for the maximum period permitted by law of 12 months "would not be sufficient to declare and uphold proper standards of conduct and behaviour and to maintain public confidence in the profession. Furthermore, it would not send a strong enough signal to you, the profession and the public about what is regarded as behaviour unbecoming a doctor." The legal rules that set out procedure to be followed at a Medical Practitioners Tribunal Service hearing require the panel, if it concludes that a period of suspension would be insufficient as a sanction, to order that the doctor's name be erased from the Medical Register.

If a doctor were to appeal to the High Court against findings made by a Fitness to Practise panel at the Medical Practitioners Tribunal Service, he would need to demonstrate that the findings of the panel were wrong. It could never be an appropriate basis for an appeal that the doctor was aggrieved at the result. As to factual findings, the High Court recognises that panels are in a special position with regard to hearing

the evidence, in that the panel hears witnesses and is able to make assessments of the demeanour and reliability of witnesses as they give evidence. Accordingly the High Court will not lightly set aside factual findings by a panel. Where, as in this case, the panel has received appropriate legal advice from a legal assessor, factual findings will be virtually unassailable on appeal.

Similarly, the High Court will show considerable deference to a Fitness to Practise panel's determinations on impairment of fitness to practise and sanction. This is because the panel is regarded as a professional panel, including one or more doctors, and well placed to decide what conduct amounts to serious misconduct, what amounts to impairment, and what should be the appropriate sanction. Here, again, the Court will be very slow to intervene unless it can be shown that the panel has misapplied the proper legal principles, or that it has failed to consider relevant matters, or that it has given weight to matters that are properly irrelevant.