

30 November 2023

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**Re: GMC investigation into the Conduct of Dr Diana Warner**

We write on behalf of Lawyers are Responsible to express our concern regarding your ongoing investigation of Dr Diana Warner. Lawyers Are Responsible are a group of lawyers: primarily solicitors and barristers. We challenge the legal profession's role in enabling the fossil fuel industry. We have signed a Declaration of Conscience, open to all members of the legal profession, in which we commit, amongst other things, to withholding our services in respect of (1) supporting new fossil fuel projects and (2) action against peaceful climate protesters. So far nearly 200 lawyers have signed the Declaration. The Declaration and further details can be found on our website at [www.lar.earth](http://www.lar.earth).

With respect to s 39 of the GMC and MPTS Sanctions Guidance, we request that you consider this letter in support of Dr Warner. We submit that:

- a) it is relevant to the proceedings against her
- b) we provide legal references in support of Dr Warner's legally protected rights to political action
- c) Lawyers are Responsible has worked with the medics on campaigns and we have been aware of Dr Warner personally since Lawyers are Responsible was launched in March 2023
- d) we were aware of Dr Warner's convictions and protesting activities
- e) the relationship between Lawyers are Responsible and Dr Warner is that of campaigners engaged in mutual aims of stopping climate and ecological collapse

- f) it is part of our mission to support peaceful climate protestors, and it is for this reason we have prepared this letter of support

In an email on 15 May 2023, you wrote to Dr Warner:

1. *On 31 May 2022 at Highbury Corner Magistrates' Court, you were:*
2. *convicted of, without lawful excuse, damaging furniture to the value of under £5000 belonging to Stratford Magistrates', intending to destroy or damage such property or being reckless as to whether such property would be destroyed or damaged contrary to sections 1(1) and 4 of the Criminal Damage Act 1971;*
3. *sentenced to 12 weeks imprisonment.*

*And that by reason of the matters set out above your fitness to practise is impaired because of your conviction.*

We submit that Dr Warner is not unfit to practice by reason of her convictions, prison sentence or protesting activities. She was convicted on account of protesting acts which demonstrated her ethical principles, particularly her concern about the moral failure to act on the climate and ecological emergency. Moreover, she acted in the exercise of her rights under international and domestic law.

To find Dr Warner unfit to practice would be a disproportionate response. All persons, including doctors, have the right to exercise their right to peaceful protest.

With respect to solicitors, we are aware that the Solicitors' Regulation Authority published guidance on 1 September 2022 on *Convictions arising from Matters of Principle or Social Conscience*, as set out here: <https://www.sra.org.uk/solicitors/guidance/convictions-arising-social-conscience/> and we submit that Dr Warner's case would fall into this category. The guidance states:

*"Where a conviction arises as a result of someone taking what they consider to be principled action or participating in a peaceful protest and that conviction does not involve a significant risk of harm to the public and/or material risk to property, it is unlikely to result in us taking any regulatory action. It is also unlikely that such conviction would result in a refusal for admission, or a practising certificate being granted as long as it is disclosed to us."*

We urge the tribunal to use its discretion not to find Dr Warner unfit to practice or impose any other regulatory action.

### **Civil disobedience is qualitatively different from other criminal acts**

We submit that acts of principled civil disobedience are qualitatively different from criminal actions where the motive involves self interest. Dr Warner's actions were not morally blameworthy and did not harm anyone or cause more than minor property damage. Not everyone agrees with breaking the law, but it cannot be said that Dr

Warner's actions reflect negatively on her integrity, honesty or her fitness to practice. Dr Warner has completed her sentence and paid all costs required of her by the courts.

Many members of the public would support Dr Warner's actions. The medical profession is not brought into disrepute as a result of her actions, there is no loss of confidence in the profession. In fact, people may be alerted to the extreme seriousness of the climate and ecological emergency by the fact that a doctor cares so much and is so concerned, that they are taking principled action.

### **United Nations concerns about Climate Defenders**

On 4 April 2022 the UN Secretary General stated that "investing in new fossil fuel infrastructure is moral and economic madness". Despite this, the UK government approved a new coal mine in Cumbria and approved plans to issue more than 100 oil and gas licences in the North Sea, including approving the development of the massive oil and gas field Rosebank, off the coast of Shetland. The UN Secretary General also said in that speech: "*Climate activists are sometimes depicted as dangerous radicals. But the truly dangerous radicals are the countries that are increasing the production of fossil fuels.*" We agree with this point.

The UN Special Rapporteur on Human Rights, Mary Lawlor, also said of climate defenders in October 2023: "*These defenders are basically trying to save the planet, and in doing so save humanity... These are people we should be protecting, but are seen by governments and corporations as a threat to be neutralised. In the end it's about power and economics... At its core it's about maintaining the power structures in place. This is true regardless of whether it's a dictatorship, democracy or a corrupt narco state, and regardless of the state's professed commitment to human rights, protecting the environment and combating climate change... Smearing defenders as lawbreakers or anti-development distracts from the cause and changes the narrative ...*"

(See: <https://www.theguardian.com/environment/2023/oct/12/how-criminalisation-is-being-used-to-silence-climate-activists-across-the-world?s=09>)

Dr Warner is now retired, she was not protesting when in a professional capacity and a considerable section of the public agrees with protest on the issue of the climate and ecological emergency, and wants the government to do much more to safeguard life. Dr Warner's actions are not inconsistent with her duties as a professional.

To subject Dr Warner to a further punitive sanction, beyond the criminal process, by finding her unfit to practice can be seen as legitimising the power structure that is destroying the planet's life support system.

### **Rights under international and domestic law**

Dr Warner has the right of privacy, freedom of expression and peaceful assembly, and access to and maintenance of employment without discrimination on grounds of political opinion, under international law.

The rights to privacy and of freedom of expression and peaceful assembly are also protected under the *European Convention on Human Rights (ECHR)* and in domestic

law under the *Human Rights Act 1998*. In deciding whether to subject medical professionals to disciplinary action, the GMC should have regard to these rights and freedoms.

These rights include Dr Warner's rights as a worker to work and to a political opinion. Indeed, under Article 23 of the *Universal Declaration of Human Rights*:

*(1) **Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment ...***

This right is amplified by the prohibition of discrimination in access to and maintenance of employment on grounds of political or other opinion under the Article 2 of the International Covenant on Economic, Social and Cultural Rights.

Article 1 of the *International Labour Organisation's Convention 111 - Discrimination (Employment and Occupation) Convention*, 1958, ratified by the United Kingdom on 8 June 1999 and in force, states that:

*For the purpose of this Convention the term discrimination includes--*

*(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, **political opinion**, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation ...*

*3. For the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.*

Article 2 states that:

*Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.*

Under Article 5 of the *International Labour Organisation's Convention 158 - Termination of Employment Convention*, 1982 (No. 158), albeit not ratified by the United Kingdom:

*"The following, inter alia, shall not constitute valid reasons for termination:*

*(a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours ...*

*(d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, **political opinion**, national extraction or social origin."*

Furthermore, the Employment Appeals Tribunal (EAT) has already given guidance that a commitment to tackling the climate and ecological crises could amount to a protected philosophical belief under the Equality Act 2010 in the context of employment. As a protected characteristic under equality legislation, this means that a worker cannot be subjected to discrimination, harassment or victimisation on the basis of these beliefs. As a regulator subject to the Public Sector Equality Duty under the Equality Act 2010,

the GMC must, in the exercise of its functions, have regard to eliminating unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

Dr Warner's right to privacy (*Ozpinar v. Turkey*, §§ 43-48) and her rights under international human rights law to exercise freedom of expression and peaceful assembly under Articles 10 and 11 of the ECHR, and the *Human Rights Act 1998*, will be infringed by finding her unfit to practice.

### **The finding of unfit to practice would be disproportionate**

Dr Warner showed courage and integrity, qualities that the profession should celebrate. She acted on principle, and had nothing to gain personally by her actions. Dr Warner acted in the exercise of her rights under international and domestic law. It would be alarming if the exercise of rights under domestic and international law were to be considered grounds for professional sanction.

### **Conclusion**

In the circumstances, the finding of unfit to practice would be disproportionate and could send a chilling effect to other medical professionals who engage in legitimate political activities outside work.

Yours sincerely,

*Lawyers Are Responsible*

**LAWYERS ARE RESPONSIBLE**