PUBLIC RECORD

Dates: 10/01/2022 - 19/01/2022

Medical Practitioner's name:	Dr Rajeev DHAR
GMC reference number:	4149695
Primary medical qualification:	MB BS 1994 University of London

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Not Impaired

Summary of outcome

Warning

Tribunal:

Legally Qualified Chair	Mr Charles Thomas
Lay Tribunal Member:	Mr Colin Sturgeon
Medical Tribunal Member:	Dr Paul Divall

Tribunal Clerk:	Ms Jemine Pemu

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Chris Gillespie, Counsel, instructed by the MDU
GMC Representative:	Ms Harriet Tighe, 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 Facts - 14/01/2022

Background

1. Dr Dhar qualified with an MBBS from St Georges Hospital Medical School, University of London, in 1994. In 1999, he obtained an MRC Psych qualification from the Royal College of Psychiatrists in London. Dr Dhal has over 16 years experience as a Consultant Psychiatrist in both the NHS and private sector and, at the time of the events, Dr Dhar was practising as a Consultant Psychiatrist.

2. The Allegation that has led to Dr Dhar's hearing relates to an issue of alleged professional misconduct. Concern was raised about Dr Dhar's conduct by the Independent Doctors Federation (IDF) for whom he had been an appraiser since 2015. The concern related to an appraisal conducted by Dr Dhar in which he amended the date of an appraisal interview he had carried out from the 10th of February 2020 to the 11th of February 2020. It was alleged that he had done this to avoid potential disciplinary action by the IDF. It was alleged that this behaviour was dishonest as Dr Dhar knew the appraisal took place on the 10th and not the 11th of February.

The Allegation and the Doctor's Response

3. The Allegation made against Dr Dhar is as follows:
That being registered under the Medical Act 1983 (as amended):

1. From March 2015, you were an appraiser with Independent Doctors Federation ('IDF').
Admitted and found proved

2. Between 02:30.01 on 15 February 2020 and 02:30.00 on 16 February 2020, you altered the date of Dr A's appraisal from 10 February 2020 to 11 February 2020.
Admitted and found proved

3. You knew that Dr A's appraisal had taken place on 10 February 2020.
Admitted and found proved

4. Your actions as set out at paragraph 2 were dishonest by reason of paragraph 3.
To be determined

The Admitted Facts

4. At the outset of these proceedings, through his counsel, Mr Christopher Gillespie, Dr Dhar made admissions to some paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs of the Allegation as admitted and found proved.

5. In light of Dr Dhar's response to the Allegation made against him, the Tribunal is required to determine the remaining paragraph of the Allegation.

Factual Witness Evidence

6. The Tribunal received evidence, via video link and in the form of witness statements, on behalf of the GMC from the following witnesses:

- Mr K, the Responsible Officer at the IDF at the time of the incident, statement dated 13 January 2021;
- Dr A, a member of the IDF, statement dated 16 February 2021;
- Ms L, the Managing director of the IDF, statement dated 25 June 2021 and a supplementary witness statement dated 12 January 2022.

7. Dr Dhar provided his own witness statement, dated 02 November 2021, and also gave oral evidence at the hearing.

8. The Tribunal also received various written testimonials on behalf of Dr Dhar from the following individuals:

- Dr B, dated 1 November 2021;
- Dr C, dated 1 November 2021;
- Ms M, dated 29 October 2021;

- Dr D, dated 15 October 2020 and 29 October 2021;
- Mr N, dated 28 October 2021;
- Dr E, dated 27 October 2021;
- Mr O, dated 27 October 2021;
- Dr F, dated 27 October 2021;
- Ms P, dated 27 October 2021;
- Mr Q, dated 26 October 2021;
- Dr H, dated 25 October 2021;
- Dr G, dated 25 October 2021;
- Dr I, dated 29 October 2021.

Documentary Evidence

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

- Dr Dhar's declaration form dated 10 March 2015;
- Email exchange between Mr K and Dr A, dated 4 March 2020;
- Dr A's appraisal form, dated February 2020;
- An explanatory note of the IDF system records activity and colour classification, undated;
- Email exchange between Mr K and Dr Dhar, dated 5 March 2020;
- Various emails exchanged between Dr A and Dr Dhar, dated between 28 February 2018 and 6 March 2019;
- Another exchange between Dr A and Dr Dhar, dated 28 January 2020;
- Various exhibits referred to in Ms L's witness statement;
- Various exhibits referred to in Dr Dhar's witness statement;
- Screenshot of Section 18 of an IDF Appraisal form.

The Tribunal's Approach

10. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Dhar does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

11. The Tribunal also bore in mind that while balance of probabilities is an unvarying standard, the judgment of Re H (Minors) [1996] AC 563 stated that it is expected that the more serious the allegation, the more cogent the evidence must be.

12. In respect of the allegation that Dr Dhar acted dishonestly, the Tribunal applied the test laid down by the Supreme Court in *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67 *('Ivey'*), namely that the Tribunal should first ascertain subjectively the actual state of Dr Dhar's knowledge or belief as to the facts. Whether the belief is reasonable may be a matter of evidence, but reasonableness is not an additional requirement when considering whether the belief was genuinely held. The Tribunal should then ascertain whether his conduct was dishonest applying the objective standards of ordinary decent people.

13. The Tribunal also bore in mind the evidence of Dr Dhar's good character. It took this into account both when considering whether the evidence he had provided to the Tribunal was truthful, and whether he was likely to have acted in the dishonest way alleged.

The Tribunal's Analysis of the Evidence and Findings

14. The Tribunal evaluated all the evidence before it in order to make its findings on the facts relating to the outstanding paragraph of the Allegation.

15. In determining whether Dr Dhar's actions as set out at paragraph 2 were dishonest by reason of paragraph 3, the Tribunal first looked at Dr Dhar's state of mind and intention when he changed the date of the appraisal interview.

16. The Tribunal noted that the GMC's case was that Dr Dhar's motivation in changing the date was to avoid receiving a "red flag" from IDF for only accessing the form for the first time on the date of the appraisal interview. Such a red flag would have led to an investigation by the IDF and possible disciplinary action being taken against Dr Dhar, including him potentially being removed from the list of IDF appraisers. The Tribunal noted that Dr Dhar first attempted to access the form on 10th January 2020. At that stage there was nothing uploaded for him to see. He next attempted to do so shortly before 11pm on the 9th February 2020, the night before the appraisal was due to take place with Dr A. At that time there was still nothing uploaded onto the system. He then contacted Dr A that night and early the next morning, asking her to submit her form. She then provided him with her log in details which allowed him to view her form from about 10.30am on the 10th of February until 1pm on that day when the appraisal interview took place. It was in fact Dr Dhar who submitted the form to the IDF database, using Dr A's login details at 12.57pm, three minutes before the interview was due to begin. There was no dispute between Dr Dhar and Dr A that the interview in fact

took place satisfactorily and that all the necessary ground was covered. In due course, Mr K, the Responsible Officer, approved the revalidation of Dr A based on this appraisal.

17. The Tribunal took the view that Dr Dhar could potentially have been criticised for not having checked whether the form had been successfully submitted by Dr A earlier, especially as he knew that Dr A had previously had difficulties submitting her appraisal form. The Tribunal accepted that the email, dated 28th January 2020, from Dr A telling Dr Dhar she had attempted to upload the form and asking him to check if it was complete may well have ended up in a spam folder, given its subject line of "Anything". However, the form had not been submitted and there was therefore nothing for Dr Dhar to review. He had in fact attempted to start his preparation just before 11pm on the 9th February 2020, the day before the interview was to take place. Starting then would normally have warranted an "amber flag", rather than a red flag. The evidence before the Tribunal was that amber flags would not warrant an investigation. This was not an appraisal where no preparation had taken place. The Tribunal took the view therefore that on careful analysis of the sequence of events Dr Dhar had attempted to start his preparation the day before the interview in compliance with IDF policy.

18. The Tribunal accepted the submission of Mr Gillespie that the evidence before the Tribunal demonstrated that Dr A had consistently struggled to complete and submit her appraisal form as required. The Tribunal noted that the evidence suggested that Dr A had not had consistent access to a laptop since 2019. The Tribunal noted that in her statement Dr A indicated that she had not had difficulties submitting her appraisal. This was clearly contradicted by the emails in evidence that indicated the opposite in 2018 and 2020. While the Tribunal considered Dr A a truthful witness, it also considered that she was not necessarily reliable when dealing with the detail of the submission of her appraisal form, due to the challenges that this presented to her.

19. The Tribunal went on to consider Dr Dhar's evidence of what occurred during the appraisal interview on 10th February. His evidence was that at that meeting, section 6 of the appraisal form, which had to be completed by Dr A, had not been filled in. He stated that this was an important part of the appraisal process. He said that Dr A was anxious about this and that he dealt with this by reassuring Dr A that she could complete this after the meeting and that he would change the date of the interview to the 11th February in order for her to do so, and allow her to feel she had contributed to the discussion. He stated that Dr A had brought a hard copy of a document dealing with her PDP plan, which section 6 concerned, and that, as a result, they were able to satisfactorily discuss this aspect of Dr A's appraisal. He stated in evidence that it was because he had agreed with Dr A that he would change the date to the

11th February, that he actually did so when he accessed Dr A's appraisal again at 1.45 am on 16th February.

20. The Tribunal noted that Dr Dhar was able to produce the document that he said had formed the basis of the discussion around section 6 of the form. The Tribunal also noted that Dr A, when asked if there was anything further she had to complete on the form after the appraisal interview, stated 'not as far as I remember, but it's possible'. The Tribunal also noted the evidence of Ms L who told the Tribunal that the appraisal form had to be reopened by the IDF administration team on 24th February because section 6 had not been completed. The Tribunal considered that this was corroborating evidence for Dr Dhar's account that section 6 had not been completed at the time of the appraisal interview.

21. The Tribunal noted the good references and testimonials provided on behalf of Dr Dhar. These references speak highly of Dr Dhar's character and his kindness and willingness to help others. The Tribunal considered that they also lent support to the likelihood of Dr Dhar suggesting that he change the date of the interview in order to make Dr A less anxious rather than for reasons of his own self-interest.

22. The Tribunal concluded that the GMC had not proved, on the balance of probabilities, that Dr Dhar's motivation when he changed the date on the form was to avoid potential disciplinary action by the IDF. The Tribunal concluded that the GMC had not proved, on the balance of probabilities, that Dr Dhar's account of why he changed the date on the form was untrue. The Tribunal concluded that Dr Dhar did state to Dr A in the meeting that he would change the date of the interview on the form. The Tribunal accepts that this was said in order to lessen Dr A's anxiety about the fact that section 6 had not been completed. Thereafter, Dr Dhar did deliberately change the date on the form, from the 10th to the 11th of February, knowing that this was untrue. The Tribunal also noted that it was not necessary for the date to be changed at the time when the alteration was made on 16th February, as Dr A could have uploaded the necessary information onto section 6 of the form without the date of the appraisal interview being changed.

23. The Tribunal then went on to consider whether Dr Dhar's actions would be viewed as dishonest by a properly informed member of the public aware of all the facts. It noted that Dr Dhar deliberately changed the date of the appraisal interview and this was not done accidentally. It also noted that the appraisal form is a very important document which makes up a key part of the appraisal process. This process is part of the regulatory process which exists to keep the public safe. Therefore, it is likely that a member of the public would view this to be of importance.

24. The Tribunal also noted the fact that Dr Dhar changed the date on the document despite the fact that it was not essential in order for Dr A to complete the form. There was in fact no good or valid reason for him to alter the date on the form.

25. The Tribunal concluded that, an ordinary member of the public, aware of all the facts, would regard it as dishonest for Dr Dhar to have changed the date on the appraisal form in the way that he did.

26. The Tribunal has therefore found that Dr Dhar's actions as set out at paragraph 2 to be dishonest by reason of paragraph 3, and therefore found paragraph 4 of the allegation to be proven.

The Tribunal's Overall Determination on the Facts

27. The Tribunal has determined the facts as follows:
That being registered under the Medical Act 1983 (as amended):

1. From March 2015, you were an appraiser with Independent Doctors Federation ('IDF').
Admitted and found proved

2. Between 02:30.01 on 15 February 2020 and 02:30.00 on 16 February 2020, you altered the date of Dr A's appraisal from 10 February 2020 to 11 February 2020.
Admitted and found proved

3. You knew that Dr A's appraisal had taken place on 10 February 2020.
Admitted and found proved

4. Your actions as set out at paragraph 2 were dishonest by reason of paragraph 3.
Determined and found proved

Determination on Impairment - 18/01/2022

28. The Tribunal now has to decide, in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved, Dr Dhar's fitness to practise is impaired by reason of misconduct.

The Evidence

29. The Tribunal has taken into account all the evidence and testimonials received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence as follows.

- A further witness statement from Dr Dhar, dated 17 January 2022;
- A witness Statement from Dr J, Responsible Officer for Dr Dhar at Nightingale Hospital, London, dated 1 July 2021;
- Individual 360, Patient Feedback Report for Dr Dhar, dated 23 June 2021.

Submissions

On behalf of the GMC

30. Ms Tighe, Counsel, submitted that Dr Dhar's fitness to practise is impaired by reason of misconduct. She invited the Tribunal to remind itself of its own judgement at the fact-finding stage, and the reasons for its decision as outlined in its determination at that stage.

31. Ms Tighe reminded the Tribunal that there is no burden of proof in relation to the issue of impairment; it is a matter of judgment for the Tribunal. She submitted that the Tribunal must only proceed to determine whether the doctor's fitness to practice is impaired if it decides that he is guilty of misconduct. Ms Tighe reminded the Tribunal of the two-stage process to be adopted. First, whether the facts found proved amount to misconduct and secondly, whether Dr Dhar's fitness to practise is currently impaired by reason of his misconduct. She submitted that Dr Dhar had breached the following paragraphs of Good Medical Practice (2013 edition) ('GMP'):

> 1 *Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.*
>
> 65 *You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*

71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.

a. You must take reasonable steps to check the information is correct.

b. You must not deliberately leave out relevant information.

32. When outlining the approach that the Tribunal should take in respect of misconduct and impairment, Ms Tighe referred the Tribunal to the following cases: CHRE v NMC and Paula Grant [2011] EWHC 297 (Admin); Roylance v The GMC (No 2): PC 24 Mar 1999; Cheatle v GMC [2009] EWHC 645 (Admin); and Cohen v GMC [2008] EWHC 581 (Admin) Nandi v GMC [2004] EWHC 2317 (Admin); R(A), GMC v Cheetham [2004] EWHC 880 (Admin); GMC v Dr Nwachuku [2017] EWHC 2085 (Admin) and PSA v GMC & Hilton [2019] EWHC 2192 (Admin).

33. Ms Tighe submitted that Dr Dhar's actions fell significantly below the standards expected of a registered practitioner. She submitted the findings of the Tribunal at the facts stage amounted to serious professional misconduct. She drew the Tribunal's attention to the factors relating to impairment set out in The Fifth Shipman Report and adopted in the case of CHRE v NMC and Paula Grant [2011] EWHC 927 Admin and submitted that limbs *b, c* and *d* were engaged in Dr Dhar's misconduct.

34. Ms Tighe submitted that the evidence of reflection provided by Dr Dhar was confined to paragraphs 2 and 3 of his witness statement. Ms Tighe submitted that Dr Dhar had shown little evidence of insight, remorse and remediation. She submitted that Dr Dhar has yet to develop full insight into his misconduct. She submitted that although Dr Dhar, in his statement, set out that he regrets changing the date on the appraisal form, acknowledges that it was an unwise decision and that he should have raised the issue with somebody else at IDF, his reflections go no further. Ms Tighe submitted that in order to show more insight, Dr Dhar could have, for example, accepted that his actions were dishonest, or outlined why he should not have changed the date. She submitted that he could have then gone on to consider the impact of his dishonesty on the public's perception of the medical profession. Furthermore, Ms Tighe submitted that the focus of his witness statement was the impact of a finding of impairment on his career.

35. Ms Tighe submitted that Dr Dhar's focus also remained on the motivation for his actions and that he would not gain anything, personally or financially, from his actions. She submitted that Dr Dhar's submission that he had not conducted an appraisal since February 2020 and has no intention of conducting further appraisals does not show sufficient insight

into his misconduct. Ms Tighe submitted that this lack of full insight shows that there is still a risk of repetition.

36. Ms Tighe submitted that Dr Dhar had brought the profession into disrepute and had breached one of the fundamental tenets of the profession. She submitted that a finding of impairment was necessary in order to uphold the second and third limbs of the overarching objective, namely to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the profession.

On behalf of Dr Dhar

37. Mr Gillespie, Counsel, submitted that, taking full account of all the factual findings made by the Tribunal, on the unusual facts of this case and all of the information the Tribunal has received about Dr Dhar, the Tribunal may conclude that this act of dishonesty was an isolated incident and is in no way reflective of Dr Dhar's true character and, as a result, his fitness to practice is not currently impaired.

38. Mr Gillespie submitted that each case must turn on its own facts, and whilst a finding of dishonesty usually leads to a finding of misconduct, it does not follow automatically that a finding of misconduct should lead to a finding of impairment. Mr Gillespie referred the Tribunal to various relevant case law including '*Nandi'; 'Roylance'* and '*Hilton'* before reminding the Tribunal of its findings at paragraph 16 onwards of the facts determination. He submitted that it is important that the Tribunal gives full effect to its findings regarding Dr Dhar's state of mind. He also noted that the Tribunal accepted that Dr Dhar's dishonesty did not relate to clinical matters or patient safety. Furthermore, it did not involve him adding false or misleading information about the substance of the appraisal itself. He reminded the Tribunal that Dr Dhar's conduct was not designed to mislead the IDF and was not for any personal benefit on the part of Dr Dhar.

39. Mr Gillespie further submitted that dishonesty did not inevitably lead to a finding of serious misconduct. He submitted that on the spectrum of dishonesty, Dr Dhar's conduct rests towards the bottom end. He submitted however, that if the Tribunal does find misconduct, in reaching its decision on impairment, the Tribunal should bear in mind that it is agreed that this case does not engage issues of patient safety, nor does it bring the medical profession into disrepute. Mr Gillespie submitted that the focus of the Tribunal will be on

determining whether Dr Dhar, in his conduct, has seriously breached a fundamental tenet of the medical profession.

40. He submitted that the Tribunal should consider whether Dr Dhar's conduct fell far below that which was expected of a registered medical professional, and if so, whether the conduct falls seriously below the expected standards and has the capacity to undermine trust and confidence in the profession as a whole. Mr Gillespie asked the tribunal to bear in mind the remorse shown by Dr Dhar, the degree of insight demonstrated by him, and the degree to which that has been properly embedded and expressed. He further stated that the Tribunal may wish to consider the question of remediation; whether his conduct is remediable and whether he has taken steps to remedy it. He requested that the Tribunal may wish to consider whether there is any realistic likelihood that there will be repetition of his conduct. In this regard, he submitted that this incident related to an isolated error of judgement which is unlikely to reoccur.

41. Mr Gillespie directed the Tribunal to the witness statement prepared by Dr Dhar in which he detailed the serious impacts that a finding of dishonesty, even without a finding of misconduct, is likely to have on his career. Mr Gillespie submitted that this was not an attempt to seek pity from the Tribunal but instead has relevance to the question of impairment and likelihood of repetition. He submitted that the likelihood of repetition in Dr Dhar's case is remote and a well-informed member of the public, fully aware of all the facts, is unlikely to be shocked by a finding of that Dr Dhar's impairment is not impaired.

42. Mr Gillespie invited the Tribunal to reject the GMC's submission that there is a lack of insight on the part of Dr Dhar and invited the Tribunal to look at all the information before it which shows that Dr Dhar is someone who has shown remorse and insight. He stated that Dr Dhar is viewed favourably amongst everyone he works with and referred the Tribunal to the positive testimonials submitted on behalf of Dr Dhar alongside the feedback received from patients to further show how out of character this conduct is for Dr Dhar. Mr Gillespie stated that, prior to this incident, Dr Dhar had an unblemished record. He submitted that Dr Dhar's conduct should be viewed in light of this when the Tribunal carries out its assessment of the likelihood of repetition.

The Relevant Legal Principles

43. The Tribunal reminded itself that at this stage of the proceedings, there is no burden or standard of proof and the decision on impairment is a matter for the Tribunal's judgement alone.

44. In approaching its decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to serious misconduct, and then whether the finding of that misconduct which was serious could lead to a finding of impairment.

45. In relation to the question of misconduct, the Tribunal had regard to the case of *Roylance v General Medical Council (No.2) [2000] 1 AC 311* in which it was held:

> *"Misconduct' is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances.'*

46. The Tribunal must determine whether Dr Dhar's fitness to practise is impaired today, taking into account Dr Dhar's conduct before and at the time of the events and any relevant factors since then such as whether Dr Dhar has insight, whether the matters are remediable and have been remedied, and any likelihood of repetition.

47. When considering whether fitness to practice is currently impaired, the Grant case (above) endorsed the following test, formulated by Dame Janet Smith in the Fifth Shipman Report:

> '*Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*
>
> *a) …*
>
> *b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
>
> *c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
>
> d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future."*

48. In considering the dishonesty in this case, the Tribunal bore in mind the judgment in the case of *GMC v Chaudhary* [2017] EWHC 2561 (Admin) ('*Chaudhary*') which stated that there are degrees of dishonesty, and that an individual can be dishonest on an individual occasion rather than it being a pervasive character trait. It was necessary to consider the context of any dishonesty found.

49. The Tribunal had regard to GMC v Dr Nwachuku & PSA for Health and Social Care [2017] EWHC 2085, cited and approved in the Hilton case, in particular to Mrs Justice O'Farrell's rehearsal of principles drawn from previous High Court cases dealing with dishonesty:

> *'45. Dishonesty encompasses a very wide range of different facts and circumstances. Any instance of it is likely to impair a professional person's fitness to practise: R (Hassan) v General Optical Council [2013] EWHC 1887 per Leggatt J at paragraph [39].*
>
> *46. Dishonesty constitutes a breach of a fundamental tenet of the profession of medicine: PSA v GMC & Igwilo [2016] EWHC 524. A finding of dishonesty lies at the top end in the spectrum of gravity of misconduct: Patel v GMC Privy Council Appeal No.48 of 2002.*
>
> *47. A finding of impairment does not necessarily follow upon a finding of dishonesty. If misconduct is established, the tribunal must consider as a separate and discrete exercise whether the practitioner's fitness to practise has been impaired: PSA v GMC and Uppal [2015] EWHC 1304 at paragraph [27].*
>
> *48. However, it will be an unusual case where dishonesty is not found to impair fitness to practise: PSA v Health and Care Professions Council & Ghaffar [2014] EWHC 2723 per Carr J at paragraphs [45] and [46].*

49. The attitude of a practitioner to the allegations made and any admissions of responsibility for the misconduct will be taken into account as relevant factors in determining whether or not fitness to practise has been impaired: Nicholas-Pillai v GMC [2009] EWHC 1048 per Mitting J at paragraph [18].

50. The overarching concern is the public interest in protecting the public and maintaining confidence in the practitioner and medical profession when considering whether the misconduct in question impairs fitness to practise: Yeong v GMC [2009] EWHC 1923 per Sales J at paragraphs [50] and [51]; Nicholas-Pillai (above) at paragraph [27]'

50. The Tribunal reminded itself of the statutory overarching objective which is 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.

The Tribunal's Determination on Impairment

Misconduct

51. The Tribunal first considered whether the facts found proved against Dr Dhar amounted to misconduct. Misconduct can be found in circumstances where there have been serious departures from expected standards of conduct and behaviour, which can be identified by reference to GMP.

52. The Tribunal considered paragraphs 1, 65 and 71 of GMP, set out above to be relevant.

53. The Tribunal reminded itself of its findings of fact. Dr Dhar's conduct involved deliberate dishonesty and therefore amounted to a deliberate breach of paragrapgh 71 of GMP. The Tribunal also gave particular weight to the fact that the dishonesty related to not only an important document, but one that played a significant part in the regulatory process for medical professionals, put in place to ensure public safety. Additionally, it bore in mind that doctors are required to be honest and demonstrate integrity both in and out of medical

practice. In this regard, the Tribunal found that Dr Dhar had breached the relevant paragraphs of GMP and a fundamental tenet of the profession. The Tribunal bore in mind the circumstances of the dishonesty as they had found them to be. It also bore in mind that the date itself was not a detail that would affect the validity of the appraisal itself. However, the Tribunal concluded that the deliberate and dishonest changing of the date would be considered to be deplorable by fellow practitioners and that in all the circumstances Dr Dhar's dishonesty did amount to serious misconduct.

Impairment

54. The Tribunal then went on to consider whether Dr Dhar's fitness to practise is currently impaired.

55. In making its decision on impairment, the Tribunal considered whether Dr Dhar had demonstrated any insight. The Tribunal noted that it had effectively accepted the evidence of Dr Dhar at the fact finding stage. Additionally, the Tribunal referred itself to the further statement provided by Dr Dhar at the impairment stage. The Tribunal noted that Dr Dhar accepted that his actions were foolish and that he should not have done what he did. The Tribunal accepted that he had reflected on the incident since the events took place. The Tribunal noted that Dr Dhar had not undertaken any appraisals since this incident, reflecting the gravity of what had occurred. The Tribunal noted what Dr Dhar described would be the continuing impact of a finding of dishonesty on his future practice. The Tribunal accepted that the effect of those consequences, together with the regulatory proceedings, would be to give Dr Dhar further reminders of the seriousness of his misconduct. The Tribunal considered that Dr Dhar understood how his conduct on this occasion had breached the standards to be expected of a doctor. In that respect he did have insight into his misconduct. The Tribunal had regard to the testimonials provided on behalf of Dr Dhar which spoke highly of him as an honest doctor who conducted his practice with integrity. The Tribunal concluded that this was an isolated act of dishonesty, that dishonesty was not a pervasive trait in Dr Dhar and that there was not a significant risk of repetition.

56. The Tribunal noted that although cases involving dishonesty would usually lead to a finding of impairment, it was not the case that all cases of dishonesty must lead to a finding of impairment. The Tribunal accepted Mr Gillespie's submission that the dishonesty in this case fell at the lower end of the spectrum of seriousness. The Tribunal did consider that the facts of this case were unusual. There was no motivation of personal gain on the part of Dr Dhar. The dishonesty did not take place in a clinical setting and did not affect any patient's

safety. The evidence of Mr K confirmed that the appraisal in question was satisfactorily completed and was sufficient for Doctor A's revalidation.

57. The Tribunal considered whether a finding of impairment was necessary to uphold proper standards of behaviour within the profession, and to maintain public confidence in the profession. However, the Tribunal was of the view that an ordinary member of the public or the profession, being aware of all of the facts of this case, Dr Dhar's previously unblemished record, the positive testimonials attesting to his high standard of clinical work, the low risk of repetition, and the fact that Dr Dhar had gone before his regulator, would not consider that his misconduct was such as to require a finding of impairment to uphold proper standards of behaviour or to maintain public confidence in the wider profession.

58. The Tribunal has therefore determined that Dr Dhar's fitness to practise is not impaired.

Determination on Warning - 19/01/2022

59. As the Tribunal determined that Dr Dhar's fitness to practise was not impaired it considered whether in accordance with s35D(3) of the 1983 Act, a warning was required.

Submissions

60. On behalf of the GMC, Ms Tighe, Counsel, submitted that the Tribunal found that there has been a significant departure from GMP, particularly paragraph 71, and that the concerns raised by the Tribunal require a formal response. She referred the Tribunal to the following paragraphs in the Guidance on Warnings (February 2018) ('the Guidance'):

> *10* *The power to issue warnings, together with other powers available to the GMC and to MPTS tribunals, is central to their role of protecting the public which includes protecting patients, maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour*
>
> *11* *Warnings allow the GMC and MPTS tribunals to indicate to a doctor that any given conduct, practice or behaviour represents a departure from the standards expected of members of the profession and should not be repeated. They are a formal response from the GMC and MPTS tribunals in the interests*

of maintaining good professional standards and public confidence in doctors. The recording of warnings allows the GMC to identify any repetition of the particular conduct, practice or behaviour and to take appropriate action in that event. Breach of a warning may be taken into account by a tribunal in relation to a future case against a doctor, or may itself comprise misconduct serious enough to lead to a finding of impaired fitness to practise.

14 *Warnings should be viewed as a deterrent. They are intended to remind the doctor that their conduct or behaviour fell significantly below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise. Warnings may also have the effect of highlighting to the wider profession that certain conduct or behaviour is unacceptable.*

20 *The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.*

a *There has been a clear and specific breach of Good medical practice or our supplementary guidance.*

b *The particular conduct, behaviour or performance approaches, but falls short of, the threshold for the realistic prospect test or in a case before a tribunal, that the doctor's fitness to practise has not been found to be impaired.*

c *A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise. Warnings may be an appropriate response to any type of allegation (subject to the comments in paragraph 7 regarding cases solely relating to a doctor's health); the decision makers will need to consider the degree to which the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear the potential impact of the conduct, behaviour or performance in question,* accordingly.

26 *In deciding whether to issue a warning the decision maker should apply the principle of proportionality, weighing the interests of the public with those of the practitioner. It is important to bear in mind, of course, that warnings do*

not restrict the practitioner's practice and should only be considered once the decision maker is satisfied that the doctor's fitness to practise is not impaired.

61. Ms Tighe submitted that the case of *Hilton* was relevant, and that whilst the circumstances of that case were different to those of Dr Dhar, the principle that a Warning is appropriate and necessary to uphold public confidence and maintain standards in the profession is relevant and applicable in this case.

62. In her submissions, Ms Tighe acknowledged that insight has been demonstrated by Dr Dhar, that he is a practitioner of good character and that there is a negligible risk of repetition. However, given the Tribunal's finding that Dr Dhar's actions were a serious departure from GMP and amounted to serious misconduct, the issuing of a Warning is nonetheless required in this case.

63. Ms Tighe submitted that issuing a Warning is the appropriate and proportionate response in the circumstances of this case and is necessary in order to protect public confidence and maintain and uphold standards in the profession.

64. On behalf of Dr Dhar, Mr Gillespie, Counsel, submitted that a Warning is not necessary in order to uphold the overarching objective in the circumstances of this case.

65. Mr Gillespie submitted that the doctor's previous good record, good character, the fact that this was a wholly isolated incident of dishonesty within an otherwise unblemished career, insight, remediation, and the negligible likelihood of repetition all demonstrate that a Warning is not required in this case. He submitted that any warning, if needed to be given, should reflect the unique situation of this case so as not to mislead a member of the public about the nature of the case.

66. Mr Gillespie directed the Tribunal to various paragraphs of the guidance including paragraph 11 and 32:

> ***11*** *Warnings allow the GMC and MPTS tribunals to indicate to a doctor that any given conduct, practice or behaviour represents a departure from the standards expected of members of the profession and should not be repeated. They are a formal response from the GMC and MPTS tribunals in the interests of maintaining good professional standards and public confidence in doctors. The recording of warnings allows the GMC to identify any repetition of the particular conduct, practice or behaviour and to take appropriate action in that event. Breach of a warning may be taken into account by a tribunal in relation to a future case against a doctor, or*

may itself comprise misconduct serious enough to lead to a finding of impaired fitness to practise.

32 *If the decision makers are satisfied that the doctor's fitness to practise is not impaired or that the realistic prospect test is not met, they can take account of a range of factors to determine whether a warning is appropriate.*

These might include:

a *the level of insight into the failings*
b *a genuine expression of regret/apology*
c *previous good history*
d *whether the incident was isolated or whether there has been any repetition*
e *any indicators as to the likelihood of the concerns being repeated*
f *any rehabilitative/corrective steps taken*
g *relevant and appropriate references and testimonials.*

67. Mr Gillespie submitted that a warning was not necessary in the interest of maintaining good professional standards and public confidence, nor is it essential to act as a deterrent. Mr Gillespie submitted that the experience of the Tribunal process alongside the finding of dishonesty made against him is sufficient for Dr Dhar to ensure that this behaviour is not repeated, and he needs no further reminder. He submitted that a finding of dishonesty alone will have an enormous impact on Dr Dhar's career and professional practice, e.g. he will no longer be able to practice as an expert witness and appraiser, amongst other things. He further submitted that, due to the unique nature of this case, there are very few lessons to be derived from this case for it to act as a deterrent for other doctors, as the specific circumstances of this case are unlikely to arise again.

The Legally Qualified Chair's Advice

68. Once a Tribunal is satisfied that the doctor's fitness to practise is not impaired, it must consider whether the concerns raised are sufficiently serious to require a formal response by way of a Warning. The Tribunal must have regard to the public interest.

69. The power of the Tribunal to issue a formal Warning is central to public protection, maintaining public confidence in the profession, and declaring and upholding proper standards of conduct and behaviour. A Warning is a formal response drawing a doctor's attention to specific concerns and highlighting that any repetition is likely to result in a finding of impaired fitness to practise.

70. The test is: a Warning will be appropriate if there is evidence to suggest that a doctor's behaviour has fallen below the standard expected, to a degree warranting a formal response, such as a significant departure from GMP. There is no definition of 'significant' in the Medical Act or in the Rules.

71. The Legally Qualified Chair directed the Tribunal's attention to the various relevant paragraphs in the Guidance, including paragraph 25:

> *25 There will be some cases involving dishonesty or violence that are not related to the doctor's professional practice and/or which are sufficiently low level in nature that taking action on the doctor's registration would be disproportionate. A warning is likely to be appropriate in these cases. Examples might include, in the absence of any other concerns, police cautions for theft or common assault.*

Determination on Warning

72. The Tribunal has had regard to the Guidance and it has borne in mind its power to issue Warnings. The Tribunal reminded itself of the overarching objective. The Tribunal noted that a Warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS Tribunal.

73. In deciding whether to issue a Warning the Tribunal has applied the principle of proportionality, weighing the interests of the public with those of the doctor. The Tribunal has borne in mind that Warnings do not restrict the doctor's practice and should only be considered once it is satisfied that the doctor's fitness to practise is not impaired.

74. The Tribunal reiterated its finding at the impairment stage that the likelihood of repetition is not significant. Therefore, it determined that a warning was not necessary to protect patient safety. The Tribunal also noted that whilst it found that Dr Dhar's dishonesty fell at the lower end of the spectrum of dishonesty, it did involve a deliberate lie on a document that was part of the regulatory process for doctors. The Tribunal found that this was serious professional misconduct and a clear breach of paragraph 71 of GMP.

75. The Tribunal had regard to the likely impact of a Warning on Dr Dhar, as well as the mitigating circumstances of this case. However, the Tribunal considered that the public interest, in marking this behaviour as unacceptable to the public and the rest of the profession, outweighed his interests. It concluded that it is necessary to send a signal

to the public and members of the profession that changing the date on such an important document in the regulatory process, albeit not for his own personal benefit, is unacceptable and undermines the regulatory system.

76. The Tribunal determined that a warning would be appropriate and proportionate in this case. This would serve to maintain and uphold proper standards and protect public confidence in the profession. It concluded that to not issue a warning could not be justified in light of the circumstances of the case and the applicability of the Guidance in respect of its earlier findings of fact and misconduct.

77. The Tribunal therefore determined to impose the following Warning on Dr Dhar's registration:

'Dr Dhar:

Dr Dhar admitted that whilst working as an appraiser with Independent Doctors Federation, between 02:30.01 on 15 February 2020 and 02:30.00 on 16 February 2020, Dr Dhar altered the date of Dr A's appraisal interview on her appraisal form from 10 February 2020 to 11 February 2020. Dr Dhar knew that Dr A's appraisal interview had taken place on 10 February 2020.

The Tribunal found that the changing of the date of the appraisal was deliberate and dishonest, involving stating something that was untrue on a document that was an important part of the regulatory process for doctors. The Tribunal accepted that Dr Dhar had told Dr A he would change the date of the appraisal interview because Dr A was anxious about the fact that her appraisal form was incomplete at the time of the appraisal interview. The date was not changed for any personal gain on the part of Dr Dhar.

This conduct does not meet with the standards required of a doctor and was a breach of, in particular, paragraph 71 of GMP. It risks undermining public confidence and professional standards in the profession and it must not be repeated. Whilst this failing in itself was not so serious as to require any restriction on Dr Dhar's registration, it is necessary in response to issue this formal warning.'

78. This Warning will be published on the List of Registered Medical Practitioners (LRMP) in line with the GMC Publication and Disclosure Policy, which can be found at www.gmc-uk.org/disclosurepolicy.

79. That concludes this case.