

## PUBLIC RECORD

Date: 14/12/2020

Medical Practitioner's name: Dr Abdullahi Abdi YUSSUF

GMC reference number: 7035559

Primary medical qualification: State Exam 2005 Universita degli Studi di Roma "La Sapienza"

Type of case	Outcome on impairment
Review - Language impairment	Impaired

**Summary of outcome**

Suspension, 12 months.  
Review hearing directed  
Immediate order imposed

**Tribunal:**

Legally Qualified Chair	Mrs Julia Oakford
Medical Tribunal Member:	Dr Janet Nicholls
Medical Tribunal Member:	Mr Mike Hayward

Tribunal Clerk:	Mr John Poole
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**Attendance and Representation:**

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	n/a
GMC Representative:	Ms Ceri Widdett, Counsel

### Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held partly in public and partly in private.

### 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 Impairment - 15/12/2020

1. The Tribunal has convened to review Dr Yussuf's case in accordance with Rule 22 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). In accordance with Rule 22(1)(f), it first has to decide whether Dr Yussuf's fitness to practise is currently impaired by reason of not having the necessary knowledge of English.

### Background

2. The Tribunal does not intend to rehearse the full background of Dr Yussuf's case, but it has had regard to the determinations of the previous Tribunals.

### 2015 Panel

3. Dr Yussuf's case was first considered by a Fitness to Practise Panel in November 2015 ('the 2015 Panel'), which found that his fitness to practise was impaired because he did not have the necessary knowledge of English. It determined to impose an order of conditions on his registration for a period of 18 months.
4. The 2015 Panel was provided with a letter dated 8 January 2014 from Dr A, Consultant Psychiatrist, stating that she had been called to Cheadle Heath police station in order to conduct a Mental Health Act Assessment on 4 December 2013. She had spoken to Dr Yussuf over the telephone. Dr A wrote that "His English is of a poor standard and it was impossible to understand the history over the telephone".

5. At the request of the General Medical Council ('the GMC'), on 25 October 2014 Dr Yussuf undertook an assessment of his knowledge of the English language using the academic version of the International English Language Testing System ('IELTS'). The 2015 Panel found proved that the scores he achieved were below the minimum scores acceptable to demonstrate the necessary knowledge of English.
6. In reaching its decision on impairment, the 2015 Panel had regard to the results of the IELTS test that Dr Yussuf took in October 2014, in which he achieved an overall score of 5.5. It also had regard to the results of the IELTS test he took in October 2015, when he achieved an overall score of 6.0. The Panel noted that whilst his score had improved, Dr Yussuf had failed to achieve the minimum standard required by the GMC of an overall score of 7.5.
7. Taking all the evidence into account, the 2015 Panel was satisfied that Dr Yussuf's standard of English was not at a level that allowed him to safely practise unrestricted in the UK. It considered the risk that a doctor with poor communication skills posed to patients, and accordingly determined that a finding of impairment was necessary in order to promote and maintain public confidence in the medical profession.
8. The 2015 Panel considered that the risk to patients was low, that Dr Yussuf had insight into his deficient English language knowledge and that he was taking steps to improve his English. It determined that a period of 18 months conditional registration was an appropriate sanction which would protect members of the public and the public interest, whilst giving Dr Yussuf the opportunity to address the shortcomings in his knowledge of the English language. The 2015 Panel determined that a review hearing was necessary to ensure that Dr Yussuf had addressed his shortcomings.

## 2017 Tribunal

9. In an email dated April 2017, Dr Yussuf stated that he had taken the IELTS test twice and had improved in some areas, but overall was still under the minimum standard. His scores were as follows:

### 24 September 2016

- Listening – 6.0
- Reading – 5.0
- Writing – 6.0

- Speaking – 6.5
- Overall Band Score – 6.0

#### 25 February 2017

- Listening – 5.5
- Reading – 5.5
- Writing – 5.0
- Speaking – 7.0
- Overall Band Score – 6.0

**10.** The 2017 Tribunal acknowledged that Dr Yussuf had continued to make efforts to improve his English and had complied with all other conditions set out by the 2015 Panel. Nevertheless, it was mindful that its primary focus must remain on the outcome of recent IELTS tests. It noted that it was agreed evidence that, although improvements had been made in individual areas of the IELTS test, neither these nor the Overall Band Score met the required minimum standard of 7.0 and 7.5, respectively.

**11.** The 2017 Tribunal concluded that Dr Yussuf had not met the required language testing standard and it considered that there remained a risk to patient safety and to public confidence in the profession. Accordingly, it determined that his fitness to practise remained impaired because he did not have the necessary knowledge of English and determined to impose a further period of conditions of 18 months duration on Dr Yussuf's registration.

#### **The 2018 Tribunal**

**12.** A Tribunal convened for a third review of Dr Yussuf's case in December 2018. The 2018 Tribunal established that Dr Yussuf had not been in the UK or undertaken further IELTS tests. It acknowledged his personal circumstances but determined matters had not advanced since the 2017 Tribunal and that his fitness to practise remained impaired by reason of not having the necessary knowledge of English. That Tribunal noted that Dr Yussuf relinquished his licence to practise on 6 April 2018.

**13.** The 2018 Tribunal recognised that Dr Yussuf had engaged fully with the GMC and that he had expressed his willingness to re-engage with his professional regulator on his return to the UK. However, it noted that it had been 18 months since Dr Yussuf's last hearing and he had still not taken the IELTS test, although it acknowledged that there were mitigating personal family circumstances which prevented him from doing so. The 2018 Tribunal was satisfied that a

further period of conditional registration would be appropriate and proportionate and would sufficiently address the issue of risk to the public as well as the wider public interest. The 2018 Tribunal determined to impose conditions on Dr Yussuf's registration for a further period of two years.

14. The 2018 Tribunal directed that, shortly before the end of the period of conditional registration, Dr Yussuf's case should be reviewed by a Medical Practitioners Tribunal. It considered that a future Tribunal reviewing this matter would be assisted by:

- Evidence of completion of an IELTS test, the results of which demonstrate that he has achieved the minimum standards required by the GMC
- Reports from his workplace reporter and clinical supervisor
- Evidence of objective, independent and robust feedback regarding his English language knowledge in a clinical setting
- Evidence that he has kept his medical knowledge and skills up to date
- Testimonials
- Any other evidence that will assist the Tribunal reviewing his case.

### Today's Review Hearing

15. This is the third review of Dr Yussuf's case. He is neither present nor represented at this hearing. The Tribunal determined that notice of this hearing had been served properly in accordance with Rules 15 and 40 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules') and determined to proceed in the absence of Dr Yussuf. The Tribunal's full decision on the application is included at Annex A.

### The Evidence

16. In addition to the determinations of the previous Tribunals, the Tribunal had regard to the new information received since the last hearing. This comprised various email exchanges between Dr Yussuf and the GMC.

17. In email correspondence dated 18 April 2019 regarding Dr Yussuf's intentions to return to work in the UK, he stated that he wished to keep his registration without a licence to practice. He stated that he wanted to return to the UK in three months' time and would inform the GMC when he wants to work once had come back to the UK.

18. In further correspondence on 11 December 2019, Dr Yussuf confirmed that he wished to return to the UK in 2020 to work as a medical practitioner and in an email on 15 February 2020 he indicated this may be in July 2020.
19. The Tribunal noted that the GMC subsequently wrote to Dr Yussuf on 18 May 2020 seeking an update but did not receive a response. The GMC wrote to him again on 29 August 2020 in regard to this MPT review hearing, but Dr Yussuf did not respond. The Tribunal noted that the GMC sent a 'pathfinder' email to Dr Yussuf on 12 October 2020 to confirm his email address and he responded on 13 October 2020 to confirm his email and that confidential correspondence regarding his case could be sent to him.
20. The Tribunal noted the most recent email correspondence dated 15 November 2020 in regard to this hearing. Dr Yussuf wrote (sic):

'...I would like to let you know that I travelled to Somalia on 12th April 2019 sine today I live in Somalia and I took off my licience to practice and keep only my registration. I have been working in different hospitals in Somalia to help the poor patients and now I am one of the member of Covid 19 comittee at Burao General hospital in Somalia and saved the lives of many patiients affected corona virus. As you know the GMC has imposed ristraction of my leicence to practice because of english language and not my clinical skills and my medical compitance and I could not work in UK due this stress [XXX] I have been working in UK different hospitals since 2009 and I had no complain regarding my clinical skills and medical practise from my patients and there was no consultant who made compaling how I treated them.The only issues was a lady consultant that called to me while I was driving on raining day to get history a patient that I referred her and we could not hear well enough and then made complain that I was not speaking good english but she confirmed the mental health patient that lbreferred my diagnosis was right and no clinical compitance. My firt hearing I brought the panal hearing witnesses of 4nurses and 3 police officers that all of them confirmed to the panal that there was no barrier language between me and my patients and they understood clearly and that they are happy how I care the patients. Now I was working Burao hospital in Somalia almost 3 years and I had no complain from my patients and other consultants. I have done more English courses and now I improved the level of my english but when I do the test I feel stress. I can not attend this hearing as there is second wave of Covid 19 and UK there is total lock down and I am in Somalia. I request from the panal to take off this restriction on my GMC to work in UK, come and help my 9 children feeding and clothing. I hope that the panal will accept my kindly request and consider my case especial circumetance...'

## Submissions

21. On behalf of the GMC, Ms Widdett submitted that Dr Yussuf's fitness to practise remains impaired by reason of insufficient knowledge of the English language. She reminded the Tribunal of the overarching objective and submitted that all three limbs were potentially engaged in this case.
22. Ms Widdett submitted that Dr Yussuf has provided no objective evidence of remediation. She stated that he has not provided satisfactory IELTS test results, nor demonstrated he is at the required standard in any of the area of the IELTS test. Further, there are no recent workplace reports or reports from a clinical supervisor or any feedback on his English in a clinical setting. She added that there is no objective evidence that Dr Yussuf has kept his knowledge up-to-date and that there are no new testimonials.
23. Ms Widdett noted that Dr Yussuf stated he felt stressed when taking the English language tests. She submitted, however, that there are other steps he could take to prove proficiency in English language and furthermore he has not provided any evidence of steps taken to alleviate the stress XXX he alludes to.
24. Ms Widdett submitted that Dr Yussuf has clearly not fully addressed the concerns over the last seven years. She added there has also been a significant delay since he last practised in the UK and as such, there is a risk of further deterioration in his use of the English language as he has not been using it clinically on a daily basis.
25. The Tribunal did not receive any submissions from Dr Yussuf but had regard to his most recent correspondence, dated 15 November 2020, quoted above.

## The Relevant Legal Principles

26. The Tribunal reminded itself that the decision on impairment is a matter for the Tribunal's judgement alone, with no legal burden or standard of proof on either party. However, the Tribunal was conscious of a persuasive burden on Dr Yussuf to satisfy the Tribunal that he has sufficiently addressed the past impairment.
27. The Tribunal had regard to the 'Guidance for Medical Practitioners Tribunals on dealing with concerns of a doctor's knowledge of English' and the paragraph which states that: 'the results of the IELTS test is a key factor in deciding if a doctor is impaired due to concerns that they lack the necessary knowledge of English to practise medicine safely'.

28. Whilst the Tribunal has borne in mind the submissions made. In so doing, the Tribunal has had regard to the fact that its primary responsibility is to ensure the health, safety and wellbeing of the public, the promotion and maintenance of public confidence in the profession, and the promotion and maintenance of proper standards of conduct and behaviour.

### The Tribunal's Determination on Impairment

29. The decision as to whether Dr Yussuf's fitness to practise is currently impaired is a matter for this Tribunal exercising its own judgement.

30. The Tribunal has fully taken into account the limited information received since the last review of Dr Yussuf's case.

31. The Tribunal noted that Dr Yussuf has not taken a further IELTS test in this period. Indeed, he has not provided any of the evidence which he was advised would be assistance at this review hearing by the previous Tribunal.

32. There has been no new information in regard to Dr Yussuf's English language skills since he last undertook the IELTS test in 2017. Moreover, with the exception of a small improvement in his spoken English, his results in 2017 had not significantly improved on his previous IELTS test results. There is therefore no evidence that his knowledge of English was improving prior to him going to work in Somalia and there has been no evidence that his level has been improving whilst in Somalia.

33. Aside from the lack of evidence of completion of an IELTS test, there is no other evidence such as testimonials or feedback, to suggest an improvement in Dr Yussuf's knowledge of English. Indeed, the Tribunal presumed that Dr Yussuf has not been using English on a daily basis in a work capacity and inferred that his knowledge of English is more likely to have deteriorate than improved in this period.

34. Given there is no evidence that Dr Yussuf has remediated the concerns, the Tribunal determined that his fitness to practise remains impaired by reason of not having the necessary knowledge of English. The Tribunal determined that a finding of impairment is necessary to protect and promote the health, safety and wellbeing of the public, promote

and maintain public confidence in medical profession and to promote and maintain proper professional standards and conduct for the members of the profession.

#### **Determination on Sanction - 14/12/2020**

1. Having determined that Dr Yussuf's fitness to practise is impaired by reason of not having the necessary knowledge of English, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

#### **The Evidence**

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

#### **Submissions**

3. On behalf of the GMC, Ms Widdett submitted that the appropriate sanction in Dr Yussuf's case is a further period of conditions on his registration. In her submissions, she invited the Tribunal to consider the Sanctions Guidance (November 2020 edition) (SG).
4. Ms Widdett submitted that all three limbs of the overarching objective are potentially engaged in Dr Yussuf's case. She submitted that a further period of conditions would allow Dr Yussuf one more chance to remedy the deficiencies in his knowledge of English. She added that Dr Yussuf has not taken timely steps to remediate nor provided any objective evidence to demonstrate his English has improved. Moreover, he has not provided any evidence to show he has kept his medical knowledge up-to-date.
5. The Tribunal did not receive any submissions from Dr Yussuf but again, had regard to his most recent correspondence, dated 15 November 2020, quoted in the Tribunal's determination on impairment.

#### **The Tribunal's Approach**

6. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken account of the SG. It has borne in mind that the purpose of the sanctions is not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect.

7. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Yussuf's interests with the public interest. The public interest includes the protection of patients, the maintenance of public confidence in the medical profession, and the declaring and upholding of proper standards of conduct and behaviour in that profession.

### **Mitigating and Aggravating Factors**

8. The Tribunal first considered the mitigating and aggravating factors in Dr Yussuf's case.
9. The Tribunal considered the only mitigating factor in this case, to be the fact that Dr Yussuf has not been in the UK and therefore has not been able to comply with the conditions imposed by the last Tribunal. The Tribunal reminded itself that Dr Yussuf left the UK due to family circumstances and has subsequently been working as part of the response to the Covid-19 pandemic in Somalia. In part, he has continued to engage with the GMC.
10. The Tribunal considered Dr Yussuf's level of insight to be an aggravating factor. In his most recent correspondence he requested that the restrictions on his registration be lifted, notwithstanding the fact he has provided no evidence to satisfy the Tribunal that he has remediated the concerns in regard to his knowledge of English or provided any information that his medical skills and knowledge are up-to-date. The Tribunal considered that his insight has not developed and, in fact, may have reduced. He does not appear to appreciate why the conditions were imposed on his registration in the first place.

### **The Tribunal's Determination on Sanction**

#### **No action**

11. In coming to its decision as to the appropriate sanction to impose in Dr Yussuf's case, the Tribunal first considered whether to take no action. The Tribunal reminded itself that there should be exceptional circumstances to justify taking no action where a finding of impairment has been made.
12. The Tribunal determined that, in view of the Tribunal's findings on impairment, it would be neither sufficient, proportionate nor in the public interest, to conclude this case by taking no action.

## Conditions

13. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Yussuf's registration. The Tribunal bore in mind that any order of conditions would need to be appropriate, proportionate, workable and measurable.
14. The Tribunal reminded itself that conditions may be appropriate in cases where a doctor has insight. The Tribunal has already expressed concern in relation to Dr Yussuf's level of insight and concluded that it has not developed since the last hearing. The present Tribunal noted Dr Yussuf's comments in his email of 15 November 2020, 'I request from the panel to take off this restriction on my GMC to work in UK' (sic). In the significant period of time available much of which predates the Covid pandemic, he has not been able to provide any of the evidence which the previous Tribunal advised would be of assistance.
15. Indeed, the results of the three language tests which predate the previous Tribunal showed no substantial improvement with time.
16. Similarly, the previous Tribunal had not received any evidence in regard to Continuing Professional Development but acknowledged he had been living in Somalia since April 2018. A significant period of time has passed since then and the Tribunal still has no evidence in regard to Dr Yussuf's current medical knowledge and skills. The Tribunal could not be satisfied that there has not been a deterioration in his medical knowledge and skills and therefore that the risk to patients remained low as determined by previous Tribunals.
17. The Tribunal also bore in mind that conditions might be appropriate where a doctor is willing to respond positively in providing evidence that they are committed to keeping their knowledge and skills up to date. The Tribunal has received no such evidence.
18. The Tribunal considered that a further period of conditions would not be appropriate and would not satisfy the overarching objective. In any event, the Tribunal considered that a further period of conditions would not be workable given the length time Dr Yussuf has not been practising in the UK and the lack of evidence that he has remediated the concerns in relation to his knowledge of English or kept his medical knowledge and skills up-to-date. Nor would it uphold public confidence in the profession.

## Suspension

19. The Tribunal therefore considered that a period of suspension was the appropriate and proportionate sanction in Dr Yussuf's case.
20. In particular, the Tribunal considered paragraph 97d of the SG to be relevant in this case:
- 97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.
- ...
- d In cases that relate to knowledge of English, where the doctor's language skills affect their ability to practise and there is a risk to patient safety if the doctor were allowed to continue to practise even under conditions.
21. Further, the Tribunal was disappointed by the efforts Dr Yussuf has made in the time afforded to him since the last review of his case. It was satisfied that, at this stage, only a period of suspension would uphold all three limbs of the overarching objective.
22. The Tribunal considered that only the maximum period of 12 months suspension was appropriate and would give Dr Yussuf sufficient time to address the concerns.

## Review hearing directed

23. The Tribunal directed that, shortly before the end of the period of suspension, Dr Yussuf's case should be reviewed by a Medical Practitioners Tribunal. It considered that a future Tribunal reviewing this matter would be assisted by:
- Evidence of completion of an English language test approved by the GMC, the results of which demonstrate that he has achieved the minimum standards required by the GMC;
  - Evidence of objective, independent and robust feedback regarding his English language knowledge in a clinical setting;
  - Evidence that he has kept his medical knowledge and skills up to date;
  - Testimonials; and
  - Any other evidence that will assist the Tribunal reviewing his case.

24. Unless Dr Yussuf exercises his right of appeal, this decision will take effect 28 days from when written notice of this determination is deemed to have been served upon him.

**Determination on Immediate Order - 15/12/2020**

1. Having determined that Dr Yussuf's registration is to be suspended for a period of 12 months, the Tribunal has considered, in accordance with the Rules, whether his registration should be subject to an immediate order.

**Submission**

2. On behalf of the GMC, Ms Widdett submitted that an immediate order of suspension was necessary to protect the public and the public interest.

**The Tribunal's determination**

3. Given the Tribunal's determination on impairment and sanction, the Tribunal determined that an immediate order of suspension is necessary in order to protect patients and otherwise in the public interest.

**Confirmed**

**Date** 15 December 2020

Mrs Julia Oakford, Chair

ANNEX A – 15/12/2020

**Application on service and proceeding in absence**

**Service**

1. Dr Yussuf is neither present nor represented at this hearing. The Tribunal therefore considered whether notice of this hearing has been properly served in accordance with Rules 20 and 40 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004 (“the Rules”) and paragraph 8 of the Schedule 4 to the Medical Act 1983.
2. On behalf of the GMC, Ms Ceri Widdett, provided the Tribunal with a copy of a service bundle. This contained an email from the GMC to Dr Yussuf’s registered email address on 2 November 2020 which attached a copy of the GMC Information Letter and a copy of the draft hearing bundle.
3. The service bundle also contained an email from the MPTS to Dr Yussuf’s registered email address on 5 November 2020 which contained the MPT Notice of Hearing letter. The Tribunal noted that Dr Yussuf responded to this email on 15 November 2020.
4. In the circumstances, the Tribunal was satisfied that all reasonable efforts have been made to serve Dr Yussuf with notice of this hearing in accordance with Rules 20 and 40.

**Proceeding in absence**

5. Having determined that notice of this hearing has been properly served, the Tribunal went on to consider whether it would be appropriate to proceed with the hearing in Dr Yussuf’s absence in accordance with Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.
6. The Tribunal noted Dr Yussuf’s email to the MPTS on 15 November 2020 in which he confirmed that: *‘I can not attend this hearing as there is second wave of Covid 19 and UK there is total lock down and I am in Somalia.’* The MPTS responded to Dr Yussuf on 16 November 2020 to reiterate that the hearing was taking place via Skype for Business and as such, he did not have to be physically present but could take part remotely. However, Dr Yussuf did not respond to this email.

7. Ms Widdett invited the Tribunal to proceed in Dr Yussuf's absence and reminded the Tribunal of the cases of *R v Jones* [2003] 1AC 1 and *General Medical Council v Adeogba*; *General Medical Council v Visvardis* [2016] EWCA Civ 162. She submitted that Dr Yussuf is clearly aware of this hearing, has voluntarily absented himself and waived his right to attend. She added that there has been no formal application to postpone the hearing and that there is no evidence an adjournment would serve any useful purpose or that Dr Yussuf would attend at a later date. She submitted, therefore, that it was fair to proceed in Dr Yussuf's absence.
8. The Legally Qualified Chair indicated the relevant legal principles to the Tribunal and took into account the case law to which Ms Widdett had made reference.
9. The Tribunal was satisfied that Dr Yussuf has voluntarily absented himself from these proceedings. Further, it concluded that there was no evidence before it that an adjournment would secure his attendance at a later date.
10. Taking into account the public interest, the Tribunal decided that it was fair and in the interests of justice to proceed with this hearing. Therefore, in accordance with Rule 31, the Tribunal has determined to proceed in Dr Yussuf's absence.