

PUBLIC RECORD

Dates: 24/10/2022 - 27/10/2022

Medical Practitioner's name: Dr Abhishikta SAHA

GMC reference number: 7653015

Primary medical qualification: MB BS 2018 Dr. D.Y. Patil Vidyapeeth Pune -
Padmashree Dr. D.Y. Patil Medical College

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Impaired

Summary of outcome
Suspension, 3 months.

Tribunal:

Legally Qualified Chair	Mr Lindsay Irvine
Lay Tribunal Member:	Ms Sirah Abraham
Medical Tribunal Member:	Dr Maria Dyban
Tribunal Clerk:	Ms Keely Crabtree

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Robert Dacre, Counsel, instructed by Weightmans
GMC Representative:	Mr Ian Brook, 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 and Impairment - 26/10/2022

Background

1. Dr Saha obtained her MB BS medical qualification at Dr. D. Y. Patil Medical College, Hospital & Research Centre, India in 2018. Dr Saha's clinical training was undertaken at the same institution as an intern and then as a clinical tutor in microbiology. Dr Saha worked as a Resident Medical Officer at the B.M Birla Heart Research Centre and Hospital, Kolkata, while she took her Professional and Linguistic Assessments Board (PLAB) exams. Between 2019 and 2020 Dr Saha worked at North City Hospital and Columbia Asia Hospital and then Parkview Hospital in 2020. Dr Saha registered with the General Medical Council (GMC) in February 2021.
2. At the time of the events, Dr Saha was a Clinical Fellow at the Royal Oldham Hospital working in the Haemato-Oncology and the Acute Medical Unit. Since 28 January 2022, Dr Saha has been employed at Northwick Park Hospital (NPH), London as a Clinical Senior House Officer.
3. The allegation that has led to Dr Saha's hearing can be summarised as that, on 11 May 2021, whilst undertaking Paper 2 of the Royal College of Physicians (UK) Part 1 online written examination, Dr Saha accessed external web pages in order to research examination questions and check and/or amend her answers to the questions. It is alleged that she knew she was not permitted to access web pages during the examination and that her actions in so doing would give her an unfair advantage in the Examination. It is alleged that by reason of that knowledge, her actions were dishonest.

The Allegation and the Doctor's Response:

4. The Allegation made against Dr Saha is as follows:

That being registered under the Medical Act 1983 (as amended):

1. On 11 May 2021, you undertook Paper 2 of the Membership of the Royal College of Physicians (UK) Part 1 online written examination ('the Examination'), during which you accessed the external web pages, set out in Schedule 1, in order to:
 - a. research examination questions; **Admitted and found proved**
 - b. check and/or amend your answers to the Examination questions. **Admitted and found proved**
2. You knew that:
 - a. you were not permitted to access web pages during the Examination; **Admitted and found proved**
 - b. your actions at paragraph 1 would give you an unfair advantage in the Examination. **Admitted and found proved**
3. Your actions as described at paragraph 1 were dishonest by reason of paragraph 2. **Admitted and found proved**

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. **To be determined**

The Admitted Facts

5. At the outset of these proceedings, through her counsel, Dr Saha, admitted the facts as set out in the Allegation, in accordance with Rule 17(2)(d) of the 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 and sub-paragraphs of the Allegation as admitted and found proved.

Impairment

6. Having announced the facts admitted and found proved, in accordance with Rule 17(2)(k) of the Rules, the Tribunal considered whether, on the basis of the facts which it has found proved, Dr Saha's fitness to practise is currently impaired by reason of misconduct.

Documentary Evidence

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

- Template of 'What to expect' email sent to all MRCP (UK) examination candidates;
- MRCP Examination Regulations including: Guidance for Candidates sitting the MRCP(UK) examinations dated January 2018;

- MRCP(UK) Code of Conduct for Examination Applicants and Candidates;
- Letters from RCP to Dr Saha, regarding concerns about the MRCP(UK) exam dated 10 June 2021 and 15 June 2021;
- Emails from Dr Saha to the RCP responding to the concerns dated 10 June 2021 and 20 June 2021;
- Letter from the RCP to Dr Saha, advising on the investigation dated 28 June 2021;
- Email from Dr Saha to the RCP, providing further comments for the investigation dated 6 July 2021;
- Email from the RCP to Dr Saha, confirming the outcome of the investigation dated 22 July 2021;
- Letter from Mr A to the GMC dated 17 August 2021;
- Log of timestamps from the screenshare footage of Dr Saha's MRCP(UK) Part 1 21.2 Paper 2 examination on 11 May 2021 (provided by the RCP);
- Extract 1 of screen share from Dr Saha's MRCP(UK) Part 1 21.2 Paper 2 examination on 11 May 2021 (provided as a separate video file);
- Extract 2 of screen share from Dr Saha's MRCP(UK) Part 1 21.2 Paper 2 examination on 11 May 2021 (provided as a separate video file);
- Dr Saha's Reflection statement, undated;
- Dr Saha's certificate in Maintaining Professional Ethics (course date 12-14 July 2022);
- Dr Saha's Good medical practice reflection, undated;
- Dr Saha's Development and Restoration Plan dated 12 July 2022.

8. Dr Saha provided her own witness statement dated 17 October 2022 and also gave oral evidence at the hearing.

Witness Evidence

9. The Tribunal received evidence on behalf of the GMC in the form of a witness statement from Mr A, Quality and Policy Manager for RCP.

10. The Tribunal also received a number of testimonials on behalf of Dr Saha.

Submissions

11. On behalf of the GMC, Mr Brook stated that Dr Saha initially denied cheating when the RCP contacted her and only admitted it when she was sent the video clip. Mr Brook stated that in her witness statement, Dr Saha voluntarily admitted to not having declared the GMC Investigation into this matter on her successful application for a position at the NPH which would have been a breach of para 71 GMP.

12. Notwithstanding that Dr Saha is not charged with that breach, Mr Brook submitted that it is relevant at this stage of the proceedings and something that the Tribunal can properly take into account when considering impairment.

13. Mr Brook stated that the GMC relied on the case of *Nicholas-Pillai v GMC [2009] EWHC 1048 (Admin)*, in particular paragraph 16. He said it is agreed by the defence that the Tribunal can take this further incident into account at the impairment stage.
14. Mr Brook submitted that Dr Saha first mentioned the investigation to her educational supervisor, on or around 24 May 2022, and that her failure to disclose the investigation came before the disciplinary hearing of the Trust on 26 September 2022. The allegation, which she admitted was upheld and she was given a final written warning for her proven misconduct, which was confirmed in the Trust’s letter on 3 September 2022. She accepted though, that she had lied in the application. Mr Brook stated that Dr Saha accepts that she lied in completing the relevant application form, and she has said that she regretted not disclosing it.
15. Mr Brook said that it is noteworthy that Dr Saha, despite having accepted that she had lied in the application to NPH, resurrected in cross examination what she had said at the disciplinary hearing, that despite the letter being replete with the word “investigation”, Dr Saha seemed to be saying in her evidence that she did not understand the word ‘investigation’.
16. Mr Brook stated that having cheated during the examination on the 11 May 2021 and lied to the RCP, only admitting it when she had no other choice in the face of the evidence. Mr Brook submitted that Dr Saha was dishonest once again, by not disclosing the requisite information in the application form to NPH. Mr Brook stated that this has a significant impact upon any remorse and insight efforts Dr Saha has demonstrated between May 2021 and May 2022.
17. Mr Brook said that in the testimonial from Dr B, it describes Dr Saha’s cheating as an ‘*a foolish mistake... and an aberration*’. Mr Brook stated that, it is clear that Dr B is only aware of one incident of dishonesty, which he regards as an aberration. Mr Brook stated that Dr Saha had told Dr C that she made a mistake when she cheated and that it was completely unintentional as documented in his testimonial. Mr Brook stated that the cheating could not have been unintentional and was clearly deliberate. Nor was it an aberration, as Dr Saha went on to be dishonest in a closely connected way when she failed to declare the GMC investigation in her application to NPH.
18. Mr Brook stated that whilst their testimonials confirmed their awareness of the GMC charges, none make the reference to having been informed of the NPH incident. Mr Brook submitted that this further dishonesty should go to the weight that the Tribunal attaches to those testimonials. Mr Brook said that had they been made aware of it, it may have affected their view of Dr Saha’s honesty.
19. Mr Brook submitted that Dr Saha has admitted to cheating in a professional examination in order to obtain membership of the Royal College of Physicians. This dishonest behaviour is clearly unacceptable and is a significant departure from paragraph 65 of GMP and undermines public confidence in the profession. Further, that this is aggravated by Dr

Saha's subsequent, closely connected dishonesty. Mr Brook referred the Tribunal to Dr Saha's Rule 7 reflection, where Dr Saha states that she only became fully aware of the importance of honesty after reading paragraph 65 of GMP.

20. Mr Brook submitted that there are features of Dr Saha's evidence that show that she was not being completely open and truthful with the Tribunal, and there are indications that on close examination her insight was perhaps not quite genuine and was merely trotting out something of a rehearsed script that she had prepared. Mr Brook stated that if the Tribunal reject this, it is submitted that Dr Saha's insight is far from fully developed.

21. Mr Brook stated that doctors should not need to read GMP to understand the importance of being honest in the medical profession, nor to read examination rules to know that one should not cheat in an examination. Mr Brook submitted that cheating in the exam is serious misconduct as defined in the relevant authorities. Further, he submitted that honesty is a fundamental tenet of the profession.

22. Mr Brook stated that in regard to Dr Saha's evidence on the ethics course she had undertaken, and its contents, she has centred on communication and explained why she may have behaved as she did when she panicked, does not help with dealing with a dishonest character trait.

23. Mr Brook reminded the Tribunal that there are occasions where impairment of fitness to practice must be found as a matter of public policy to uphold confidence in the profession. Further, that if a finding of impairment was not found, it would have an adverse impact on public confidence in the profession, and the GMC and the MPTS. Mr Brook submitted that in all the circumstances, Dr Saha fitness to practise is impaired.

24. On behalf of Dr Saha, Mr Dacre stated that Dr Saha is realistic that this case gives rise to grave concerns about her probity and her honesty. Further, she accepts, that it is likely that the Tribunal will conclude that she remains impaired because of the seriousness of her misconduct. This is something that she makes clear in her witness statement and does not suggest that the circumstances that she found herself in in early 2021 in any way justifies her misconduct. The circumstances are context and are likely to have a bearing on the likelihood of repetition and are relevant mitigation. Mr Dacre submitted that it would be wrong to conclude that giving evidence about her circumstances at the time were attempts to distract from what she did during the exam.

25. Mr Dacre stated that Dr Saha had a number of times in her examination in chief and under cross examination stated that this was plainly wrong and told the Tribunal that this was the worst mistake she had ever made.

26. Mr Dacre submitted that the real question for the Tribunal at this stage, is whether the period of a few minutes during the exam in 2021 combined with Dr Saha's conduct since, is a sufficient basis for finding impairment when set against the genuine attempts that she has made to remediate. Mr Dacre reiterated that Dr Saha is before this Tribunal in respect of

a single incident of dishonesty. He said that the Tribunal is entitled to take into account Dr Saha's response to the Allegations as part of the assessment of insight and remediation and that includes her initial denial. It also includes her failure to notify NPH and her reflections on what happened. Mr Dacre stated that Dr Saha accepts that being honest with her regulator about what has happened, warts and all, is the right thing to do.

27. Mr Dacre made reference to the case of *Nicholas-Pillai v GMC* referred to by Mr Brook, and submitted that it requires real care as it is part of a line of authorities dealing with what reliance a Tribunal can essentially put on conduct during the course of GMC investigation and hearing. Mr Dacre said that the case is about dishonesty during a hearing, and about dishonest instructions said to have been given to lawyers in preparation for a hearing. Mr Dacre stated that what is not permissible, and there does not seem to be any dispute about this, is to litigate at stage two separate allegations and to make freestanding findings of fact about them where they have not been charged.

28. Mr Dacre submitted that Dr Saha accepts that she did not notify her new employers about the GMC investigation and accepts it in terms that she should have done. Mr Dacre stated that the picture as to whether or not it was dishonest is significantly clouded by the recognition at the hearing and by Dr Saha's evidence that she had, in effect, been told by a consultant that she was not currently under investigation.

29. Mr Dacre stated that in relation to the NPH issue, this is an unusual position because the lion share of the submissions made, and the cross examination have been in respect of a separate incident that had not been charged by the GMC.

30. Mr Dacre stated that the ordinary Allegations are drafted before Tribunals, so that dishonesty in particular can be alleged fairly with the legal test that needs to be applied and either admitted or proven on the evidence. Mr Dacre said that it was up to the GMC if it decides to bring charges or not. Mr Dacre stated that in this case it is a separate incident factually linked to these proceedings, but not part of them. However, whilst it is accepted that it is relevant to Dr Saha's insight, it cannot be treated as a separate incident of a doctor's dishonesty during a hearing either at this stage or at a later stage.

31. Mr Dacre submitted that it would be wrong in principle to treat this case as relating to three incidents of dishonesty, even if it is accepted that the Tribunal is entitled to take into account what happened after the charged incident as part of the assessment of Dr Saha's insight.

32. Mr Dacre submitted that the NPH incident must to some degree reflect well on Dr Saha and reflects her recognition of the importance of complete transparency, even in circumstances where that transparency gives rise to a risk of a more adverse consequence.

33. Mr Dacre stated that Dr Saha could not have learned a more painful lesson about the importance of probity from the combination of this incident that has been charged and what happened subsequently. She knows that her registration as a doctor is on the line, she has

been reprimanded by her trust, and she also knows that whatever the circumstances, full and frank, honesty is the rule.

34. Mr Dacre stated that the reality is that Dr Saha has demonstrated that she understands the requirement to be honest by the voluntary disclosure in her reflective statement of what happened with NPH. Further, it was open to Dr Saha to say nothing about the misconduct hearing and it is not a charge relied on by the GMC.

35. Mr Dacre stated that although Dr Saha initially denied cheating in her first email to Mr A, the reality is that she accepted in full the allegations in response to the second e-mail she received. Mr Dacre stated that Dr Saha has not since sought to deny it and has made full admissions at this hearing and at the Rule 7 at stage. Mr Dacre stated that it was for the Tribunal to decide if Dr Saha was in any way trying to obfuscate in that document. Mr Dacre submitted that Dr Saha was trying to put into her own words the insights that she has gained about what happened. Mr Dacre stated that this reflection and in her more recent statement she is remorseful about what happened, and she is desperate to demonstrate that she has changed her attitude.

36. Mr Dacre stated that Dr Saha is at these proceedings because of her own failures, and it is inevitably difficult to provide evidence of remediation when it comes to something as fundamental as honesty. Mr Dacre submitted that Dr Saha cannot be criticised for trying to do whatever she can to demonstrate that she has learned lessons. Mr Dacre stated that Dr Saha has targeted the remediation course available to her on the importance of probity and honesty in difficult circumstances and did so in good faith. Mr Dacre stated that Dr Saha has done what she can to learn more about herself and about what happened, and to develop strategies for dealing with the pressures faced by particularly junior doctors. This is evidence of her willingness to change.

37. Mr Dacre stated that to the extent that Dr Saha has done Continuous Professional Development (CPD) which is not relevant to probity or honesty, this would not be a basis for fair criticism. Mr Dacre submitted that from Dr Saha's evidence, Dr Saha is desperate to do anything that she can to prove to the Tribunal that she is fit to practice. Mr Dacre stated that the testimonials provided on behalf of Dr Saha speak to the esteem that she was held in by those who are close to her. She is a junior doctor, who has been in this country for less than two years and does not have the weight of testimonial evidence that you might expect from a practitioner of longer experience. However, all speak positively on her character.

38. Mr Dacre submitted that under robust cross examination, Dr Saha was trying her best to defend herself, where criticisms were undue and to accept where she had done wrong. Mr Dacre stated that it was a matter for the Tribunal as to whether this was a rehearsed script. Mr Dacre submitted that there is no meaningful inconsistency between Dr Saha's initial reflections and her statement and is a doctor whose thoughts and expressions are genuine.

The Relevant Legal Principles

39. 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 misconduct and that the misconduct was serious, and secondly whether the doctor’s fitness to practise is currently impaired by reason of that serious misconduct.

40. The Tribunal must determine whether Dr Saha’s fitness to practise is impaired today, taking into account her conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and whether there is any likelihood of repetition.

41. The Tribunal was mindful of the overarching objective of the GMC set out in section 1 of the Medical Act 1983 (as amended) to:

- a. *Protect, promote and maintain the health, safety and well-being of the public,*
- b. *Promote and maintain public confidence in the medical profession, and*
- c. *Promote and maintain proper professional standards and conduct for members of that profession.*

42. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report* adopted by the high court in *CHRE v NMC and Paula Grant [2011] EWHC 297 (Admin)*. In particular, the Tribunal considered whether its findings of fact showed that Dr Saha’s fitness to practise is impaired in the sense that she:

- a. *Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- 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.’*

43. In terms of dishonesty, the Tribunal took account of the case of *PSA v Health and Care Professions Council and Ghaffar [2014] EWHC 2723* where it is stated that it would be an unusual case where dishonesty is not found to impair fitness to practise.

44. However, it also bore in mind the cases of *PSA v GMC and Uppal [2015] EWHC 104* and *PSA v GMC and Hilton [2019] EWHC 1638*, which held that a finding of dishonest conduct

does not automatically lead to a finding of impairment. It also noted the case of *GMC v Chaudhary* [2017] EWHC 251 where Mr Justice Jay said:

'...dishonesty is not necessarily a monolithic concept...questions of degree obviously arise but secondly, that dishonesty in an individual does not have to be an all pervading or immutable trait.'

45. The Tribunal further accepted the advice of the LQC that when considering impairment, it was dealing with a single incident of admitted and proven dishonesty. As agreed by counsel, any evidence relating to another incident which was not before it as an Allegation was not subject to any evaluation with a view to making a finding of fact, but was relevant only to its deliberation on the issue of current impairment.

The Tribunal's Determination on Misconduct

46. The Tribunal first considered whether the facts found proved are a sufficiently serious departure from the standards of conduct reasonably expected of Dr Saha as a registered medical practitioner, to amount to misconduct.

47. The Tribunal reminded itself of the description of misconduct in *Roylance v GMC* [2000] 1 AC 311 '*as a word of general effect involving some act or omission which falls short of what would be proper in the circumstances*'. In the same case, the court further stated that '*it is not any professional misconduct that will qualify. The professional misconduct must be serious*'.

48. The Tribunal considered the culpable matters in this case to be that: Dr Saha, when undertaking Paper 2 of the Membership of the Royal College of Physicians (UK) Part 1 online written examination, accessed external web pages in order to research examination questions and check and/or amend her answers to the examination questions and that this gave her an unfair advantage in the examination and that these actions were dishonest.

49. The Tribunal had regard to GMP, in particular paragraphs 1 and 65 of GMP, which state:

'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.'

50. The Tribunal determined that these paragraphs of GMP were engaged in this case and that Dr Saha had breached fundamental tenets of the medical profession which had the potential to undermine patients trust in the profession.

51. The Tribunal was of the view that Dr Saha’s conduct in effectively cheating while undertaking the examination was particularly serious and was at the highest end of the scale.

52. The Tribunal concluded that, taking account of all the circumstances in this case including her initial denial of cheating when first challenged, Dr Saha’s conduct fell far below the standards expected of a doctor, and was contrary to GMP guidance. The Tribunal was in no doubt that the misconduct in this case was serious professional misconduct, regarding both the individual actions described in the paragraphs of the Allegation and taking the matter as a whole. The Tribunal was of the view that fellow members of the medical profession would consider this behaviour by Dr Saha deplorable and seriously below the standard expected of medical practitioner.

53. The Tribunal therefore concluded that Dr Saha’s actions as set out in the Allegation amounted to misconduct.

The Tribunal’s Determination on Impairment

54. Having determined that the facts admitted and found proved amounted to misconduct, the Tribunal went on to consider whether, as a result of this, Dr Saha’s fitness to practise was currently impaired by reason of her misconduct.

55. In determining whether a finding of current impairment of fitness to practise was necessary, the Tribunal looked for evidence of insight, remediation, and the likelihood of repetition, bearing in mind the three elements of the overarching statutory objective.

56. The Tribunal noted the concession by Mr Dacre that Dr Saha’s fitness to practise was likely to be found impaired. However, it exercised its own judgement in making its determination on the issue.

57. The Tribunal first considered Dr Saha’s level of insight and had regard to paragraph 52 of the SG when considering this issue. It states:

‘52. A doctor is likely to lack insight if they:

a. refuse to apologise or accept their mistakes

b. promise to remediate, but fail to take appropriate steps, or only do so when prompted immediately before or during the hearing

c. do not demonstrate the timely development of insight’

58. The Tribunal noted that, although Dr Saha had initially denied cheating, the Tribunal accepted that she admitted the dishonesty when confronted with the evidence. It further noted that Dr Saha had also admitted her dishonesty at the Rule 7 stage and before this Tribunal. It also found that she had conducted considerable reflection on her dishonesty including in statements of reflection and in her GMC statement:

“I do not think anything is worse than losing one’s reputation. No punishment in the world is as bad as being called a cheater, liar or dishonest person. I think it was very dishonest of me to look through different websites during the exam and then again deny it when I was asked initially. I think this is the most serious thing I have ever done in my entire career.”

59. It noted that she apologised for how she had handled the situation and indicated it would never happen again. The Tribunal further noted her voluntary inclusion in her evidence of the NPH disciplinary hearing and associated reflective statement relating to a job application which failed to mention that she was under investigation by the GMC. It observed Mr Dacre’s contention that this was in order to be fully transparent and do the right thing which suggested to the Tribunal a commendable degree of openness and frankness about her conduct. It accepted that various challenging events in her life during 2021 including bereavement, isolation following the move to the UK and lack of support during the pandemic, may have contributed to her ill-judged actions.

60. The Tribunal also noted that Dr Saha had expressed remorse about her cheating in her written statement declaring that she *“had a lot of guilt and shame going through my mind while writing my response letter to the policy officer because I had initially denied it”*.

61. However the Tribunal noted that in her Rule 7 response to the cheating allegation and in her input to the NPH disciplinary investigation, Dr Saha’s admissions were tempered by the introduction of circumstances and reasons to minimise or explain her actions, undermining to a degree the expressions of remorse and fully developed understanding.

62. In addition the Tribunal was of the view that in her oral evidence, Dr Saha was on occasion less convincing about the depth and development of her insight into both events. It observed in relation to the cheating, that whilst professing under examination by her counsel that cheating and being dishonest is the worst thing that anyone can ever do from any place in the world, she occasionally under cross examination reverted to excuses or explanations for the behaviour. For example she described treating the examination as another practice session on her laptop where she looked up the answers as a kind of reflex having routinely looked up answers during practice. Her justification for the initial denial of looking up answers was also unconvincing, with her ascribing it to ‘being human’ and ‘having emotions’. It noted also a continued propensity to blame others including supervisors for the failure to declare the GMC investigation on the job application which undermined to a degree any claim to fully developed insight. There was also a concerning reference to language challenges in relation to the definition of the words “inquiry” and “investigation”. The Tribunal noted that, under cross examination, she also fell back on the excuse of not reading documents carefully, including the MRCP examination regulations and the GMC investigation letter. Overall the Tribunal was of the view that at times during cross

examination, Dr Saha did not appear to fully accept her mistakes and that she had been dishonest.

63. Whilst reminding itself that it is not permitted to make any finding of fact in respect of the failure to declare the ongoing GMC fitness to practise investigation in the NPH job application, it noted that the fact that this application was made only a relatively short time after the uncovering of the examination cheating, indicated there was no immediate recognition of the need for total openness and transparency, the hall marks of early developing insight into previous dishonest conduct.

64. In respect of remediation, the Tribunal had regard to the professional ethics course and professional development courses undertaken. It considered that these were positive and all that she could reasonably have conducted in the circumstances, given that it is difficult to remediate dishonesty through any particular coursework or training.

65. It also took into account the positive testimonial evidence provided in support of Dr Saha and placed no significance on the fact that none refer to the NPH incident which was not subject to a separate allegation. However, it noted that the majority of these were from family and friends, with only one from a professional colleague in India and there were no recent testimonials from colleagues concerning her current work in the UK.

66. In the light of the above conclusions, the Tribunal then considered the likelihood of repetition of the conduct. It determined that whilst Dr Saha had obviously developed a degree of insight into her behaviour, had expressed remorse and was able to compellingly express the consequences of cheating on herself and others including peers and patients, there were indications that her insight and understanding fluctuated and could not be said to be fully developed or consistent. The Tribunal was concerned that Dr Saha did not appear to be able to fully explain how she would deal with similar stress factors in the future other than that these factors would be unlikely to reoccur. Therefore, whilst it considered the risk of Dr Saha repeating the misconduct was low, recalling its conclusions in respect of Dr Saha's depth of insight, the Tribunal was unable to exclude the risk of repetition.

67. The Tribunal reminded itself that Dr Saha's misconduct related to a single incident and noted its view that considerable progress had been made in developing insight as highlighted in her written statements and oral evidence. Whilst it formed the view that there was further insight to be developed, it considered that progress to date indicated that there was no reason to believe that Dr Saha could not achieve fully developed insight into her behaviour.

68. The Tribunal noted again that the nature of Dr Saha's misconduct was difficult to remediate and its determination that it was conduct that had fallen seriously below the standard expected of a doctor. It also recalled its concern that, whilst Dr Saha's insight appeared to be developing at stages, it did not appear fully developed. The Tribunal could not therefore conclude in all the circumstances that this was one of those exceptional cases where a finding of current impairment could not be made and determined that public confidence would be undermined were it not to find Dr Saha's fitness to practise impaired.

69. The Tribunal determined that the need to uphold public confidence in the medical profession, and promote and maintain proper professional standards and conduct for members of the profession, required it to find Dr Saha's fitness to practise impaired. It therefore determined that Dr Saha's fitness to practise is currently impaired by reason of misconduct.

Determination on Sanction - 27/10/2022

1. Having determined that Dr Saha's fitness to practise is impaired by reason of misconduct, 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 the evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

Submissions

3. In the course of his submissions on behalf of the GMC, Mr Brook referred the Tribunal to relevant paragraphs in the Sanctions Guidance (16 November 2020) ('the SG'), including paragraphs 91, 92, 93 and 97(a), (e), (f) and (g). In summary, Mr Brook submitted that the appropriate and proportionate sanction in this case is a period of suspension. Mr Brook submitted that such a sanction would promote and maintain public confidence in the medical profession and would promote and maintain proper professional standards and conduct for members of the profession and referred the Tribunal to the table at 102 of SG.

4. Mr Brook made no submission as to the length of any period of suspension. Mr Brook further submitted that if the Tribunal determined a period of suspension was appropriate, the GMC would seek that a review hearing be directed at the end of that period.

5. In summary, on behalf of Dr Saha, Mr Dacre directed the Tribunal's attention to the significant mitigating factors in the case. He submitted that Dr Saha was under significant work and personal stress at the time of her misconduct. She had recently arrived in the UK, had no social network and was living on her own for periods in isolation due to the COVID concerns on her ward. Mr Dacre stated that Dr Saha did not seek to suggest otherwise than that doctors are expected by the public to abide by the rules whatever stress might bear down on them, however, the circumstances at the time are relevant to mitigating factors.

6. Mr Dacre stated that it was relevant to consider paragraphs 27 and 28 of the SG which state:

'27 When a doctor graduates from medical school and begins working in the UK, they may well experience a steep learning curve as they take on new responsibilities. As a doctor's medical career progresses, the tribunal would expect the doctor to gain

increased understanding of the social and cultural context of their work, appropriate standards, and national laws and regulations that apply to their area of work.

28 *Many doctors joining the medical register have previously worked, lived or were educated overseas, where different professional standards and social, ethnic or cultural norms may apply. Doctors are expected to familiarise themselves with the standards and ethical guidance that apply to practising in the UK before taking up employment, although experience of working as a doctor in the UK plays a key role in their development.'*

Mr Dacre stated that he was not suggesting that Dr Saha's conduct is a consequence of her background, but that it is relevant as a mitigating factor, nonetheless.

7. Mr Dacre stated that there is no evidence of previous incidents of misconduct, and it was Dr Saha's evidence that she had performed well in examinations in India and the UK. Mr Dacre stated that Dr Saha has cooperated in full and made full admissions to the GMC and continued to do so throughout this process. She has also made significant efforts to remediate. Mr Dacre stated that the testimonial evidence speaks to Dr Saha's character and to her honesty in general terms outside this incident.

8. Mr Dacre stated that Dr Saha has expressed genuine regret and remorse. She accepted that she should have behaved differently and has developed insight from a relatively early stage.

9. Mr Dacre submitted that Dr Saha is at the beginning of her career and will do anything she can to return to practice. She knows that what she did puts her in jeopardy of suspension or worse. He stated that a short period of suspension would be a further lesson to Dr Saha and would allow her to complete the progress that she has already made in respect of insight. It would also satisfy the need to mark the conduct properly in the public interest.

10. Mr Dacre stated that there is not a more powerful demonstration of the importance of being honest than appearing before your regulator facing robust cross examination and that it is highly unlikely Dr Saha would want to put herself in this position again.

11. Mr Dacre stated that Dr Saha has said in her evidence that this is the most serious mistake that she has ever made and there is no reason to believe that she will not develop full insight. Mr Dacre invited the Tribunal to impose a sanction that allows her to continue with that progress but does not go further than is necessary in the inevitable impact that decision is going to have on her and on her career.

The Tribunal's Determination on Sanction

12. 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 so doing, it has given consideration to its

findings of impaired fitness to practise, and the submissions made by Counsel on behalf of the GMC and those made on behalf of Dr Saha.

13. Throughout its deliberations the Tribunal bore in mind that the purpose of sanctions is not to be punitive, but to protect the public interest. The public interest includes protecting 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. In making its decision, the Tribunal also had regard to the principle of proportionality, and it weighed Dr Saha's interests with those of the public. It also considered and balanced the aggravating and mitigating factors in this case.

Aggravating Factors

14. The Tribunal considered the following to be aggravating factors in this case:

- Dr Saha's delayed development of insight into dishonesty exemplified by:
 - o An initial denial of her dishonesty;
 - o Dr Saha's failure to be open and transparent concerning a GMC investigation on her Northwick Park Hospital (NPH) application;
 - o Dr Saha's occasional fluctuation in the depth of her insight during the hearing.

Mitigating Factors

15. The Tribunal balanced the above aggravating factors against the following mitigating factors:

- The Tribunal reminded itself that Dr Saha's misconduct related to a single episode of dishonesty;
- Dr Saha is otherwise a person of good character, as attested to by the testimonials provided on her behalf;
- Dr Saha is at a relatively early stage of her career;
- Dr Saha has readily engaged with the GMC investigation and the regulatory process;
- Dr Saha made full and frank admissions at the earliest stage of the GMC investigation and at this hearing;
- Dr Saha's powerful expressions of regret and apology;
- Dr Saha has taken positive steps to reflect on her misconduct and to remediate it as well as developing insight in the process; therefore any risk of future repetition of her misconduct is assessed as low;
- There have been no adverse findings against Dr Saha since the index events;
- The Tribunal recalled its finding that it had considered it commendable that Dr Saha had voluntarily raised the matter of her NPH application;

- The Tribunal was not fully persuaded by Mr Dacre’s submissions in relation to paragraphs 27-28 of SG. However, the Tribunal did regard as mitigating factors the personal and professional circumstances at the time of the events in question. It noted that, Dr Saha was under personal pressure at the time due to recently having arrived in the UK, having no social or family network and was living on her own for periods due to the COVID pandemic.

No action

16. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Saha’s case, the Tribunal first considered whether to conclude the case by taking no action.

17. The Tribunal determined that, in view of the serious nature of the Tribunal’s findings on impairment, it would be insufficient and disproportionate to conclude this case by taking no action. The Tribunal concluded that there were no exceptional circumstances such as to justify taking no action and it would not adequately address the public interest.

Conditions

18. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Saha’s registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

19. The Tribunal determined that it would be inappropriate and insufficient to direct the imposition of conditions on Dr Saha’s registration. It was unable to formulate any workable conditions that would address dishonesty and, in any event, they would be inadequate given the seriousness of the misconduct and the need to maintain public confidence and uphold proper professional standards.

Suspension

20. The Tribunal then went on to consider whether suspending Dr Saha’s registration would be appropriate and proportionate.

21. The Tribunal had regard to the relevant parts of the SG in relation to suspension, including paragraphs 91, 92 and 93 of the SG:

91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.

92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in

the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).

93 *Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions...'*

22. The Tribunal had regard to its facts and impairment determination and its findings as to the nature and seriousness of the misconduct in Dr Saha's case. The Tribunal determined that the factors that indicate that suspension may be appropriate, as set out at paragraph 97(a), (e), (f), and (g) of the SG, were 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.

a A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.

...

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.

f No evidence of repetition of similar behaviour since incident.

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.'

23. The Tribunal noted that there were no patient safety issues identified and that, as identified at the impairment stage, although at times her insight into her misconduct fluctuated, albeit under robust cross examination, the risk of repetition of the misconduct was low. It had regard to the extensive reflection conducted and remediation undertaken by Dr Saha, together with the comprehensive admissions during the process and the clear expressions of remorse.

24. In all the circumstances, the Tribunal determined to impose a period of suspension on Dr Saha's registration. It was of the view that this would appropriately mark the seriousness

with which the Tribunal viewed the misconduct and also send a message to the public and the profession that the misconduct was unacceptable.

25. The Tribunal noted that cases of this seriousness might, in certain circumstances, warrant erasure. However, the Tribunal noted Mr Brook's submission on behalf of the GMC that suspension was sufficient and proportionate. It had regard to the fact this was a single episode of dishonesty, and took into account the extensive and positive mitigating factors, including the insight shown, the remediation demonstrated, the early admissions, the apologies, and the positive testimonials. The Tribunal was firmly of the view that Dr Saha's conduct was not fundamentally incompatible with continued registration as a doctor.

Length of suspension

26. The Tribunal had regard to paragraph 100 of the SG relating to relevant factors when determining the length of suspension, including the risk to patient safety, the seriousness of the findings, and any mitigating or aggravating factors.

27. The Tribunal referred to its conclusions above. It noted that Dr Saha's misconduct had been a serious departure from the principles of GMP and had risked public confidence in the profession.

28. The Tribunal also recalled its comments as to the insight and remediation demonstrated by Dr Saha and was of the view that it would be difficult to construct any other substantial steps that she could take to address her misconduct. Further, the Tribunal had regard to the positive testimonials as to Dr Saha's character, the lack of any repetition of any misconduct and her personal and professional circumstances at the time in question. It agreed with Mr Dacre's submission that by itself, the appearance before this Tribunal would act as a further incentive to fully reflect on the consequences of her behaviour making it unlikely she would put herself through anything similar.

29. The Tribunal was of the view that sanctions were imposed, not as punishment, but to achieve the Tribunal's statutory purpose. Further, that, while doctors should be reminded of appropriate behaviour, it was also in the public interest not to deprive the public of an otherwise competent doctor in order to achieve that statutory purpose.

30. In all of the circumstances, the Tribunal determined to suspend Dr Saha's registration for a period of three months. It had carefully balanced the factors before it and considered the question of the appropriate length of time taking account of all of the circumstances before it. The Tribunal determined that a suspension of three months' duration would appropriately send the message that Dr Saha's misconduct was completely unacceptable and act as a deterrent, whilst fairly taking into account the various mitigating factors and features present in this case, and provide an additional period to develop full insight.

No review hearing

31. The Tribunal considered whether it should direct a review hearing, which would take place shortly before the expiration of the period of suspension. The Tribunal had regard to paragraph 164 of the SG: *‘In some misconduct cases it may be self-evident that, following a short suspension, there will be no value in a review hearing... the tribunal will need to be reassured that the doctor is fit to resume [unrestricted] practice’.*

32. The Tribunal determined not to direct a review of Dr Saha’s case. It concluded that Dr Saha had demonstrated maturing insight, had taken positive steps by way of remediation, and that a review hearing would be unnecessary and inappropriate in the specific circumstances of this case. The period of suspension will provide Dr Saha with the opportunity to reflect further and develop full insight. The Tribunal concluded that the need to promote and maintain both public confidence in the medical profession and proper professional standards and conduct for members of the profession would be served upon the expiration of Dr Saha’s suspension and there would be no concern in her resuming unrestricted practice afterwards.

Determination on Immediate Order - 27/10/2022

70. Having determined to suspend Dr Saha’s registration for three months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Saha’s registration should be subject to an immediate order.

Submissions

71. On behalf of the GMC, Mr Brook submitted that an immediate order was not necessary in the circumstances of this case.

72. On behalf of Dr Saha, Mr Dacre agreed with Mr Brook that an immediate order was not required.

The Tribunal’s Determination

73. In making its decision the Tribunal had regard to the SG, including paragraph 172:

“The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.”

74. The Tribunal determined that it would not be necessary to impose an immediate order to *“protect members of the public”, “in the public interest”, or “in the best interests of*

the doctor". It was not of the view that immediate action needed to be taken to protect public confidence in the medical profession, particularly given the mitigating and other factors which the Tribunal has outlined in its determination on Sanction. The Tribunal was conscious of the seriousness of the misconduct but determined that this was adequately addressed by the substantive suspension and it would be appropriate for Dr Saha to continue in unrestricted practice before that substantive order takes effect.

75. In all the circumstances, the Tribunal determined not to impose an immediate order of suspension on Dr Saha's registration.

76. This means that Dr Saha's registration will be suspended 28 days from the date on which written notification of this decision is deemed to have been served, unless she lodges an appeal. If Dr Saha does lodge an appeal, she will remain free to practise unrestricted until the outcome of any appeal is known.

77. There is no interim order to revoke.

78. That concludes this case.