

PUBLIC RECORD

Dates: 12/04/2022 - 21/04/2022

Medical Practitioner’s name: Dr Afsa SHAFI
 GMC reference number: 6117121
 Primary medical qualification: MB ChB 2005 University of Birmingham

Type of case	Outcome on facts	Outcome on impairment
New - XXX	XXX	XXX
Review - Deficient professional performance		Not Impaired

Summary of outcome
XXX

Tribunal:

Medical Tribunal Member (Chair)	Dr Priya Iyer
Lay Tribunal Member:	Ms Jacqueline Telfer
Medical Tribunal Member:	Professor Irving Benjamin
Legal Assessor:	Mr Tanveer Rakhim, 12-13 APRIL 2022 Mr Sanjay Lal, 14 April 2022 Mr Alex Graham 19 April 2022 Mrs Judith Walker 20 - 21 April 2022
Tribunal Clerk:	Ms Rebecca Paterson

Attendance and Representation:

Medical Practitioner:	Present and not represented
GMC Representative:	Mr Rick Holland, 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 Facts - 13/04/2022

XXX

Determination on Impairment - 19/04/2022

1. In accordance with Rule 21A(2) the Tribunal will now determine in accordance with Rule 22(1)(f) whether Dr Shafi's fitness to practise is impaired, taking into account the background to the case and to the facts found proved in relation to the new XXX.
2. At the outset of this stage of the proceedings, Mr Holland, on behalf of the GMC, informed the Tribunal that it would also be conducting a review of a previous finding of impairment by reason of deficient professional performance.

Background

The 2016 Tribunal

3. Dr Shafi's case was first heard by a Medical Practitioners Tribunal ('MPT') in April 2016 ('the 2016 Tribunal'). The 2016 Tribunal found Dr Shafi's fitness to practise to be impaired by reason of deficient professional performance whilst employed by Birmingham and Solihull Mental Health NHS Foundation Trust ('the Trust') between 2012 to 2014 as a CT1 core trainee in psychiatry.
4. The 2016 Tribunal found a number of deficiencies in Dr Shafi's performance including inappropriate prescribing, an inability to summarise findings and an inability to draw conclusions in relation to Mental Health Tribunal reports.
5. The 2016 Tribunal also found that in 2014 Dr Shafi fell asleep in meetings, demonstrated inadequate techniques in basic hygiene, preparing for physical examinations and phlebotomy, keeping clinical records and demonstrated poor clinical judgement for her level of training.
6. The 2016 Tribunal further found that Dr Shafi failed to review a patient when requested to do so and failed to understand the risk regarding head injury.

7. As a result, the 2016 Tribunal found Dr Shafi's fitness to practise impaired by reason of deficient professional performance and suspended her registration for a period of 12 months. The 2016 Tribunal directed a review of Dr Shafi's case and determined that a reviewing Tribunal would be assisted by the following:

- evidence that she has developed insight into the nature of the deficiencies identified in her practice, as referred to in the Tribunal's determination on impairment, with particular regard to Domains 1, 2 and 3 of Good Medical Practice (2013);
- evidence of a further performance assessment if she is invited to undertake one by the GMC during the period of her suspension;
- evidence that she has kept her skills and knowledge up to date through continuing professional development activities by her attendance at appropriate, accredited, structured training courses, reading and online learning, together with detailed and structured reflections;
- evidence of her commitment and engagement with the review process;
- any other evidence which she thinks may assist the reviewing Tribunal.

The 2017 Tribunal

8. Dr Shafi's case was reviewed in 2017 ('the 2017 Tribunal'). That Tribunal noted that an assessment of Dr Shafi's performance was undertaken in February 2017 and it was provided with a copy of a Performance Assessment report dated 27 March 2017. Of the eight categories assessed, Dr Shafi's performance was found to be unacceptable in the following five categories: Maintaining Professional Performance, Assessment, Clinical Management, Relationships with Patients, and Working with Colleagues. In the category of Record Keeping, Dr Shafi's performance was assessed as being a cause for concern.

9. The 2017 Tribunal found that Dr Shafi's fitness to practise remained impaired by reason of deficient professional performance and imposed a further suspension for 12 months. The 2017 Tribunal considered that this period of time would allow Dr Shafi time to address the serious concerns identified by the 2016 Tribunal and further develop her insight and take action to demonstrate that she had the commitment, drive and capacity to respond to training.

The 2018 Tribunal

10. Dr Shafi's case was next reviewed in 2018 ('the 2018 Tribunal'). The 2018 Tribunal noted that Dr Shafi had engaged with the GMC more than she had previously and had gained further insight. She had also made further progress towards remediating the deficiencies identified in her performance. However, the 2018 Tribunal considered that Dr Shafi's performance remained deficient in a wide range of areas and it considered that until these were fully remediated there remained a risk of repetition and a risk to patients. The 2018 Tribunal therefore determined that Dr Shafi's fitness to practise remained impaired by reason of deficient professional performance.

11. With regard to sanction, the 2018 Tribunal determined to impose conditions on Dr Shafi's registration for a period of eighteen months. It considered that this would provide Dr Shafi with an opportunity to develop her clinical skills whilst guarding against any risk to patients. The conditions included a provision that Dr Shafi should be directly supervised by a clinical supervisor and that she should undertake a further performance assessment.

12. The 2018 Tribunal determined to direct a review of Dr Shafi's case and set out the evidence that a reviewing Tribunal would be assisted by:

- A report from Dr Shafi's clinical supervisor and educational supervisor;
- An updated PDP produced in conjunction with Dr Shafi's clinical supervisor and educational supervisor;
- Evidence that Dr Shafi has kept her skills and knowledge up to date through Continuing Professional Development activities by her attendance at appropriate, accredited, structured training courses, reading and online learning, together with detailed and structured reflections;
- Evidence to demonstrate to a reviewing Tribunal that Dr Shafi has satisfactorily addressed the deficiencies outlined in the findings of the Performance Assessment; and
- Any other evidence which Dr Shafi considered may assist the reviewing Tribunal.

The February 2020 Tribunal

13. On 7 February 2020 Dr Shafi's case was reviewed by an MPT Tribunal ('the February 2020 Tribunal'). Dr Shafi was represented by XXX, Dr D, at this hearing.

14. At this hearing Dr Shafi failed to provide any of the information requested by the previous Tribunal. During the course of the hearing, the February 2020 Tribunal was presented with new material provided by Dr Shafi which included two letters, written by a XXX.

15. XXX.

16. On the basis of the two letters presented, Dr D invited the February 2020 Tribunal to find impairment on the basis of XXX as opposed to deficient professional performance.

17. In response, Mr Donoghue, on behalf of the GMC, submitted that this was not a power which was open to a reviewing Tribunal as it should not go behind the decision of a previous Tribunal. XXX. Mr Donoghue stated that if the Tribunal had concerns with regard to the new evidence presented by Dr Shafi it could adjourn the hearing and request the GMC to take account of the new evidence regarding XXX. He stated that any new findings would then be considered at a future hearing. As a result, Dr D made an application for an adjournment on the basis set out by Mr Donoghue.

18. The February 2020 Tribunal determined to adjourn the hearing for six months and reminded Dr Shafi of the material she should provide to assist the reviewing Tribunal.

The August 2020 Tribunal

19. At the outset of Dr Shafi's hearing in August 2020, ('the August 2020 Tribunal'), Mr Donoghue, Counsel for the GMC, made an application to adjourn the hearing. He stated that Dr Shafi's hearing in February 2020 had adjourned to allow the GMC time to investigate XXX, but its investigations had not yet concluded.

20. Mr Donoghue submitted that Dr Shafi had not provided any of the evidence requested by the previous Tribunals. He stated that Dr Shafi had not worked since 2013, save for a short clinical attachment in 2018, and apart from that and her attendance on some courses, Dr Shafi had provided none of the other evidence requested of her.

21. Mr Donoghue submitted that in the interest of fairness the proceedings should adjourn for a period of six months so that the GMC could conclude its investigations XXX.

22. Mr Donoghue assured the Tribunal that the GMC was confident that an adjournment of six months would allow time for XXX the GMC to conclude its investigation and decide whether Allegations based on XXX should be taken forward.

23. In all the circumstances the August 2020 Tribunal determined that, in light of the limited information before it, it would risk unfairness to Dr Shafi if it continued with the hearing. The August 2020 Tribunal therefore determined to adjourn the proceedings for a period of six months.

24. The August 2020 Tribunal directed Dr Shafi to provide a statement to the GMC by 3 September 2020 setting out her training since she left school as well as her plans for work in the future. It directed that a Tribunal reviewing Dr Shafi's case would be assisted if she provided the documents already requested by previous Tribunals together with an updated statement from Dr Shafi, XXX, which she will have received.

The February 2021 Tribunal

25. Dr Shafi's case was next reviewed on 5 February 2021. At the outset of proceedings Mr Peter Byrne, Counsel, on behalf of the GMC made an application to adjourn the hearing for a period of six months.

26. XXX

27. Mr Byrne reminded the Tribunal that, save for a short clinical attachment in May 2018, Dr Shafi had not worked since 2013 and although she had attended some courses, Dr Shafi had yet to provide the evidence requested by previous Tribunals. Mr Byrne submitted that without this evidence it would not be possible for the

Tribunal to assess Dr Shafi's fitness to practise.

28. Mr Byrne invited the Tribunal to grant a further adjournment for a period of six months to allow time for the GMC to conclude its investigation.

29. Dr Shafi supported the application and stated that she would use the time to collate the information she intended to present to the next Tribunal.

30. The Tribunal concluded that in the absence of information regarding Dr Shafi's XXX and without the evidence from Dr Shafi, it would not be possible to properly assess the matter of impairment. The Tribunal considered the importance of striking a balance between fairness to Dr Shafi and the public interest and considered that proceeding without such evidence would risk causing unfairness to Dr Shafi. In all the circumstances the Tribunal determined to adjourn the hearing for a further six months to allow the GMC to conclude its investigation.

31. After hearing submissions from parties, the Tribunal determined to extend the order of conditions imposed on Dr Shafi's registration for a period of six months. The Tribunal also took the opportunity to remind Dr Shafi of the documentation likely to assist a reviewing Tribunal at her next MPT review hearing.

The August 2021 Tribunal

32. Ms Renton, on behalf of the GMC, informed the Tribunal of the current situation XXX.

33. XXX Ms Renton stated that the GMC had spoken with Dr Shafi and advised her that the intention was to apply for an adjournment of the proceedings for a period of 9 months.

34. Ms Renton submitted that at this stage there remained the original issue of deficient professional performance and the potential issue regarding XXX. Ms Renton submitted that it would not be possible for the Tribunal on that day to review the question of current impairment as information was missing XXX.

35. Dr Shafi did not oppose Ms Renton's application for an adjournment.

36. The Tribunal considered that evidence in relation to XXX was pertinent to any decision on her fitness to practise and that it would not be possible to properly assess the issue of current impairment at the proceedings without that XXX information. In addition, the Tribunal considered that proceeding without such evidence would risk causing unfairness to Dr Shafi. The Tribunal determined that in the absence of XXX it should not go against the decision of previous Tribunals and consider impairment of Dr Shafi's fitness to practise.

37. In the circumstances the Tribunal determined to adjourn the hearing for a period of nine months under Rule 29(2), to allow the GMC to conclude its investigation.

38. The Tribunal considered the length of time that Dr Shafi had been out of clinical practice and determined that the order of conditions as currently drafted struck the proportionate balance between fairness to Dr Shafi and protection of the public. It therefore extended the existing conditions for a further nine months.

39. The Tribunal reminded Dr Shafi of the documentation which was likely to assist the Tribunal at her next MPT hearing:

- A report from Dr Shafi's clinical supervisor and educational supervisor;
- An updated PDP produced in conjunction with Dr Shafi's clinical supervisor and educational supervisor;
- Evidence that Dr Shafi has kept her skills and knowledge up to date through Continuing Professional Development activities by her attendance at appropriate, accredited, structured training courses, reading and online learning, together with detailed and structured reflections;
- Evidence to demonstrate to a reviewing Tribunal that Dr Shafi has satisfactorily addressed the deficiencies outlined in the findings of the performance assessment;
- An updated statement from Dr Shafi, recording her responses to the three assessments, which she will have received;
- A statement to her GMC contact setting out her medical history of training since she left school together with her plans for work in the future. The statement should have attached to it Dr Shafi's CV;
- Any other evidence which Dr Shafi considers may assist the reviewing Tribunal.

The Present Hearing

The Evidence

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

41. Dr Shafi gave oral evidence at the hearing.

42. The Tribunal also received documentary evidence which included but was not limited to:

- Previous Tribunal determinations, dated between April 2016 and August 2021;
- Performance Assessment, dated 27 March 2017;
- Letter relating to insurance, dated 21 August 2018;
- XXX;
- Blank certificate of readiness to enter specialty training, dated 2020;
- Blank CREST 2020 Dean's supporting declaration;
- Screenshot of online application for medical post;
- Copy of CPD certificate;

- Email from Dr Shafi to the GMC enclosing Curriculum Vitae, dated 3 September 2020;
- Various records of correspondence between Dr Shafi and the GMC, dated between October 2018 and November 2020.

Submissions

GMC Submissions

43. On behalf of the GMC, Mr Holland submitted that there was clear evidence that would enable the Tribunal to find that Dr Shafi's fitness to practise was currently impaired by reason of XXX. He submitted that the extent to which Dr Shafi's XXX contributed to the previous findings of deficient professional performance was entirely a matter for the Tribunal.

44. Mr Holland referred the Tribunal to various pieces of documentary evidence before it. He submitted that the evidence demonstrated some linkage between Dr Shafi's XXX and her conduct from which deficient professional performance was found. However, he submitted that there was no particular piece of evidence that categorically stated that XXX was the root cause of Dr Shafi's deficient professional performance between 2012 and 2014.

45. In relation to impairment, Mr Holland submitted that it was inescapable that XXX was a very significant feature which was going to be a source of difficulty so far as Dr Shafi was concerned if she aspired to resume full time training. XXX

46. Mr Holland addressed the Tribunal on paragraph XXX of Good Medical Practice ('GMP'). He submitted that it was not until 7 February 2020 that the GMC became aware that it was being put forward that deficient performance was attributable to Dr Shafi's difficulties with XXX. Mr Holland noted that Dr Shafi was not working at the time of the disclosure and that there had been no breach of this paragraph in letter and in spirit.

47. Addressing Domain 1 of GMP, Mr Holland submitted that the only work that had undertaken since 2014 was limited teaching work.

Dr Shafi's Evidence

48. In her submissions on impairment, Dr Shafi referred the Tribunal to the oral evidence she had given at this stage.

49. XXX

50. Dr Shafi told the Tribunal that when she reflected on her time during training in psychiatry, she recognised that she was struggling. She stated that she had tried her best not to make any mistakes but that she did not know she was XXX at that time and that she was too embarrassed to go and speak to a senior colleague.

51. When questioned, Dr Shafi confirmed that when she now analysed the period from 2012 to 2014, she '*definitely*' attributed all or most of her difficulties to XXX.

52. XXX

53. Dr Shafi stated that she wanted to focus in the direction of becoming a teaching fellow. She informed the Tribunal that she was now volunteering at Aston Medical School and that she uses a trolley as an aid. She stated that everyone knew XXX. Dr Shafi said that she only worked mornings and that she was really enjoying what she was doing.

54. Dr Shafi informed the Tribunal that she agreed with Mr Holland in relation to his submissions on GMP. Addressing paragraph XXX of GMP, Dr Shafi submitted that although she XXX. She submitted that she had been keeping herself, the GMC, and any future employer informed of her XXX.

The Relevant Legal Principles

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

56. In approaching the decision, the Tribunal bore in mind the overarching objective. The Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted XXX, and then whether the finding of that XXX and the previous finding of deficient professional performance could lead to a finding of current impairment.

57. The Tribunal considered paragraph XXX of GMP:

'XXX'

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

59. 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, as adopted by the High Court in CHRE v NMC and Paula Grant [2011] EWHC 297 Admin. The Tribunal noted that any of the following features are likely to be present when a doctor's fitness to practise is found to be impaired:

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 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 to breach in the future one of the fundamental tenets of the medical profession; and/or
- d. Has in the past and/or is liable in the future to demonstrate that his integrity cannot be relied upon.'

60. XXX

The Tribunal's Determination on Impairment

XXX

Impairment

62. The Tribunal having found that the facts found proved amounted to XXX, went on to consider whether Dr Shafi's fitness to practise was currently impaired by reason of that XXX, and/or her deficient professional performance. In doing so, the Tribunal analysed the relationship between the previous findings of deficient professional performance and the XXX.

63. The Tribunal referred itself to the letters of XXX. It noted the dates within the letter dated 14 October 2019:

'XXX'

64. The Tribunal considered this in the context of Dr Shafi's email to the GMC in May 2015 which, in relation to her performance in 2014, stated:

'After much consideration, I agree to have failed to keep up with my required assessments, made clinical mistakes on two occasions, and been unable to prove my competences at CT1 level of training in psychiatry'.

65. Although the Tribunal acknowledged that Dr Shafi did not attribute this to XXX at that time, it was mindful that Dr Shafi was unrepresented and was then unaware of XXX.

66. The Tribunal considered paragraph XXX of GMP and the submissions made by Mr Holland and Dr Shafi and concluded the contents of paragraph XXX had not been breached either in the letter or the spirit.

67. The Tribunal reminded itself of Dr Shafi's own evidence that XXX.

68. The Tribunal took into account XXX letter, Dr Shafi's evidence, and the overlap between Dr Shafi's XXX and her conduct leading to a finding of deficient professional performance. In light of this evidence, the Tribunal concluded that, on the balance of probabilities, there was an inextricable link between the deficient professional performance and the more recent findings of XXX

69. On review, the Tribunal therefore determined that this case solely related to issues of XXX and that Dr Shafi's fitness to practise was not currently impaired by reason of deficient professional performance.

70. XXX

71. XXX

72. XXX

Determination on Sanction - 21/04/2022

XXX.