

PUBLIC RECORD

Dates: 11/11/2022

Medical Practitioner's name: Dr Al MURSHED
GMC reference number: 5202141
Primary medical qualification: MB BS 1993 Dhaka University

Type of case Outcome on impairment
Review - Misconduct Impaired

Summary of outcome
Erasure

Tribunal:

Legally Qualified Chair	Mr Paul Moulder
Lay Tribunal Member:	Ms Jacqueline Telfer
Medical Tribunal Member:	Dr Gabrielle Downey

Tribunal Clerk:	Ms Olivia Moy
-----------------	---------------

Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	n/a
GMC Representative:	Ms Niamh Ingham, 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 Impairment - 11/11/2022

1. At this review hearing the Tribunal has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr Murshed's fitness to practise remains impaired by reason of misconduct.

The Outcome of Applications Made During the Impairment Stage

2. The Tribunal granted the GMC's application, made pursuant to Rules 40 and 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that service of this hearing had been effected and that it should proceed in Dr Murshed's absence. Its full determination can be found at Annex A.

Background

3. Dr Murshed qualified in 1993 with a MB BS from Dhaka University in Bangladesh.
4. This is the third review of Dr Murshed's case after the original finding of impairment by misconduct.

The October 2019 Hearing

5. Dr Murshed's case was first considered by a Medical Practitioners Tribunal in October 2019 ('the 2019 Tribunal'). The facts found proved by the 2019 Tribunal can be summarised as follows: Dr Murshed failed to attend for his locum shift at North Cumbria University Hospitals NHS Trust (the Trust) on 2 July 2018. He failed to provide any adequate explanation

for this and his failure was also in breach of a GMC Warning that had been imposed on 11 September 2017 for similar behaviour during the period from October 2016 to April 2017.

6. The October 2019 Tribunal determined that Dr Murshed's fitness to practise was impaired by reason of misconduct. It found it unacceptable for Dr Murshed to have behaved in the way he did, breaching his warning and potentially putting patients at risk.

7. Given the circumstances, the 2019 Tribunal was of the view that a finding of impairment was necessary 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 the profession.

8. The October 2019 Tribunal determined to suspend Dr Murshed for a period of 12 months with an immediate order. The October 2019 Tribunal was satisfied that imposing the maximum suspension would allow Dr Murshed to develop full insight into his misconduct. The Tribunal also considered that 12 months suspension would send out a signal to the doctor, the profession and the public about what is regarded as behaviour unbecoming a registered doctor.

9. The October 2019 Tribunal determined to direct a review of Dr Murshed's case. It considered that it may assist a reviewing Tribunal if Dr Murshed provided:

- Evidence that Dr Murshed had fully remediated his misconduct, which could include, but was not limited to, a reflective statement which addressed the misconduct and an appreciation of the impact of his actions;
- Evidence that he had kept his clinical skills and knowledge up to date;
- Any other evidence Dr Murshed considered would assist the reviewing Tribunal in being satisfied that he is no longer impaired.

The October 2020 Review Hearing

10. Dr Murshed's first review took place on 30 October 2020.

11. The Tribunal noted that Dr Murshed had not engaged with the proceedings or the GMC. In addition, Dr Murshed had provided no evidence. The Tribunal could therefore make no determination on whether Dr Murshed had remediated his misconduct or kept his skills and knowledge up to date.

12. The 2020 Tribunal found that although the 2019 Tribunal had not had evidence before it that Dr Murshed had caused patients harm, there had been a potential for this to occur. The 2020 Tribunal was further satisfied that by reason of Dr Murshed's past misconduct and continuing lack of engagement, he was liable in the future to bring the medical profession into disrepute and breach one of the fundamental tenets of the medical profession.

13. The 2020 Tribunal concluded that it would undermine the public's confidence in the profession if a finding of impairment were not made.

14. When considering which sanction, if any, to impose, the 2020 Tribunal noted the aggravating factors that had been found by the 2019 Tribunal, and that Dr Murshed had not provided any evidence that would assist it during his review hearing.

15. The 2020 Tribunal determined that imposing a period of 12 month suspension would send a clear message to Dr Murshed, the profession and the public about what is regarded as behaviour unbecoming of a registered doctor. Furthermore, it considered that this period would allow Dr Murshed time to develop full insight into his misconduct.

The November 2021 Review Hearing

16. Dr Murshed's second review took place on 1 November 2021.

17. The Tribunal again noted that in terms of evidence, there was nothing before it to demonstrate that Dr Murshed acknowledged his past misconduct nor any evidence to demonstrate that he had kept his skills and knowledge up to date. It further noted the lack of any evidence that Dr Murshed had developed insight into his conduct or of any remediation, regret, apology or remorse for his actions.

18. The 2021 Tribunal was satisfied that sub paragraphs a, b and c of Dame Janet Smith’s criteria cited in paragraph 76 of *Grant* were engaged in this case. The Tribunal noted that the 2019 Tribunal had evidence before it from Dr A who said that while no direct patient harm came about from Dr Murshed’s absences in July 2018, there was however the potential for this to occur. This Tribunal determined that in the absence of any engagement with these proceedings and evidence that Dr Murshed had maintained his medical knowledge and skills he was liable in the future to act so as to put a patient or patients at unwarranted risk of harm.

19. The Tribunal could not be satisfied that Dr Murshed is not currently impaired. It determined that the doctor had not satisfied the persuasive burden that rests upon him at this stage and therefore determined that Dr Murshed’s fitness to practice remained impaired by reason of his misconduct.

20. The 2021 Tribunal determined that Dr Murshed’s conduct was serious, but fell short of being fundamentally incompatible with continued registration. The Tribunal found that imposing a period of suspension would send a further clear message to the doctor, the profession and the public about what is regarded as behaviour unbecoming a registered doctor.

21. The 2021 Tribunal directed a review of Dr Murshed’s case. It determined that it would assist the reviewing Tribunal if Dr Murshed provided:

- Evidence he has fully remediated his misconduct, which can include, but is not limited to a reflective statement which addresses the misconduct and an appreciation of the impact of his actions;
- Evidence he has kept his clinical knowledge up to date;
- Any other information Dr Murshed considers will assist his case.

Today’s Review Tribunal

The Evidence

22. The Tribunal now has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr Murshed's fitness to practise remains impaired by reason of Misconduct.

23. The Tribunal has taken into account all the evidence received, including, but not limited to:

- Determinations of the previous Tribunals;
- Correspondence from the GMC to Dr Murshed.

Submissions of Miss Ingham, on behalf of the GMC

24. On behalf of the GMC, Miss Ingham submitted that Dr Murshed has continued to not engage with the GMC and further submitted that Dr Murshed has provided no evidence as to whether he has remediated his misconduct or kept his skills and knowledge up to date

25. Miss Ingham submitted that accordingly, Dr Murshed remains impaired by reason of his misconduct.

The Relevant Legal Principles

26. In a review case, in practical terms, there is a persuasive burden upon the doctor to demonstrate that all the concerns which have previously been identified have been adequately addressed, and that remediation has taken place. If satisfied that any previous conduct was highly unlikely to be repeated, the Tribunal could then conclude that the doctor's fitness to practise is no longer impaired.

27. The Tribunal reminded itself that the decision in relation to impairment is a matter for the Tribunal's judgement alone. The November 2021 Tribunal set out the evidence that a future Tribunal may be assisted by. This Tribunal is aware that it is for the doctor to satisfy it that he would be safe to return to unrestricted practice.

28. This Tribunal must determine whether Dr Murshed's fitness to practise is impaired today, taking into account his efforts to address the concerns around his practice.

The Tribunal's Determination on Impairment

29. In reaching its decision, the Tribunal bore in mind that its primary responsibility is to uphold the statutory overarching objective which is as follows:

- To protect, promote and maintain the health, safety and well-being of the public;
- To promote and maintain public confidence in the medical profession;
- To promote and maintain proper professional standards and conduct for members of that profession.

30. The Tribunal considered the previous determinations and the submissions from Miss Ingham.

31. The Tribunal noted that the 2019 Tribunal determined that while no direct patient harm occurred from Dr Murshed's absences in July 2018, there had been the potential for this to have occurred.

32. The Tribunal considered that Dr Murshed had completely failed to meet the persuasive burden on him to demonstrate he had dealt with past concerns. In terms of the evidence, there was nothing before the Tribunal to demonstrate that Dr Murshed had acknowledged his past misconduct and had remediated it, nor any evidence to demonstrate that he had kept his skills and knowledge up to date. The Tribunal further noted there was a lack of any evidence that Dr Murshed had developed insight into his conduct or expressed any appropriate regret, apology or remorse for his actions.

33. The Tribunal decided that, in the circumstances above, and in the absence of any engagement in these proceedings, there remained the potential that Dr Murshed could put a patient or patients at unwarranted risk of harm in the future. The Tribunal therefore decided that Dr Murshed's fitness to practise was impaired, based on a risk of repetition of misconduct.

34. The Tribunal noted that Dr Murshed has now failed to engage with his regulator for nearly four years. The Tribunal took the view that this indicated the potential for

deterioration in his competencies and his continued disengagement from the proceedings increased the Tribunal's concerns over his attitude to his past misconduct.

35. The Tribunal further decided that Dr Murshed's failure to engage with his regulator for nearly four years also damages public confidence in the profession and undermines professional standards. The Tribunal considered that it is wholly unacceptable for a registered doctor to ignore his regulator for this length of time. Therefore, a finding of impairment was also necessary, in order to maintain public confidence in the profession and to maintain professional standards.

36. The Tribunal determined that Dr Murshed's fitness to practice remains impaired by reason of his misconduct.

Determination on Sanction - 11/11/2022

1. Having determined that Dr Murshed's fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 22(1)(h) of the Rules on the appropriate direction as to sanction, if any, to impose.

The Evidence

2. The Tribunal has taken into account the background to the case and the evidence received during the earlier stage of the hearing where relevant to reaching a decision on what action, if any, it should take with regard to Dr Murshed's registration.

Submissions of Miss Niamh Ingham, on Behalf of the GMC

3. On behalf of the GMC, Miss Ingham submitted that the appropriate sanction at this stage in the case of Dr Murshed was one of erasure.

4. Miss Ingham submitted that Dr Murshed has continued for a third consecutive sanction period to fail to engage with the fitness to practise proceedings in any capacity.

5. Miss Ingham submitted that there has been no evidence of developing insight or remediation and further submitted that the GMC is of the opinion that there are no mitigating factors in this case.
6. Miss Ingham submitted that taking no action is not appropriate in this case. She further submitted that conditions are unworkable and not appropriate. With regard to suspension, Miss Ingham submitted that suspension 'has not worked' and since 2019 Dr Murshed has shown blatant disregard for the fitness to practise proceedings. Miss Ingham stated that it is difficult to see what benefit further suspension would have.
7. Miss Ingham concluded that Dr Murshed has continually disengaged with his regulator, shown deliberate or reckless disregard for the standards set out in GMP and demonstrated a persistent lack of insight into his shortcomings. Accordingly, Miss Ingham submitted that erasure is the appropriate sanction at this stage in Dr Murshed's proceedings.

The Tribunal's Determination on Sanction

8. The Tribunal was aware that the decision as to the appropriate sanction, if any, to impose on Dr Murshed's registration is a matter for this Tribunal alone, exercising its own independent judgement.
9. In reaching its decision, the Tribunal had regard to relevant paragraphs of the Sanctions Guidance (SG). It has borne in mind that the purpose of a sanction is not to be punitive, although it may have a punitive effect. The Tribunal also had regard to the principle of proportionality, and it weighed Dr Murshed's interests against those of the public.
10. In deciding what sanction, if any, to impose, the Tribunal considered each of the options available starting with the least restrictive.

No action

11. The Tribunal determined that in view of the serious nature of the previous Tribunal's findings on impairment, and Dr Murshed's lack of engagement, it would be neither sufficient, proportionate nor in the public interest, to conclude this review by taking no action.

Conditions

12. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Murshed's registration. The Tribunal bore in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

13. The Tribunal determined that given Dr Murshed's lack of engagement in these proceedings and the seriousness of his misconduct, conditions would not be appropriate, proportionate, workable or measurable.

Suspension

14. The Tribunal next considered whether it would be appropriate to impose a further period of suspension on Dr Murshed's registration. The Tribunal had regard to paragraphs 92 and 97 of the SG, which sets out situations in which suspension may be the appropriate course:

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)

...

97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.

...

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

...

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

15. At this stage in proceedings, the Tribunal was not satisfied that the above factors, set out in sub-paragraphs (e) and (g) in particular, were present in Dr Murshed's case. The Tribunal considered that Dr Murshed has displayed a serial unwillingness to engage with his regulator and that he posed a significant risk of repeating his behaviour. Dr Murshed has failed to engage with his regulator for some three years since the suspension was originally imposed. During those three years, Dr Murshed has had ample time to demonstrate his potential for remediation and has not done so. The Tribunal was also concerned that it had no information on whether he had kept his skills and competence up to date.

16. The Tribunal further considered that, in this case, there is evidence that demonstrates that remediation would be unlikely to be successful, because of Dr Murshed's unwillingness to take any proactive steps to demonstrate that he is trying to remedy his misconduct.

17. The Tribunal noted that there has been no evidence of any reflection following the finding of impaired fitness to practise in 2019 nor of evidence of continuing professional development.

18. Further, the Tribunal is not satisfied that Dr Murshed has insight into his misconduct. He has shown no sign of having reflected on the concerns around his actions which have led to these proceedings and has not demonstrated to the Tribunal that his insight is developing or present at all.

Erasure

19. The Tribunal, having concluded that a suspension order would be insufficient to protect the wider public interest, determined that the appropriate and proportionate sanction is erasure. In reaching this conclusion the Tribunal took into account the following factors as set out in the below paragraphs of the SG:

‘108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor

109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).

b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.

...

j Persistent lack of insight into the seriousness of their actions or the consequences

20. The Tribunal decided that Dr Murshed’s initial misconduct had involved a risk to patient safety. Further, his continued disengagement with the regulator showed a disregard for the principles set out in GMP, which state:

12 You must keep up to date with, and follow, the law, our guidance and other regulations relevant to your work.

...

73 You must cooperate with formal inquiries and complaints procedures and must offer all relevant information while following the guidance in Confidentiality.

His failure to engage with this process and/or to communicate with his regulator indicated a persistent lack of insight into the seriousness of his actions and their consequences.

21. The Tribunal took into account its finding that Dr Murshed does not have insight into his failings which led to the initial finding that his fitness to practise was impaired. The Tribunal considered that, after several years of suspended registration, Dr Murshed's insight had not developed and no steps have been taken by the doctor to address the deficiencies and remediate his conduct.

22. The Tribunal noted that at Dr Murshed's previous review hearing, the 2021 Tribunal gave him a period of 12 months to engage with his regulator, remediate his conduct and develop his insight, but he has failed to do so. This had been the same as the intention of the Tribunals in 2019 and 2020. Despite this, Dr Murshed had failed to respond.

23. The Tribunal has concluded that, due to the persistence of his failure to engage and address the concerns regarding his fitness to practise over the period of these proceedings from 2019, these factors are now fundamentally incompatible with his registration as a doctor. Accordingly, the Tribunal has concluded that erasure is the appropriate and proportionate sanction. In the view of the Tribunal, no lesser sanction would serve to protect patient safety, maintain public confidence in the profession and maintain professional standards.

24. The Tribunal therefore directed that Dr Murshed's name be erased from the medical register. The MPTS will send Dr Murshed a letter informing him of his right of appeal and when the direction and the new sanction will come into effect.

25. Unless Dr Murshed exercises his right of appeal, his name will be erased from the medical register 28 days from the date on which written notice of this decision is deemed to have been served upon him. The suspension currently imposed on Dr Murshed's registration shall continue to have effect until the appeal period has concluded. If Dr Murshed decides to exercise his right of appeal, the period of suspension currently imposed on his registration shall continue to have effect until the appeal has been decided. A note explaining Dr Murshed's right of appeal will be sent to him.

26. This concludes the case.

ANNEX A – 11/11/2022

Determination on Service and Proceeding in Absence

Service

63. Dr Murshed is not present today at this Medical Practitioners Tribunal ('MPT') hearing. The Tribunal therefore considered whether the relevant documents had been 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 fourth Schedule to the Medical Act 1983.

64. Miss Niamh Ingham, Counsel, on behalf of the GMC, provided the Tribunal with various documents regarding service of Notice of the Hearing of Dr Murshed. This included:

- Screenshots of Dr Murshed's registered address and registered email address;
- GMC information letter (Rule 34(9) dated 28 September 2022;
- Notice of Hearing sent by MPTS to Dr Murshed by registered post on 30 September 2022 to Dr Murshed's registered address;
- Proof of service for GMC information letter (returned to sender);
- Returned GMC information letter received by GMC;
- Proof of service for Notice of Hearing sent by the MPTS;
- Telephone call to Dr Murshed dated 9 November 2022.

65. Miss Ingham submitted that all reasonable efforts have been made by the GMC to serve notice on Dr Murshed and that it is clear that he has voluntarily absented himself not only from today's proceedings, but throughout these proceedings as a whole. Miss Ingham concluded that accordingly, it is appropriate to proceed in Dr Murshed's absence.

66. The Tribunal had regard to the documents before it and the submissions made by Miss Ingham and was satisfied that notice of this hearing had been served in accordance with Rules 20 and 40.

Proceeding in Absence

67. Having been satisfied that notice was properly served upon Dr Murshed, the Tribunal then considered whether to proceed with this hearing in his absence, in accordance with Rule 31 of the Rules. The Tribunal was conscious that in accordance with the principles in *R v Jones (2001) EWCA Crim 168* and *Adeogba (2016) EWCA Civ 162*, 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.

68. The Tribunal noted that doctors have an obligation to keep their details up to date. It was therefore content that the home address and email address on Siebel were correct.

69. The Tribunal has evidence before it that Dr Murshed was aware of the hearing commencing on 11 November 2022. The Tribunal determined that Dr Murshed has chosen to voluntarily absent himself from today's proceedings. Furthermore, it has not received any indication that Dr Murshed has requested an adjournment in order to engage at a later date.

70. The Tribunal concluded that it is in the public interest and in the interests of justice to proceed with this hearing today.

71. Accordingly, the Tribunal determined that it was fair and appropriate to proceed in Dr Murshed's absence.