

PUBLIC RECORD

Date: 30/10/2020

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
Suspension, 12 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Kenneth Hamer
Medical Tribunal Member:	Dr Meenakshi Verma
Medical Tribunal Member:	Dr Liz Ball

Tribunal Clerk:	Ms Jeanette Close
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Attendance and Representation:

Medical Practitioner:	Not present and not represented
GMC Representative:	Mr Alan Taylor, 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 - 30/10/2020

The Outcome of Applications Made during the Impairment Stage

1. The Tribunal granted the GMC's application, made pursuant to Rules 20 and 40 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that notice of this hearing had properly been served on Dr Murshed, and granted its application, made pursuant to Rule 31 of the Rules, that this hearing should proceed in his absence. The Tribunal's full decision on these applications is included at Annex A.

Background

The 2019 Tribunal

2. Dr Murshed's Medical Practitioners Tribunal hearing took place in October 2019 ('the 2019 Tribunal'). The facts found proved at Dr Murshed's hearing can be summarised as follows. On 2 July 2018 Dr Murshed failed to report for a shift at North Cumbria University Hospitals NHS Trust (the Trust) and failed to give adequate notice to the Trust and to Locum People ('the agency'). At the time of the events Dr Murshed was the subject of an active GMC warning issued to him in September 2017 in respect of similar conduct which had occurred over the period of October 2016 and April 2017.
3. The 2019 Tribunal found that Dr Murshed in failing to report for his shift at the Trust on 2 July 2018 and failing to give adequate notice to the Trust and the agency, had breached paragraphs 38 and 65 of Good Medical Practice (2013 Edition) ('GMP'). The 2019 Tribunal found that by virtue of Dr Murshed's repetition of similar conduct, he had compromised the public's trust in the profession.
4. The 2019 Tribunal also found that Dr Murshed had failed to adhere to the warning issued to him in 2017 and that his actions at the time had the potential to compromise patient

safety. It considered that Dr Murshed had failed in his duty to the public and to the medical profession when he did not attend for a shift that he had agreed to.

5. The 2019 Tribunal considered that Dr Murshed was aware of the active GMC warning, yet he chose not to report for an agreed shift at the Trust. It considered that this was a serious failure on Dr Murshed's part. The 2019 Tribunal determined that Dr Murshed's actions fell short of the standards of conduct reasonably to be expected of a doctor and it amounted to misconduct.
6. In considering whether Dr Murshed's fitness to practise was impaired by reason of his misconduct, the 2019 Tribunal considered that this type of conduct was remediable and that it was possible for Dr Murshed to develop understanding and insight into his behaviour. However, the 2019 Tribunal noted that, although Dr Murshed understood the seriousness of his actions, he showed a complete lack of insight into the potential impact his actions could have had on patients. It considered that Dr Murshed's insight was limited and solely concerned with his own interests.
7. In light of the lack of engagement on the part of Dr Murshed throughout the proceedings, the 2019 Tribunal could not be confident that he would not repeat his behaviour. It considered that at the time of the events Dr Murshed knew the consequences of his actions, yet still repeated his behaviour in spite of the GMC warning.
8. The 2019 Tribunal found that Dr Murshed had breached his warning which had the potential to put patients at risk. It considered that this undermined the public's trust and confidence in the medical profession and the GMC's efforts to promote and maintain proper professional standards and conduct.
9. In all of the circumstances the 2019 Tribunal determined that a finding of impairment was necessary in Dr Murshed's case 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.
10. In reaching its decision on the appropriate sanction to impose, the 2019 Tribunal considered the seriousness of Dr Murshed's misconduct which involved failure to attend a shift on 2 July 2018; failing to give adequate notice to the Trust and to the agency; and his repeating behaviour, despite a formal GMC warning.

11. The 2019 Tribunal also considered the aggravating factors in Dr Murshed’s case, including:
 - Lack of insight into the implications of his actions; and
 - No evidence of any remediation, regret, remorse, or apology for his failure to attend the shift on 2 July 2018.

12. The 2019 Tribunal determined that Dr Murshed’s misconduct was so serious that action was required to maintain public confidence in the profession. It considered that whilst Dr Murshed’s behaviour was a serious breach of the principles of GMP, it was not fundamentally incompatible with continued registration. The 2019 Tribunal determined that a period of suspension would be the appropriate and proportionate sanction in Dr Murshed’s case and would maintain public confidence in the profession and uphold and maintain proper standards of conduct for members of the profession.

13. In considering the appropriate period of suspension, the 2019 Tribunal had regard to the seriousness of the misconduct and considered that imposing the maximum period of 12 months would send a clear message to the doctor, the profession and the public about what is regarded as behaviour unbecoming a registered doctor. Furthermore, it considered that a 12-month period of suspension would allow Dr Murshed time to develop full insight into his misconduct.

14. The 2019 Tribunal determined to direct a review of Dr Murshed’s case. It was of the view that the onus would be on Dr Murshed to demonstrate how he had remediated his conduct. It determined that it would assist a 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; and
 - Evidence he has kept his clinical skills and knowledge up to date.

Today’s Review Hearing

15. 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 his misconduct.

The Evidence

- Record of Determinations from the 2019 hearing;
- Letter from the GMC to Dr Murshed, dated 5 December 2019;
- Letter from the GMC to Dr Murshed, dated 16 January 2020; and
- Letter from the GMC to Dr Murshed, dated 2 July 2020.

Submissions

16. On behalf of the GMC, Mr Taylor submitted that the question before the Tribunal today was whether or not Dr Murshed's fitness to practise remains impaired. Mr Taylor stated that the 2019 Tribunal had given Dr Murshed "a clear steer" as to what he would need to provide to a reviewing Tribunal in terms of demonstrating remediation and insight into the misconduct that was found proved against him.
17. Mr Taylor stated that Dr Murshed had provided no evidence whatsoever to this Tribunal of insight into his actions and no evidence of any remediation, regret, remorse or apology. Mr Taylor submitted that the Tribunal could not be confident that Dr Murshed would not repeat his actions in the future. He stated that given the context in which they had occurred, whilst Dr Murshed was subject to an active GMC warning for similar conduct, the Tribunal could not be confident that there would not be a repetition of similar conduct.
18. Mr Taylor referred the Tribunal to the case law of *Abrahaem v GMC* [2008] EWHC 183 (Admin), and the comments made by Mr Justice Blake that a reviewing Tribunal should consider whether all of the concerns raised have been sufficiently addressed to the reviewing panel's satisfaction. Mr Taylor stated that the persuasive burden at a review hearing is on the practitioner to demonstrate that the concerns of the previous Tribunal have been addressed.
19. Mr Taylor also referred to the case law of *CHRE v NMC and Paula Grant* [2011] EWHC 927 (Admin) and the need to have regard to both public protection and the wider public interest when considering the question of current impairment.
20. Mr Taylor submitted that in the absence of any communication from Dr Murshed and any evidence of remediation or insight into the gravity of misconduct; any evidence of remorse; apology; regret; or evidence that he would not repeat his misconduct, the Tribunal should conclude that Dr Murshed's fitness to practise remains impaired by reason of misconduct.

The Relevant Legal Principles

21. The Tribunal reminded itself that at this stage of the proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal’s judgement alone.
22. The Tribunal must determine whether Dr Murshed’s fitness to practise is impaired today, taking into account his conduct since the previous Tribunal proceedings and any relevant factors since then, such as whether issues of concern have been remedied, whether Dr Murshed has developed insight and the likelihood of repetition of his misconduct.
23. In *Khan v. General Pharmaceutical Council [2017] 1 WLR 169 SC (Sc)*, Lord Wilson JSC said:

27...[T]he focus of a review is upon the current fitness to practise of the registrant to resume practice, judged in the light of what he has, or has not, achieved since the date of suspension. The review committee will note the particular concerns articulated by the original committee and seek to discern what steps, if any, the registrant has taken to allay them during the period of suspension. The original committee will have found that his fitness to practise was impaired. The review committee asks: “Does his fitness to practise remain impaired”?

24. The Tribunal reminded itself that there is a persuasive burden on the medical practitioner to demonstrate that the concerns of the 2019 Tribunal have been sufficiently addressed.
25. Throughout its deliberations, the Tribunal bore in mind the statutory overarching objective, which includes:
 - protecting, promoting and maintaining the health, safety and well-being of the public;
 - promoting and maintaining public confidence in the medical profession; and
 - promoting and maintaining proper professional standards and conduct for members of that profession.

The Tribunal's Determination on Impairment

26. In considering whether Dr Murshed's fitness to practise is currently impaired by reason of his past misconduct, the Tribunal has taken account of all the documentary evidence presented to it together with the submissions made by Mr Taylor on behalf of the GMC.
27. The Tribunal also had regard to the case law of *Grant* where Mrs Justice Cox stated at paragraphs 74 and 76:

"74 ...In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances."

...

"76... Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. 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."*

28. The Tribunal noted the total lack of engagement with these proceedings on the part of Dr Murshed and that he had not engaged with the GMC since the conclusion of his substantive hearing in October 2019.
29. The Tribunal also 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 has 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.

30. The 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 has maintained his medical knowledge and skills he is liable in the future to act so as to put a patient or patients at unwarranted risk of harm.
31. The Tribunal is further satisfied that by reason of his past misconduct and continuing lack of engagement with these proceedings Dr Murshed has in the past brought and is liable in the future to bring the medical profession into disrepute and breach one of the fundamental tenets of the medical profession as stated in *Good medical practice*, namely to make the care of your patients your first concern.
32. The Tribunal considered the statutory overarching objective and concluded that public confidence would be undermined if a finding of impairment were not made in the particular circumstances of this case.
33. The Tribunal has therefore determined that Dr Murshed’s fitness to practise remains impaired by reason of misconduct.

Determination on Sanction - 30/10/2020

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

Submissions

2. On behalf of the GMC, Mr Taylor referred to the relevant paragraphs of the Sanctions Guidance (November 2019) (‘the SG’) and made submissions on the appropriate and proportionate sanction.
3. Mr Taylor submitted that there is no evidence upon which the Tribunal can conclude that it is safe for Dr Murshed to resume practice. He stated that there is a complete lack of evidence from Dr Murshed that he has kept his knowledge and skills up to date and

there was no evidence of insight or remediation. Mr Taylor stated that there are no exceptional circumstances that would warrant taking no action in Dr Murshed's case.

4. Mr Taylor submitted that conditions would be neither appropriate nor proportionate in Dr Murshed's case. He stated that Dr Murshed had failed to engage with his regulator for a prolonged period of time. Despite the 2019 Tribunal giving Dr Murshed clear direction on the information he should provide to a reviewing Tribunal Dr Murshed had presented no evidence whatsoever. Mr Taylor stated that the Tribunal could not be confident that Dr Murshed would comply with any conditions imposed on his registration.
5. Mr Taylor submitted that Dr Murshed has been subject to a period of suspension for 12 months following his MPTS hearing in 2019, and that a further period of suspension was the proportionate and appropriate response. He stated that Dr Murshed's misconduct was serious with a pattern of previous and similar conduct. Mr Taylor said that a period of suspension would meet all three limbs of the overarching objective and was the appropriate sanction in this case.

The Tribunal's Determination on Sanction

6. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgement.
7. It reminded itself that at this stage of the proceedings, there is no burden or standard of proof and the decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own independent judgement.
8. In reaching its decision, the Tribunal has taken account of the SG and of the overarching objective. It has borne in mind that the purpose of sanctions is not to be punitive, but to protect patients and the wider public interest, although the sanction may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Murshed's interests with the public interest.
9. The Tribunal has borne in mind that, in deciding what sanction, if any, to impose, it should consider all the sanctions available, starting with the least restrictive.

No action

10. The Tribunal first considered whether to take no further action. The Tribunal considered that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances and determined that such circumstances do not exist in this case.
11. The Tribunal concluded that taking no action would be neither appropriate, proportionate, nor in the public interest.

Conditions

12. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Murshed's registration. It has borne in mind that any conditions must be appropriate, proportionate, workable and measurable.
13. The Tribunal has determined that conditions would neither be appropriate nor workable, as they would not address Dr Murshed's misconduct, lack of insight and remediation into his misconduct.

Suspension

14. The Tribunal next considered whether it should impose a further period of suspension on Dr Murshed's registration and had regard in particular to paragraphs 91 and 92 of the SG which set out the circumstances in which suspension may be the appropriate sanction:

'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).'

15. The Tribunal noted the aggravating factors concerning Dr Murshed’s misconduct which the 2019 Tribunal had regard to. These were:
- Lack of insight into the implications of his actions;
 - No evidence of any remediation, regret, remorse or apology for his failure to attend the shift of 2 July 2018
16. The Tribunal also noted that Dr Murshed failed to pay heed to the recommendations of the 2019 Tribunal that he provide:
- Evidence that 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; and
 - Evidence that he has kept his clinical skills and knowledge up to date
17. This Tribunal has received no evidence from Dr Murshed of insight, remediation and his current state of medical knowledge and skills. The Tribunal considered that a further period of suspension would afford Dr Murshed the opportunity to engage with his regulator.
18. The Tribunal determined that a period of suspension would be the appropriate and proportionate sanction in Dr Murshed’s case and would maintain public confidence in the profession and uphold and maintain proper standards of conduct for members of the profession.
19. The Tribunal considered that imposing a period of 12 months would send a clear message to the doctor, the profession and the public about what is regarded as behaviour unbecoming a registered doctor. Furthermore, it considered that a 12-month period of suspension would allow Dr Murshed time to develop full insight into his misconduct.
20. The Tribunal determined to direct a review of Dr Murshed’s case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Murshed to demonstrate how he has remediated his conduct. It determined that it would assist a 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; and

- Evidence he has kept his clinical skills and knowledge up to date.
21. Dr Murshed will also be able to provide any other information that he considers will assist.
 22. Accordingly, the Tribunal direct that the current period of suspension shall be extended for a further period of 12 months from the time when it would otherwise expire.

Confirmed

Date 30 October 2020

Mr Kenneth Hamer, Chair

ANNEX A – 30/10/2020

Service and Application to Proceed in Absence

1. Dr Murshed is neither present nor legally represented at this hearing. The Tribunal has considered Mr Taylor’s submissions, on behalf of the General Medical Council (GMC).

Service

2. Mr Taylor referred the Tribunal to the ‘Service Bundle’ from the GMC. This included a screen shot of Dr Murshed’s confirmed registered address and email. The bundle also contained a ‘Certificate of Service’ dated 16 September 2020, confirming that the GMC Information Cover Letter and the Hearing Bundle was sent via first class post to Dr Murshed’s registered address. It also included a copy of the GMC’s Notice of Hearing letter which had been sent via email to Dr Murshed on 15 September 2020 at 16:24. After receiving no reply to this email, the GMC sent a chaser email on 18 September 2020 at 16:51, again the GMC received no response from Dr Murshed.
3. Mr Taylor stated that on 2 July 2020, the GMC had sent a letter to Dr Murshed’s registered address requesting information for today’s proceedings. Mr Taylor stated that Dr Murshed has been aware of today’s hearing date as far back as 2 July 2020.
4. The Tribunal was provided with a ‘track and trace’ document which showed that the MPTS notice of hearing letter dated 28 September 2020 sent to Dr Murshed’s registered address had been signed for by ‘A Murshed’ at 11:03 am on 30 September 2020.
5. The Tribunal was satisfied, based on the evidence before it, that service of these proceedings had been effected in accordance with the Rules.

Proceeding in Absence

6. Having been satisfied that the Notice of Hearing has been properly served, the Tribunal went on to consider whether to exercise its discretion under Rule 31 of the Rules to proceed with the hearing in Dr Murshed’s absence.
7. Mr Taylor referred the Tribunal to the relevant case law and went through the factors which the Tribunal must bear in mind when exercising its discretion to proceed in the absence of the registrant, as set out in the cases of:

- *R v Jones [2003] AC 1, HL;*
 - *GMC v Adeogba [2016] EWCA Civ 162;*
8. Mr Taylor submitted that whilst fairness to the doctor is a prime consideration when considering whether to proceed in the absence of the registrant, fairness to the GMC should also be considered. Mr Taylor stated that it was in the public interest that Dr Murshed’s review should be heard expeditiously.
 9. Mr Taylor stated that Dr Murshed has taken the decision not to attend these proceedings and his absence was voluntary. He reminded the Tribunal that Dr Murshed has not engaged with the GMC since his substantive hearing in October 2019. Mr Taylor stated that given the history of Dr Murshed’s lack of engagement, no purpose would be served in granting an adjournment as there was no reason to believe that it would result in Dr Murshed’s future attendance.
 10. Mr Taylor invited the Tribunal to proceed in Dr Murshed’s absence pursuant to Rule 31.
 11. The Tribunal has borne in mind that its discretion to proceed in the absence of a registrant should be exercised with the utmost care and caution. It also considered the need to balance Dr Murshed’s interests, with the overarching statutory objective.
 12. The Tribunal accepted Mr Taylor’s submissions. The Tribunal has received no request for an adjournment from Dr Murshed to enable him to attend on a later date and there is no reason to believe that granting an adjournment would result in Dr Murshed’s future attendance.
 13. The Tribunal took account of the potential disadvantage to Dr Murshed in not attending the hearing but weighed that against the wider public interest. The Tribunal concluded that all reasonable efforts have been made to contact Dr Murshed and it is satisfied that Dr Murshed has voluntarily absented himself from these proceedings.
 14. In accordance with Rule 31, the Tribunal determined that it was appropriate to proceed with the hearing in Dr Murshed’s absence.