

## PUBLIC RECORD

Dates: 12/04/2021 - 13/04/2021

Medical Practitioner's name: Dr Almona MUSA

GMC reference number: 4663313

Primary medical qualification: LMSSA 1999 Society of Apothecaries of  
London

| Type of case  | Outcome on facts                             | Outcome on impairment |
|---------------|--|-----------------------|
| New - Caution | Facts relevant to impairment<br>found proved | Not Impaired          |

## Summary of outcome

No warning

## Tribunal:

|                          |                  |
|--------------------------|------------------|
| Legally Qualified Chair  | Ms Margaret Obi  |
| Lay Tribunal Member:     | Miss Susan Hurds |
| Medical Tribunal Member: | Dr Andrew Hoyle  |

|                 |                   |
|-----------------|-------------------|
| Tribunal Clerk: | Miss Kanwal Rizvi |
|-----------------|-------------------|

## Attendance and Representation:

|  |  |
|--|--|
| Medical Practitioner:                  | Present and represented  |
| Medical Practitioner's Representative: | Mr Andrew Colman, Counsel, instructed by<br>RadcliffesLeBrasseur |
| GMC Representative:                    | Ms Victoria Gainza, 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 and Impairment - 13/04/2021

1. The Tribunal determined, in accordance with Rule 41 of the General Medical Council ('GMC') ('Fitness to Practise') Rules Order of Council 2004 ('the Rules'), that the hearing would be heard partly in public and partly in private.
2. The determination will be announced in private, XXX. However, a redacted version of this determination will be published at the conclusion of the hearing.

## Determination on Facts

3. At the outset of these proceedings, Mr Colman, on behalf of Dr Musa confirmed that the factual Allegation was admitted in its entirety. The Tribunal therefore announced the Allegation was admitted and found proved.
4. The admitted factual Allegation is as follows:
  1. On 12 July 2019 at Wembley Police Station you accepted a caution for Common Assault. **Admitted and found proved**

## Impairment

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

## Background

6. Dr Musa qualified in the Czech Republic in 1998. She undertook various House officer posts in the UK and completed her GP training in 2004. Dr Musa worked as a salaried GP and a partner in a practice in Kilburn Park before joining the Shaftesbury Medical Centre in

Harrow Middlesex ('the Practice') in 2009. She was appointed a GP Trainer at the Practice in 2014 XXX.

7. On 12 July 2019 at Wembley Police Station Dr Musa accepted a caution for Common Assault. The background circumstances are set out below.

8. XXX.

9. The incident was reported to NHS England. On 5 March 2019, the Head of Practitioner Performance & Revalidation for NHS England's London Region contacted Dr Musa, requesting a Voluntary Undertakings Agreement that she would stand down from clinical work and contact with patients pending an investigation. Dr Musa agreed. However, she was permitted to undertake administrative and managerial responsibilities. That same day Dr Musa informed Health Education England ('HEE') that she would be relinquishing her role as a GP trainer with immediate effect.

10. On 7 March 2019, Dr Musa agreed to be interviewed by the police as a volunteer. A legal representative was present during the interview. The audio recording of the interview has since been lost but the notes of the interview confirm that Dr Musa admitted that once or twice, she had XXX in "*the heat of the moment*". She described the physical contact as a '*one or two taps*' XXX. On a scale from 1-10 she stated that the level of force she used was less than 5. No marks were left. XXX. During the interview Dr Musa expressed regret and remorse.

11. XXX.

12. On 12 July 2019, Dr Musa accepted a police caution for common assault.

13. On 16 July 2019, Dr Musa referred herself to the GMC.

14. On 15 August 2019, the Voluntary Undertakings Agreement was lifted which meant that Dr Musa was able to resume providing the full range of services to her patients.

### Witness Evidence

15. The Tribunal received evidence, on behalf of the GMC, in the form of a witness statement, dated 26 September 2019, from DC A XXX of the Metropolitan Police.

16. Dr Musa provided her own witness statement dated 24 February 2021 and gave oral evidence at the hearing.

### Documentary Evidence

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

- Dr Musa’s self-referral, dated 26 July 2019;
- The police caution, dated 12 July 2019;
- DC A’s notes of Dr Musa’s police interview, dated 7 March 2019;
- Emails between the GMC and the Metropolitan Police, dated 18 November 2019;
- Records provided by NHSE including appendices: email regarding Voluntary Undertakings Agreement and F2F meeting notes, on various dates;
- Factual statement and reflective statements, dated 9 August 2019;
- XXX;
- XXX.
- 2020 appraisal, dated 20 January 2020;
- Further reflective statement, dated March 2021;
- Various testimonials;
- Continuing Professional Development (CPD); and
- Patient feedback forms.

#### Dr Musa’s Evidence

18. Dr Musa, in her oral evidence, explained the background circumstances. She told the Tribunal that *“it was very much in the heat of the moment and was not planned by any means”*. XXX.

19. Dr Musa described her XXX as a *“stupid mistake”* and stated that she had used *“low-level force”*.

20. In her reflective statement, dated March 2021, Dr Musa stated:

*‘I have felt deeply ashamed of what has happened and extremely sorry for the impact on XXX and on the profession and to my patients. I have expressed a great deal of remorse to the Police and accepted responsibility for what took place many months ago. I have learnt from this traumatic and painful experience and this will never happen again. I understand the difficulties this has placed on the regulatory authorities in determining my return to work and I have engaged fully with them. I understand fully the need to protect the Public Interest. I have also made a self-referral to the GMC about my personal conduct. I have been reflecting on the circumstances and my personal background that has led to this incident.’*

21. In cross examination, Dr Musa was asked to expand on the impact of her conduct referred to in her written reflection statement. XXX. She recognised that she was not accessible to her patients, during the 6 month period when she was subject to the Voluntary Undertakings Agreement, and that their clinical care had to be provided by locums which caused some concern to her patients. She also recognised the reputational damage to the profession caused by her actions. She acknowledged that doctors are not expected to have cautions for common assault.

22. XXX.

23. Dr Musa told the Tribunal that she had taken the opportunity to learn and reflect on her behaviour and would continue to do this.

### Submissions

24. Ms Gainza, on behalf of the GMC, submitted that Dr Musa's fitness to practise is currently impaired by reason of her caution. She referred the Tribunal to relevant caselaw and submitted that the circumstances of the caution are such that public confidence would be undermined if a finding of impairment is not made. She also submitted that a finding of impairment is necessary to uphold proper standards.

25. Ms Gainza submitted that the GMC take no issue in relation to Dr Musa's clinical skills and competence as a GP. She further submitted that it is evident from the material produced that Dr Musa has expressed remorse and has taken considerable steps to remediate her conduct. However, she submitted the caution was administered for an offence of violence which is a serious matter. XXX.

26. Ms Gainza submitted that although the Tribunal may sympathise with the background circumstances as described by Dr Musa an offence of common assault requires a finding of impairment to maintain public confidence and maintain proper professional standards of the profession.

27. Mr Colman, on behalf of Dr Musa, submitted that Dr Musa's fitness to practise is not impaired. In support of this submission he invited the Tribunal to consider the following points:

- She fully accepted that her XXX was unacceptable during the police interview, XXX. Further, she has fully accepted the facts before this Tribunal;
- In her reflective statements and during her oral evidence she has demonstrated genuine and heartfelt remorse;
- XXX;
- XXX. NHS England were satisfied that she could return to unrestricted work after a period of undertakings; and
- She has provided positive testimonials and patient feedback.

28. Mr Colman submitted that there are no public safety concerns as a consequence of Dr Musa's caution for common assault. Although, he acknowledged that public confidence may be impacted by such cases, he further submitted that if the public were fully informed of the

steps Dr Musa has taken since the incident and the depth and sincerity of her remorse and reflection, they would conclude that there is no realistic risk of repetition.

29. Mr Colman invited the Tribunal to conclude that nobody has taken this case more seriously than Dr Musa. XXX.

30. Mr Colman told the Tribunal that Dr Musa has taken every possible step to remedy what she deeply felt was her failing XXX. He stated that Dr Musa has attended XXX; undertaken targeted CPD; anger management seminar; adjusted her work-life balance and established a support network XXX. Mr Colman invited the Tribunal to note that Dr Musa's legal representatives, were in the unusual position of being unable to suggest any further steps she could undertake by way of remediation that she had not already undertaken on her own initiative.

31. Mr Colman submitted that Dr Musa has been open and honest throughout the police investigation process and these regulatory proceedings, she has demonstrated genuine remorse and regret for her actions and that a finding of impairment would be unnecessary in this case.

### **The Relevant Legal Principles**

32. 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 judgment alone.

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

34. The Tribunal had regard to the principles set out in *Cohen v GMC [2008] EWHC 581 (Admin)* of (a) whether the conduct can be remediated (b) whether it has been remediated and (c) whether there is a risk of repetition. It took account of the approach adopted in the case of Yeong with regard to conduct which has the potential to undermine public trust and confidence and the general principles outlined by Mrs Justice Cox in the case of *CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin)*.

35. The Tribunal bore in mind that it must determine whether Dr Musa's fitness to practise is currently impaired by reason of her caution, taking into account her conduct at the time of the events and any other relevant factors.

### **Impairment by reason of Caution**

36. In determining whether a finding of current impairment of fitness to practise is necessary, the Tribunal noted the requirement to consider insight and remediation, and the likelihood of repetition, balanced against the three elements of the overarching statutory objective. The Tribunal was mindful that insight is a particularly important factor in

determining the relevant steps needed to address the underlying behaviour in order to reduce the likelihood of repetition.

37. The Tribunal had regard to the context. It noted that the caution for common assault was administered by the police for behaviour that occurred on no more than one or two occasions and XXX. It was significant that no action was taken XXX after a full investigation XXX. Nevertheless, Dr Musa accepted a caution for an offence of violence which is inherently serious.

38. The Tribunal was satisfied that Dr Musa poses no risk to patients. The Tribunal concluded that Dr Musa is a competent and caring medical professional. She is described in the testimonials as '*kind, caring and extremely patient*'; and as '*... a wonderful doctor whose support has made an outstanding difference to the lives of our residents.*' The testimonials speak of her '*absolute professionalism*' and '*genuine care towards all her patients, from the very young to the elderly*' with admirable concern for the vulnerable. She has also received commendations for supporting several trainees in difficulty.

39. The Tribunal then went on to consider public interest and the overarching objective. Considering the wider public interest, the Tribunal took the view that members of the public would be concerned that a GP XXX has been made subject to a caution for common assault. Such behaviour has the potential to undermine trust and confidence in the profession and the high standards of personal conduct and behaviour expected of registered medical practitioners at all times. In considering the wider public interest the Tribunal took into account the scope and level of Dr Musa's insight relative to her conduct, the evidence of remediation and the risk of repetition.

#### Insight

40. The Tribunal determined that Dr Musa has demonstrated significant insight into her actions in her reflective statements and during her oral evidence.

41. The documentary evidence and Dr Musa's oral evidence, clearly demonstrates that Dr Musa has invested a considerable amount of personal effort into gaining meaningful insight into the factors that contributed to her unacceptable XXX. The Tribunal noted that since her interview with the police on 7 March 2019, Dr Musa has attended a significant number of relevant courses and seminars; undertaken considerable reflection and has put into practice her learning. She stated during her oral evidence that '*she takes full responsibility and feels ashamed*' by her behaviour and expressed deep regret and remorse which the Tribunal accepted as genuine.

#### Remediation

42. It is the Tribunal's judgement that the concerns raised by the caution for common assault have been fully remediated. Dr Musa has addressed her XXX by attending numerous courses and has made significant changes to her work life balance to ensure that the

stressors associated with her practice as a GP have a minimal impact on her personal life. Dr Musa described in detail what she has learnt from the experience and XXX.

43. The Tribunal was satisfied that Dr Musa has translated this learning into her personal and professional environment. It determined that there was no evidence to suggest that she would not carry her professional duties appropriately. XXX.

#### Likelihood of Repetition

44. The Tribunal considered that the background circumstances and underlying contributory factors have been fully addressed, and as a consequence the risk of repetition is very low. XXX. Dr Musa has reflected upon her behaviour and has done all that could be reasonably asked of her to demonstrate that the behaviour which led to the caution is highly unlikely to be repeated.

#### **The Tribunal's Conclusion**

45. Taking the above into account, the Tribunal carefully considered and balanced the three elements of the statutory overarching objective. XXX. The Tribunal noted that a caution for common assault was sufficiently serious, even if remediated, to undermine public trust and confidence in the profession.

46. However, the Tribunal also recognised the considerable efforts made by Dr Musa and the extensive steps she has put in place to mitigate the risk of repeating her actions. The Tribunal was impressed by the substantial evidence of remorse and contrition. The Tribunal took the view that in these circumstances a reasonable and well-informed member of the public, if provided with all the information before the Tribunal, would be satisfied that Dr Musa's has done all that she can to ensure that the conduct which led to the police caution will not be repeated. Therefore, the Tribunal determined that public confidence in the medical profession would not be undermined if a finding of impairment was not made in the particular circumstances of this case. It concluded this was an isolated period of time within an otherwise unblemished career.

47. Taking all the above matters into account, the Tribunal determined that a finding of impairment is not necessary in this case. It therefore determined that Dr Musa's fitness to practise is not currently impaired by reason of her caution.

#### **Determination on Warning - 13/04/2021**

48. XXX, this determination will be announced in private. However, a redacted version of this determination will be published at the conclusion of the hearing.

#### Determination on Warning

49. As the Tribunal determined that Dr Musa’s fitness to practise was not impaired, it invited submissions from the parties as to whether a warning was required, in accordance with s35D(3) of the 1983 Act.

### Submissions

50. Ms Gainza, on behalf of the GMC, submitted that a warning should be issued in this case. She directed the Tribunal’s attention to the document ‘General Medical Council Guidance on Warnings’ (March 2021) (‘the Guidance’) and to the relevant paragraphs.

51. Ms Gainza acknowledged that Dr Musa has demonstrated insight and that there is a low risk of repetition. She also acknowledged that many of the factors relevant to the appropriateness of issuing a warning, as set out in the guidance (see reference to paragraph 32 below), were outlined by the Tribunal in its determination on impairment and also apply at this stage. However, Ms Gainza submitted that Dr Musa’s actions breached paragraph 65 of Good Medical Practice (‘GMP’) which states:

*You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession.*

52. Ms Gainza submitted that a warning is required to mark the seriousness of Dr Musa’s conduct and to send out a message to the public and wider profession regarding the standards expected of a registered medical practitioner. She invited the Tribunal to conclude that notwithstanding Dr Musa’s genuine remorse and remediation, the nature and circumstances of the offence are such that a formal response is required to uphold professional standards.

53. Mr Colman, on behalf of Dr Musa, submitted that a warning would not be necessary in this case, given the Tribunal’s findings at the impairment stage. He urged the Tribunal to consider carefully the wording of the Guidance and the theme throughout which relates to future conduct. He informed the committee that in Dr Musa’s Rule 7 response, dated January 2020, it was submitted that a warning would be appropriate. However, this was before the matter was referred to a fitness to practise Tribunal for a hearing. He submitted that since the Rule 7 response Dr Musa has had more time to reflect and remediate. He invited the Tribunal to take into account that in a number of cases, professional standards and public confidence has been found to be upheld by a rigorous regulatory process.

54. Mr Colman referred the Tribunal to the relevant paragraphs of the GMC guidance on Warnings, particularly Paragraph 32 which is headed: “*Factors to consider when deciding if a warning is appropriate*” and states:

*“If the decision makers are satisfied that the doctor’s fitness to practise is not impaired..., they can take account of a range of factors to determine whether a warning is appropriate. These might include:*

*a. the level of insight into the failing*

- b. a genuine expression of regret/apology*
- c. previous good history*
- d. whether the incident was isolated or whether there has been any repetition*
- e. any indicators as to the likelihood of the concerns being repeated*
- f. any rehabilitative/corrective steps taken*
- g. relevant and appropriate references and testimonials.”*

55. Mr Colman submitted that every single one of the above factors militates in Dr Musa’s favour. He stated that the Tribunal had expressly found that Dr Musa has demonstrated significant and meaningful insight and accepted that her expressions of regret and remorse are genuine. It has determined that the risk of repetition is very low and that the behaviour which led to the caution is highly unlikely to be repeated, having occurred during an isolated period of time within an otherwise unblemished career. He further submitted that the Tribunal has also recognised the considerable efforts and extensive steps made by Dr Musa to remediate her behaviour and acknowledged the evidence of her references and testimonials.

### **The Tribunal’s Approach**

56. In making its decision the Tribunal exercised its own judgement. It took account of the specific circumstances of this case and had regard to the submissions provided by both parties. In making its decision, the Tribunal had regard to the Guidance.

57. The Tribunal took account of the statutory overarching objective and applied the principle of proportionality by weighing the interests of the public with those of Dr Musa.

58. The test to be applied in relation to the imposition of a warning is met if there is a significant departure from the principles set out in Good Medical Practice which warrants a formal response. The Tribunal noted that warnings are a serious response to concerns that fall below the threshold for a finding of impaired fitness to practise and may be imposed to send a message to the public and the wider profession that such conduct or behaviour is unacceptable.

### **The Tribunal’s Determination**

59. The Tribunal took account of the fact that Dr Musa’s police caution for common assault related to an isolated period within the context of her personal life. The Tribunal reminded itself of its findings at the impairment stage.

60. In light of all of the evidence adduced during the course of these proceedings, the Tribunal did not consider that a warning was necessary in Dr Musa’s case to act as a deterrent to her in the future. The Tribunal acknowledged that there has been a significant departure from GMP. However, for the reasons stated in its determination on impairment, the Tribunal considered that the risk of Dr Musa repeating her actions was very low, she has demonstrated considerable insight as well as heartfelt remorse, and has taken extensive

rehabilitative steps. The Tribunal was satisfied that the caution for common assault, XXX and the subsequent rigorous regulatory process will serve as a constant reminder to Dr Musa that her fitness to practise as a doctor relates to her personal conduct and behaviour as well as her clinical competence as a GP. Dr Musa's conduct and the impact of her actions will inevitably remain with her throughout her medical career and beyond and as a consequence will continually act as deterrent. Therefore, Dr Musa does not need a warning to be reminded of the standards expected of her.

61. The Tribunal considered whether a warning should be given for the purpose of sending a clear message to the wider profession and the public that it is unacceptable for a medical professional to be made subject to police caution for common assault. Such a warning might be required in some cases, but the Tribunal was satisfied that it is not required in the circumstances of this case. The Tribunal concluded that a reasonable and well-informed member of the public would recognise the gravity of a regulatory process and the remediation that Dr Musa has undertaken. As a consequence, a reasonable and well-informed member of the public would take the view that no formal censure is required. The Tribunal also concluded that Dr Musa's fellow professionals do not need to be made aware that her behaviour resulted in a warning to be deterred from similar conduct given that the gravity of a police caution for common assault speaks for itself. The Tribunal considered that all of the factors set out in paragraph 32 of the Guidance apply in Dr Musa's case and support the Tribunal's finding that a warning is not required. The Tribunal was mindful that the seriousness of Dr Musa's actions has already been marked by a police caution and a thorough regulatory process and therefore it considered the statutory overarching objective had been met.

62. The Tribunal determined that in this case a warning is not required to uphold standards or trust and confidence in the profession.

63. The Tribunal has therefore determined that in all the circumstances, issuing a warning would not be proportionate or appropriate.

64. That concludes this case.

**Confirmed**

**Date** 14 April 2021

Ms Margaret Obi, Chair