

PUBLIC RECORD

Dates: 06/12/2023

Medical Practitioner's name:	Dr Amir FARBOUD
GMC reference number:	6115244
Primary medical qualification:	MB BCh 2005 University of Wales
Type of case	Outcome on impairment
Review - Misconduct	Impaired

Summary of outcome

Conditions, 12 months.

Tribunal:

Legally Qualified Chair	Miss Samantha Gray
Lay Tribunal Member:	Mr John Elliott
Medical Tribunal Member:	Dr Bridget Langham

Tribunal Clerk:	Miss Maria Khan
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Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Ms Amina Graham, Counsel, instructed by MDDUS
GMC Representative:	Ms Fiona McNeill, 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 - 06/12/2023

1. At this review hearing 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 Farboud's fitness to practise is impaired by reason of misconduct.

Background

2. Dr Farboud obtained a degree in Science in 1999 from King's College, London. He obtained several qualifications in medicine which included: MBChB from University of Wales College of Medicine in 2005; MRCS (2008) and FRCS (ORLHNS) (2016) from the Royal College of Surgeons of London. At the time of the events Dr Farboud was practising as a final year trainee ENT Surgeon (ST7/8) at Cardiff and Wales NHS Trust.

2022 Tribunal

3. The facts found proved at Dr Farboud's hearing, which took place in June 2022, can be summarised as that on 28 April 2017, Dr Farboud failed to obtain appropriate consent from Patient A and make adequate medical records. It was also found that, on 18 September 2017 and 21 September 2017, Dr Farboud failed to provide good clinical care to Patient B, in particular by failing to recognise significant landmarks of the physical area and continuing inappropriately with a drilling procedure, causing injury. He failed to carry out an adequate and appropriate post-operative assessment and to put in place an adequate and appropriate management plan. It was further found that Dr Farboud had been dishonest in statements made to both Patient B and to Dr C in relation to Patient B's care.

4. The 2022 Tribunal concluded that although Dr Farboud's failure to obtain appropriate consent from Patient A did not fall so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct, the remainder of the failings identified amounted to misconduct that was serious.

5. In relation to Dr Farboud's clinical failings, the Tribunal acknowledged Dr Farboud's admissions to many paragraphs of the Allegation at the outset of the hearing, his extensive remediation by way of CPD courses and his genuine remorse, including an unreserved apology offered to Patient B. However, the Tribunal found that Dr Farboud had produced limited reflection into the clinical failings and he had provided no evidence of insight into his

dishonesty. Based on this lack of insight and reflection, the Tribunal determined that Dr Farboud's fitness to practise was impaired by reason of misconduct.

6. When considering the issue of the appropriate and proportionate sanction to impose, the Tribunal concluded that although Dr Farboud's actions were not serious enough to be fundamentally incompatible with continued registration, a signal would have to be sent to the profession and the public about what was regarded as behaviour unbecoming a registered doctor.

7. The 2022 Tribunal determined to suspend Dr Farboud's registration from the medical register for a period of eight months. It was satisfied that such a period marked the seriousness of Dr Farboud's misconduct and upheld the overarching objective to protect and promote the health, safety and wellbeing of the public, promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for the members of the profession and maintain public confidence in the profession.

2023 Tribunal

8. The first review of Dr Farboud's case was held on 08 March 2023.

9. The Tribunal had regard to Dr Farboud's most recent reflective statement and the steps he had taken to develop his insight into his behaviour since the 2022 hearing. It considered Dr Farboud's expressions of regret and remorse to be both genuine and insightful and the CPD Dr Farboud had undertaken as appropriate evidence of remediation.

10. The Tribunal concluded that Dr Farboud had fully accepted and reflected on his misconduct and dishonesty. However, Dr Farboud had been out of clinical practice for almost six years by this point and, despite the clinical links of Dr Farboud's commercial work, there was no evidence that he had maintained his clinical skills during the period when the interim conditions of practice order was in force, nor of any clinical attachment during the current suspension period. Dr Farboud's clinical skills could not be considered up to date.

11. In these circumstances, the Tribunal was satisfied that patients may be put at risk and public confidence undermined if Dr Farboud's fitness to practise were found to be not impaired and he were allowed to practise without restriction. The Tribunal determined that Dr Farboud's fitness to practise remained impaired.

12. When considering the appropriate sanction to impose on Dr Farboud's registration, the Tribunal bore in mind that it had seen no evidence to suggest that Dr Farboud could not work safely with restrictions. The Tribunal concluded that suspension would be disproportionate as the concerns relating to Dr Farboud's practice could be managed with the imposition of a further period of conditional registration. It determined that a period of nine months conditional registration would permit further time for development, consistency

of supervision and reporting to the GMC, in order to obtain reliable observation of Dr Farboud's progress

13. The 2023 Tribunal determined to direct a review of Dr Farboud's case. It considered the next reviewing Tribunal would be assisted if Dr Farboud provided the following information:

- Testimonials;
- Report from each of his supervisors;
- Copies of his PDP;
- His CPD diary and proof of CPD activities;
- Evidence that he has complied with his conditions;
- Any other documents or evidence that may assist the Tribunal.

Today's Review Hearing

The Evidence

14. The Tribunal has taken into account all the evidence received, including: the records of determinations from previous hearings; email correspondence from May and July 2023, between Dr Farboud and the GMC relating to Dr Farboud's ability to secure employment; and an email dated 08 November 2023 from Dr Farboud's solicitor to the GMC. In that email he advised that as Dr Farboud had been unable to secure employment, he had no further evidence to put before the Tribunal. Dr Farboud therefore requested the Tribunal to maintain his conditions in their current form.

Submissions

15. On behalf of the GMC, Ms McNeill submitted that as there was no further evidence provided on behalf of Dr Farboud to satisfy the evidential burden on him, his fitness to practise remained impaired.

16. On behalf of Dr Farboud, Ms Graham submitted that although there had been no development since the last review, Dr Farboud had set out his position in respect of the difficulties he faced in securing employment and satisfying the conditions imposed by the previous Tribunal. This meant Dr Farboud was unable to provide any evidence further to that provided in March 2023.

17. Ms Graham submitted that Dr Farboud was unable to get back on the training programme he had been on at the time of the initial GMC investigation and invited the Tribunal to look back at the evidence provided to the previous Tribunal, which remained the same. Ms Graham added that Dr Farboud had done as much as he could in terms of remediation and accepted that his fitness to practise remained impaired due to lack of any further evidence.

The Relevant Legal Principles

18. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone, taking into account the statutory overriding objective. As noted above, the previous Tribunal set out the matters that a future Tribunal may be assisted by.

19. At this stage the burden of proof is on the doctor to demonstrate that all of the concerns which have been identified previously have been adequately addressed and he would be safe to return to unrestricted practice.

20. This Tribunal must determine whether Dr Farboud's fitness to practise is impaired today, taking into account Dr Farboud's conduct 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.

The Tribunal's Determination on Impairment

Misconduct

21. The Tribunal took into account there has been no change in Dr Farboud's circumstances since the last review hearing, and that he has been out of clinical practice since June 2018 and has been unable to present any evidence to the Tribunal showing any further progress.

22. As Dr Farboud has therefore been unable to provide further evidence that he is fit to practise, this Tribunal is satisfied that patients may still be at risk and public confidence undermined if Dr Farboud's fitness to practise was found to be not impaired and he was allowed to practise without restriction.

23. This Tribunal has therefore determined that Dr Farboud's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 06/12/2023

24. Having determined that Dr Farboud'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 what action, if any, it should take with regard to Dr Farboud's registration.

The Evidence

25. 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 Farboud's registration.

Submissions

26. On behalf of the GMC, Ms McNeill submitted that any sanction should be proportionate and workable and take into account the overarching objective.
27. Ms McNeill submitted that no exceptional circumstances were present in this case and therefore taking no action would not be appropriate. The GMC position was that in the circumstances, it was appropriate that a period of conditional registration should continue, followed by a review.
28. Ms McNeill reminded the Tribunal of the mitigating factors in this case, including the level of insight demonstrated by Dr Farboud at the previous review hearing. The main obstacle, Ms McNeill submitted, was Dr Farboud's lack of clinical practice and supervision. A period of retraining and supervision would be the best way to address any shortcomings.
29. Ms McNeill submitted there was nothing to suggest that Dr Farboud would not comply with conditions.
30. On behalf of Dr Farboud, Ms Graham submitted that the previous reviewing Tribunal had considered conditions appropriate and reminded the Tribunal of the findings relating to Dr Farboud's levels of insight and remediation. Ms Graham further submitted that at the time of his initial suspension, Dr Farboud only had two months left to complete his training and it was that shortfall of two months that had stopped him progressing further.
31. Ms Graham reminded the Tribunal of Dr Farboud's email correspondence with the GMC in which he stated that some of the conditions imposed by the previous reviewing Tribunal were causing difficulty in him obtaining employment. Dr Farboud had asked the GMC for help with re-registering on his training programme to complete his training but the GMC had been unable to assist.
32. Ms Graham submitted that a further period of conditions was appropriate and necessary for Dr Farboud to meet his shortfall and asked that the Tribunal consider if there was any way that Dr Farboud could be assisted in gaining employment.

Relevant Legal Principles

33. The Tribunal's decision as to the appropriate sanction, if any, is a matter for the Tribunal's own independent judgment. In making its determination the Tribunal should consider the least restrictive sanction first, before moving on to consider the other available sanctions in ascending order of severity. The Tribunal should note that the main purpose of imposing a sanction is to protect the public. Its purpose is not to punish, although it may have a punitive effect. The Tribunal should also consider proportionality by weighing the public interest against the interests of the doctor.

34. In reaching its decision the Tribunal should take into account any mitigating and aggravating features in the case and weigh them accordingly and consider these in conjunction with the Sanctions Guidelines and the statutory overarching objective: protecting and promoting the health, safety and well-being of the public, promoting and maintaining public confidence in the profession and promoting and maintaining proper professional standards and conduct.

The Tribunal's Determination

No action

35. In reaching its decision as to the appropriate sanction, if any, to impose in Dr Farboud's case, the Tribunal first considered whether to conclude Dr Farboud's case by taking no action. Taking no action is only considered appropriate where there are exceptional reasons for doing so and the Tribunal concluded that there were no exceptional circumstances in this case. The Tribunal therefore determined that taking no action would be inappropriate.

Conditions

36. The Tribunal next considered whether a continued period of conditional registration would be appropriate. It bore in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

37. The Tribunal noted that Dr Farboud had not worked in a clinical setting since 2018 and had been unable to maintain his skills. The Tribunal took into account and adopted the reasoning of the previous reviewing Tribunal that:

"... the original concerns raised related to Dr Farboud's clinical performance. It received no objective evidence of adequate clinical practice and therefore the Tribunal could not be satisfied that Dr Farboud had maintained his skills to enable him to return to unrestricted practice."

This Tribunal was of the view that a further period of conditions would provide Dr Farboud with a path back into clinical practice which, in turn, would enable him to return to unrestricted practice.

38. The Tribunal considered that Condition 6 of the current conditions, the requirement to have an educational supervisor, restricted Dr Farboud's ability to apply for clinical posts. The Tribunal concluded that keeping the previous conditions in place without Condition 6 would expand Dr Farboud's opportunities and allow him to apply for clinical posts inside and outside of training posts. The Tribunal was satisfied that removing this condition would not create a risk to the public.

39. The Tribunal therefore determined that placing conditions on Dr Farboud's practice would meet the needs of the overarching objective, balancing Dr Farboud's needs with that of the public and the profession.

40. The Tribunal was conscious that the previous reviewing Tribunal had imposed conditions for nine months. However, Dr Farboud had been unable to find suitable employment in that time. The Tribunal determined that a period of 12 months conditional registration would allow Dr Farboud sufficient time to apply for clinical posts inside or outside of a training programme.

41. The conditions are as follows and will be published:

1 He must personally ensure the GMC is notified of the following information within seven calendar days of the date these conditions become effective:

- a the details of his current post, including:
 - i his job title
 - ii his job location
 - iii his responsible officer (or their nominated deputy)
- b the contact details of his employer and any contracting body, including his direct line manager
- c any organisation where he has practising privileges and/or admitting rights
- d any training programmes he is in

2 He must personally ensure the GMC is notified:

- a of any post he accepts, before starting it
- b that all relevant people have been notified of his conditions, in accordance with condition 7.
- c if any formal disciplinary proceedings against him are started by his employer and/or contracting body, within seven calendar days of being formally notified of such proceedings
- d if any of his posts, practising privileges, or admitting rights have been suspended or terminated by his employer before the agreed date within seven calendar days of being notified of the termination

- e if he applies for a post outside the UK.
- 3 He must allow the GMC to exchange information with any person involved in monitoring his compliance with his conditions.
- 4
- a He must have a workplace reporter appointed by his responsible officer (or their nominated deputy).
 - b He must not work until:
 - i his responsible officer (or their nominated deputy) has appointed his workplace reporter
 - ii he has personally ensured that the GMC has been notified of the name and contact details of his workplace reporter.
- 5
- a He must be supervised in all of his posts by a clinical supervisor, as defined in the *Glossary for undertakings and conditions*. His clinical supervisor must be appointed by his responsible officer (or their nominated deputy).
 - b He must not work until:
 - i his responsible officer (or their nominated deputy) has appointed his clinical supervisor and approved his supervision arrangements
 - ii he has personally ensured that the GMC has been notified of the name and contact details of his clinical supervisor and his supervision arrangements.
- 6 He must not work in any locum post or fixed term contract of less than 2 weeks duration.
- 7 He must personally ensure the following persons are notified of the conditions listed at 1 to 6:
- a his responsible officer (or their nominated deputy)
 - b the responsible officer of the following organisations:
 - i his place(s) of work, and any prospective place of work (at the time of application)
 - ii all of his contracting bodies and any prospective contracting body (prior to entering a contract)

- iii any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application)
 - iv any locum agency or out of hours service he is registered with
 - v if any of the organisations listed at (i to iv) does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within that organisation. If he is unable to identify that person, he must contact the GMC for advice before working for that organisation.
- c his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts).

Suspension

42. The Tribunal considered whether suspension might be an appropriate sanction. It bore in mind that it has seen no evidence to suggest that Dr Farboud could not work safely with restrictions. The Tribunal determined that suspension would be disproportionate as the concerns relating to Dr Farboud's practice could be managed with the imposition of a further period of conditional registration.

Review Hearing Directed

43. The Tribunal determined to direct a review of Dr Farboud's case. A review hearing will convene shortly before the end of the period of conditional registration. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Farboud to demonstrate that he is fit to return to unrestricted practice. It therefore may assist the reviewing Tribunal if Dr Farboud provides the following evidence:

- Testimonials;
- Report from each of his supervisors;
- Copies of his PDP;
- His CPD diary and proof of CPD activities;
- Evidence that he has complied with his conditions;
- Any other documents or evidence that may assist the Tribunal, such as evidence of posts applied for.

44. The Tribunal have directed to impose conditions on Dr Farboud's registration for a period of 12 months. The MPTS will send Dr Farboud a letter informing Dr Farboud of his right of appeal and when the direction and the new sanction will come into effect. The current order of conditions will remain in place during the appeal period.

45. That concludes this case.