

## PUBLIC RECORD

Dates: 07/09/2023 - 08/09/2023

Medical Practitioner's name: Dr Dharmesh SHAH  
GMC reference number: 3664069  
Primary medical qualification: MB ChB 1992 University of Leeds

Type of case Outcome on impairment  
Review - Misconduct Impaired

Summary of outcome  
Conditions, 18 months.

## Tribunal:

Legally Qualified Chair	Ms Chitra Karve
Lay Tribunal Member:	Mr Geoff Brighton
Medical Tribunal Member:	Mrs Deborah McInerny

Tribunal Clerk:	Miss Racheal Gill
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## Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Alan Jenkins, Counsel, instructed by Mr Richard Privett of Weightmans LLP
GMC Representative:	Ms Fiona McNeill, Counsel (07/09/2023) Ms Susie Kitzing, Counsel (08/09/2023)

## 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 Impairment - 08/09/2023

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 Shah's fitness to practise is impaired by reason of misconduct.

## Background

2. Dr Shah qualified from the University of Leeds in 1992 and, prior to the events which were the subject of his Medical Practitioners Tribunal (MPT) hearing in 2018, he worked as a General Practitioner ('GP') partner at the Brentfield Medical Centre for 15 years. Dr Shah stopped working as a GP in 2011 but returned to work in 2014 at The Old Courthouse Surgery ('the Surgery') in Barnet as part of the GP Returner's Scheme. He had worked in this role for approximately three to four months prior to the events which led to the 2018 hearing.

3. There is a lengthy history to the case and a summary of the key issues is set out below.

### The 2018 Tribunal – Initial MPT hearing – concluded 15 June 2018

4. At the initial MPT hearing, Dr Shah admitted all paragraphs of the Allegation. He admitted that in or around 4 December 2014, he consulted with Patient A and conducted a breast examination which was not clinically indicated. He admitted that he failed to explain the reasons for conducting the examination, explain the examination process, or offer her a chaperone for the examination. Dr Shah admitted that he failed to record any discussions regarding the combined oral contraceptive pill, that he had conducted a breast examination, or that he had obtained Patient A's consent to carry out the breast examination. Dr Shah also admitted that, on 2 December 2014, he consulted with Patient B and requested to conduct a

breast examination and listen to Patient B's chest when neither were clinically indicated. He admitted that he had advised Patient B that a breast examination was required so that the combined oral contraceptive pill could be prescribed. Dr Shah further admitted that he had failed to prescribe the combined oral contraceptive pill to Patient B and that he had failed to record his request for a to perform a breast examination and Patient B's refusal of it.

5. The 2018 Tribunal found certain aspects of the treatment of those patients amounted to serious misconduct. It found that Dr Shah had only demonstrated partial insight, his conduct fell short of the standards expected and that his clinical skills were out of date, such that his fitness to practise was impaired by reason of his misconduct. It determined that 18 months conditional registration was an appropriate length of time for Dr Shah to develop his insight, obtain a substantive clinical post, and bring his clinical practice up to date.

The 2019 Tribunal – first review hearing – concluded 19 December 2019

6. The 2019 Tribunal had regard to the reports from Dr Shah's former educational supervisor and recognised that, as Dr Shah had not been working in a clinical setting, no workplace supervisor reports had been provided. The 2019 Tribunal was concerned that no reflective statement had been provided in which Dr Shah could address his insight and detail the development of his clinical practice since the Initial 2018 hearing. The 2019 Tribunal noted that Dr Shah had not provided the majority of the documentation that the 2018 Tribunal had suggested would be helpful for the next review. The 2019 Tribunal was concerned that Dr Shah had not demonstrated that he had remediated and addressed the concern that his medical practice was out of date.

7. The 2019 Tribunal determined that Dr Shah's fitness to practise remained impaired by reason of his misconduct. A further period of conditions was imposed for 12 months with a view to Dr Shah returning to clinical practice in the near future.

The 2021 Tribunal – second review hearing – concluded 15 January 2021

8. The 2021 Tribunal acknowledged that Dr Shah had made some progress since the 2019 hearing, in that he had completed an abundance of CPD relevant to general practice. However, it was concerned that Dr Shah had not undertaken any CPD relevant to the concerns of the 2018 and 2019 Tribunals. Further, although he had undertaken a significant amount of CPD, the 2021 Tribunal was concerned that he had provided no reflections upon his learning. The 2021 Tribunal concluded that Dr Shah's progress since the 2019 Tribunal hearing had been very limited. He had produced no evidence of reflection, insight or remediation in relation to his misconduct.

9. The 2021 Tribunal determined that Dr Shah’s fitness to practise remained impaired by reason of his misconduct. It had concerns about the appropriateness of a further order of conditional registration. The 2021 Tribunal determined that an order of suspension was the minimum sanction required to uphold the overarching objective, therefore it imposed a 12-month suspension order on Dr Shah’s registration instead.

The April 2022 Tribunal – third review hearing – concluded 28 April 2022

10. The 2022 Tribunal acknowledged that some progress had been made on the part of Dr Shah since the 2021 hearing. However it noted that Dr Shah’s Personal Development Plan had only been produced in the weeks leading up to the April 2022 hearing. The 2022 Tribunal was concerned with Dr Shah’s minimal efforts as regards his PDP but accepted that his actions in obtaining a mentor were a positive step forward. The 2022 Tribunal considered Dr Shah could have been more proactive in taking proper steps to remediate his misconduct despite having increased personal obligations. It concluded his attitude towards remediating his misconduct remained at best “passive”. It was concerned that there was a risk of repetition of the failures originally found due to the lack of evidence of developed insight and remediation.

11. The 2022 Tribunal concluded that Dr Shah’s fitness to practise remained impaired by reason of his misconduct. In determining what sanction to impose, the 2022 Tribunal noted that Dr Shah had a mentor who was prepared to continue to help with his aim of returning to work. As a result, the 2022 Tribunal considered that a period of conditions, working under direct supervision, would be the only way to satisfy the overarching objective. Therefore, it imposed a 4-month order of conditions on Dr Shah’s registration.

The January 2023 Tribunal – fourth review hearing – concluded 6 January 2023

12. The January 2023 Tribunal received documentary evidence that Dr Shah had been involved with clinical work when shadowing his mentor. The GMC had not been informed about this, contrary to Condition 2 of the conditions on Dr Shah’s registration. A GMC Registrar investigated for any breach of conditions and concluded that the work undertaken by Dr Shah fell within the clinical attachment guidance and did not require Dr Shah to have a licence to practise and no further action would be taken. Taking all of the relevant evidence into account, the January 2023 Tribunal was satisfied that this breach of a condition was: a) a relatively minor matter; and b) was an innocent oversight. As such, it did not adversely affect its assessment of ongoing impairment and could be disregarded.

13. The January 2023 Tribunal considered that Dr Shah’s efforts in pursuing mentorship and supervised clinical attachment work were particularly positive. It was of the view that he had sufficient insight into the misconduct, and that he had clearly set out in his reflections what he had done wrong and what he would do differently in the future. That Tribunal was satisfied that Dr Shah had now resolved all the elements raised in both the original 2018 Tribunal hearing in terms of the past impairment and ongoing concerns of the last Tribunal in 2021. This January 2023 Tribunal was satisfied there was nothing more that was required in order to demonstrate remediation.

14. The January 2023 Tribunal took into account Mr Jenkins’ submissions on impairment in which it was conceded that Dr Shah’s fitness to practise remained currently impaired. Mr Jenkins submitted that given the period of time that had elapsed, and that Dr Shah was removed from the NHS Performers List, he was now in something of a “Catch-22 situation”, where he was unable to gain clinical experience in order to return to work. The January 2023 Tribunal noted that Dr Shah had not treated patients since 2014 and heard from Dr Shah about his realistic assessment of where he was currently at in terms of a return to practise XXX. The January 2023 Tribunal was of the view that Dr Shah had shown insight into the potential pitfalls in a return to practise after such a long period away from practice. Such insight was reassuring, and the January 2023 Tribunal had confidence that Dr Shah understood his limitations such that he would have a realistic plan and parameters for a return to work.

15. The question of whether Dr Shah’s fitness to practise was currently impaired was a finely balanced one between permitting a rehabilitated doctor, lacking up to date clinical experience, to resume practice versus the wider public interest in relation to patient safety and public confidence. Overall, the January 2023 Tribunal considered a finding of impairment was required in order to satisfy the overarching objective in these circumstances. The January 2023 Tribunal was satisfied that it was appropriate, necessary and proportionate to impose conditions on Dr Shah’s registration. It determined to remove the previous requirement for a PDP and reduced the level of supervision from ‘direct’ to ‘supervised’. Therefore, it imposed a 7-month order of conditions on Dr Shah’s registration.

16. The January 2023 Tribunal considered that a reviewing Tribunal would be assisted if Dr Shah provided:

- An up-to-date PDP;
- Evidence of ongoing CPD;
- Any evidence that he may have submitted in respect of his revalidation and/or his appraisal;

- Any other development actions or progress updates that Dr Shah or his mentor consider to be appropriate.

### The current Review hearing

#### **The Evidence**

17. The Tribunal has taken into account all the evidence received, both oral and documentary.

#### Dr Shah's oral evidence

18. Dr Shah told the Tribunal of his plans to return to clinical practice. He said that he does not have a Responsible Officer ('RO') because he is not in employment, however he could have a 'suitable' person' in place of a RO. Dr Shah told the Tribunal that finding a suitable person to be his RO has not been as straight-forward as he would have liked, he had approached a number of colleagues since the last hearing, but they had other commitments and were unable to be his suitable person. He said that a GP colleague who he has known for many years, Dr B, has recently agreed to consider whether he can fulfil that role. Dr C is a full-time partner in practise and Dr Shah recently sent him the documentation to read through regarding what his responsibilities would be.

19. Dr Shah told the Tribunal that his mentor, Dr C, has been a huge supporter and he is hoping that he will be his clinical supervisor and workplace supervisor, as he had been in the past. He explained to the Tribunal that following the last review he was under the impression that his clinical supervisor, workplace supervisor and mentor had to be approved by an RO. Since he had no RO, he had not continued to engage with Dr C. He stated that he would in any event be resuming his mentorship with him.

20. Since the last hearing, Dr Shah told the Tribunal that he has had caring responsibilities XXX, and was also looking after his elderly father. He stated that although he had felt positive following his last Tribunal, when his efforts to find a suitable person were not forthcoming, he became 'resigned and despairing'. Because of this, he has not taken steps to look for opportunities in clinical experience that didn't require him to be on the National Medical Performer's List.

21. Dr Shah told the Tribunal he can only apply to the Return to Practice scheme when there are no longer GMC restrictions to his clinical practice as these currently preclude his eligibility to join the scheme. He stated that was the main way for GPs who had been away

from practice for some time to re-join the National Medical Performance List. Dr Shah said he has not independently treated patients since 2014, although he has earlier observed and managed patients with direct supervision of Dr C. His old practice was not currently able to give him support.

22. In respect of keeping his clinical knowledge up to date in General Practice, Dr Shah said he has a passion for learning medicine and reads the British Medical Journal (BMJ) weekly and British Journal of General Practice (BJGP) monthly. Dr Shah said he has not yet done the Royal College of GP's self-assessment test but that he will do as part of his plan for the Return to Practice scheme. This test would be a good guide to identify the areas in which he may be deficient to enable him to strengthen those in time. He had also undertaken CPD.

23. Dr Shah, in response to Tribunal questions, stated that he had undertaken relevant work to address the issues for which he was originally found unfit to practice. He told the Tribunal that he had seen the template for a PDP provided by the GMC to him, including the column that asked for reflections of any learning that he had undertaken. He stated that he had used a similar document to the GMC PDP template, but he did not have an explanation why he had not provided his own or the GMC template to provide his PDP to this Tribunal.

24. Also in response to Tribunal questions, Dr Shah stated that he had not, since the last hearing at least, contacted his Deanery for assistance in getting a pathway back to being able to practice as a GP. He stated that the Tribunal's question had given him another way to explore getting help. Neither had he contacted the GMC for clarification on the conditions or to seek help. He told the Tribunal that he had asked for help from the GMC in the past, but they signposted him to other organisations, such as the Health Education England (HEE). He stated that he had not contacted these bodies since the last hearing to seek advice.

25. In terms of his revalidation and appraisal, Dr Shah said he has an assessment booked with the GMC next week. He had taken no steps to secure an independent appraisal but told the Tribunal that he would do so.

26. The Tribunal received documentary evidence, including:

- Previous Record of Determinations dated:
  - 20 June 2018;
  - 23 December 2019;
  - 15 January 2021;
  - 28 April 2022;
  - 6 January 2023.

- Various correspondence from the MPTS and GMC to Dr Shah between February to August 2023;
- Personal Development Plan ('PDP'), dated September 2023;
- CPD Certificates of course attendance, dated February to August 2023.

## Submissions

### On behalf of the GMC

27. Ms McNeill, counsel, submitted that a finding of impairment in Dr Shah's case was necessary to protect the public and to satisfy the overarching objective.

28. Ms McNeill acknowledged Dr Shah's frustration over the imposed conditions. However, she submitted that conditions are imposed as a *workable* solution, and that the onus is on the doctor to enable him to be in a position to demonstrate insight and remediation. She submitted that there has been a substandard level of clear and focused insight from Dr Shah in his failure to address matters and make alternative arrangements in order to return to practice.

29. Ms McNeill submitted that Dr Shah could be criticised for not demonstrating a sufficient degree of urgency or focus. She submitted that there have been a number of alternative options to aid Dr Shah's return to practice, which he has not explored, to satisfy the Tribunal that he is making all efforts to be able to return to work. Ms McNeill submitted that Dr Shah's approach to his case was passive, rather than proactive.

### On behalf of Dr Shah

30. Mr Jenkins, counsel, acknowledged that Dr Shah takes his time to demonstrate remediation. However, he submitted that there was no requirement on Dr Shah to demonstrate urgency. He submitted that Dr Shah has had XXX problems to deal with.

31. Mr Jenkins referred the Tribunal to the findings of the January 2023 Tribunal, whereby that Tribunal had regard to Dr Shah's positive efforts in demonstrating insight and remediation into the issues relating to the initial concerns. He submitted that Dr Shah had provided the January 2023 Tribunal with additional CPD material and reflection and that Tribunal had concluded that there was nothing more required of Dr Shah to demonstrate insight or remediation. He submitted that the GMC was, in its submission today, contradicting the findings of that 2023 Tribunal. He submitted that it would not be a fair way to analyse the evidence before the Tribunal. He submitted that Dr Shah has in the past



provided CPD and reflection on record keeping and current contraceptive practice. He submitted that the current process was not an ‘appeal’ of the last Tribunal’s clear decision.

32. Mr Jenkins submitted that Dr Shah plainly has insight and completed his remediation, and since the January 2023 Tribunal Dr Shah continues to maintain interest in medical practice and has evidenced further work to keep his skills and knowledge as best he can. Mr Jenkins conceded that the January 2023 Tribunal’s concern that Dr Shah had not practiced for nine years continued to be relevant today. He also acknowledged that a valid concern was the speed at which Dr Shah was addressing his return to work.

### The Relevant Legal Principles

33. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal’s judgement alone. As noted above, the previous Tribunal set out the matters 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 practise.

34. This Tribunal must determine whether Dr Shah’s fitness to practise is impaired today, taking into account Dr Shah’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.

35. The Legally Qualified Chair stated in addition that while it agreed with Mr Jenkins that the Tribunal could not look behind the previous Tribunal’s decision, this was a fresh review and the Tribunal should make its decision based on all the evidence before it.

36. The LQC reminded the Tribunal that it would have to have regard to the test for impairment as set out by Dame Janet Smith in the Fifth Shipman Report *CHRE v NMC and Paula Grant [2011] EWHC 927 Admin*.

### The Tribunal’s Determination on Impairment

37. The Tribunal considered whether Dr Shah’s fitness to practise is currently impaired by reason of his misconduct. In reaching its decision, it has taken account of Dr Shah’s oral evidence, all the documentary evidence presented to it, the submissions made by Ms McNeill on behalf of the GMC, and those made by Mr Jenkins on Dr Shah’s behalf.

38. The Tribunal identified aggravating and mitigating factors and weighed the impact of these into its findings on impairment.

39. The Tribunal had regard to the January 2023 Tribunal's recommended list of evidence that Dr Shah could provide to assist a reviewing Tribunal.

40. The Tribunal accepted that Dr Shah had provided some evidence of ongoing additional CPD. While it considered this to be a sufficient amount of work, the CPD lacked context as to why it had been undertaken. Further, it had not received any evidence from Dr Shah of his reflections of what he has learnt from his CPD, how he would apply the learning in the future, or link it back to his PDP.

41. The Tribunal was aware of the positive conclusions of Dr Shah's insight and remediation from the January 2023 Tribunal. It credited Dr Shah for having engaged with the last Tribunal in January 2023, and for engaging with the current review. However, the Tribunal did not consider that the progress recorded by the 2023 Tribunal had continued. The Tribunal accepted that Dr Shah had insight into the original failings, however it was disappointed that he has not followed the list of recommendations provided in the last review, which was to provide an updated PDP, (which, in the view of this Tribunal) meant that there should have been a comprehensive review of all the learning he has done in terms of CPD and his subsequent reflections. Neither was there any progress on attempts at revalidation, to complete his appraisal, or to ensure that he continued to have access to a mentor. Even if he felt he needed an RO to have a mentor, he could have at least maintained the existing supportive conversations with Dr C.

42. The Tribunal noted that the January 2023 Tribunal had revised Dr Shah's conditions by reducing supervision requirements. It considered that the less onerous conditions would assist Dr Shah to find work in a patient focused environment in order to update his skills. However, the Tribunal received no such evidence of this and accordingly the Tribunal decided it was unable to move beyond the conclusions of the January 2023 Tribunal on impairment.

43. The Tribunal heard evidence from Dr Shah that he had misunderstood that his mentor had to be approved by an RO but he did not take any proactive action to seek action on what he could do. It was aware that Dr Shah had not spoken to the Deanery.

44. The Tribunal noted that previous Tribunals had described Dr Shah as 'passive' in relation to the allegations against him and the remediation required of him. It was mindful that views were reversed at the January 2023 Tribunal, whereby it concluded that *"there was nothing more that was required in order to demonstrate remediation. As such, the Tribunal had given serious consideration as to whether there was current impairment at all."* This Tribunal, like others before it, considered that Dr Shah's misconduct was remediable, and it

accepted that he had provided evidence of remediation. However, it considered that Dr Shah had reverted to his 'passive' approach with intermittent efforts to pursue his journey back to full clinical practice. The recommendations of the last Tribunal, which were intended to assist both him and this Tribunal had not been followed.

45. The Tribunal took into account that Dr Shah has been out of clinical practice for approximately nine years and that his clinical skills may have deteriorated with the passage of time. The Tribunal acknowledged that this was partly by virtue of the conditions imposed which may have put Dr Shah at a disadvantage in securing relevant clinical work and this may have reduced the opportunity for him to maintain his clinical skills. However, it also considered that part of the problem was Dr Shah's intermittent and passive approach to his own progression. By his own admission he recognised he needed to be more proactive.

46. The Tribunal was of the view that Dr Shah was fully cognisant of what he needs to do. It considered that Dr Shah appeared to become disheartened at the first barrier put in front of him, and this stopped him from trying to progress. The Tribunal was concerned that the longer Dr Shah prolongs his progress, the harder it will be for him to return to unrestricted practice, and he needed to be proactive in his commitment.

47. The Tribunal was satisfied that since the last hearing in January 2023, Dr Shah had taken the appropriate steps to fulfil some of the recommendations proposed by previous Tribunals. Nonetheless, before this Tribunal, there was limited evidence of any reflections on his learning since the last hearing.

48. Dr Shah told the Tribunal that he has a support network. The Tribunal considered that Dr Shah would benefit from utilising his support network more to help him progress.

49. The Tribunal reminded itself that there is a persuasive burden on Dr Shah to satisfy it that he is no longer impaired. In the absence of sufficient evidence to demonstrate continued clinical improvement since the last Tribunal, the Tribunal concluded that a finding of impairment was necessary in order to satisfy the overarching objective. The Tribunal took particular note of the need to take into account the wider public interest in relation to patient safety and public confidence in the profession.

50. The Tribunal considered that reasonable and fully informed members of the public would not expect Dr Shah to be able to return to unrestricted practice in these circumstances.

51. This Tribunal has therefore determined that Dr Shah’s fitness to practise is impaired by reason of misconduct.

#### **Determination on Sanction - 08/09/2023**

52. Having determined that Dr Shah’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 Shah’s registration.

#### **The Evidence**

53. 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 Shah’s registration.

#### **Submissions**

##### On behalf of the GMC

54. Ms Kitzing submitted that Dr Shah’s registration should be made subject to a further period of conditions of six months.

55. Ms Kitzing submitted that Dr Shah has not been in unrestricted practice since 2014. She reminded the Tribunal that there is a persuasive burden on Dr Shah to satisfy the Tribunal that the original concerns that led to restrictions being imposed had been remedied.

56. Ms Kitzing referred to the Sanctions Guidance (2020) (‘SG’) and submitted that the overarching objective required the Tribunal to take action, in order to protect patients, to protect the public interest and declare and uphold proper standards of conduct.

57. Ms Kitzing submitted that to take no action would not be appropriate in this case. She submitted that a further period of conditions would allow Dr Shah the opportunity to take the steps that this Tribunal has set out in its impairment determination and by previous Tribunals.

##### On behalf of Dr Shah

58. Mr Jenkins referred the Tribunal to his last submissions in the January 2023 Tribunal.

59. Mr Jenkins submitted that the Tribunal may consider it appropriate to take no action as its finding of impairment was sufficient in Dr Shah’s case. If the Tribunal were not minded in taking no action, he submitted that the Tribunal could maintain the conditions of the previous Tribunal, although he suggested there could be changes to the requirement for Dr Shah to have a mentor approved by his RO, given the difficulties he had faced in finding an RO.

60. Mr Jenkins acknowledged that this case has had a “*chequered history*” and there have been criticisms concerning the speed of Dr Shah’s progress. He submitted the continuing fact that conditions currently stop Dr Shah from getting on the Return to Practice Scheme (Health Education England). He accepted that if a six-month order of conditions were imposed, there may be a chance that Dr Shah would not effectively demonstrate the evidence required by the Tribunal by the time a reviewing Tribunal took place.

61. Mr Jenkins submitted that a longer period of conditions may give Dr Shah a more realistic chance to meet any conditions, and he suggested that the Tribunal might be able to comment on the fact that it was open to Dr Shah to request an early review if he had progressed well with meeting the conditions and had been able to find a placement which gave him clinical experience without needing to be on the National Medical Performer’s list (NHS England medical GP performance list).

### **The Tribunal’s Determination**

62. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement. Throughout its deliberations, the Tribunal considered the statutory overarching objective, and the relevant sections of the Sanctions Guidance.

63. In deciding what sanction, if any, to impose, the Tribunal reminded itself that it must consider each of the sanctions available, starting with the least restrictive, to establish which is appropriate and proportionate in this case. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Shah’s interests with the public interest. It kept in mind that the purpose of a sanction was not to be punitive, but to protect patients and the wider public interest, although the sanction may have a punitive effect.

### Aggravating and mitigating factors

64. Before considering what action, if any, to take in respect of Dr Shah's registration, the Tribunal first considered the aggravating and mitigating factors present and referred itself to its findings on impairment. It referred to paragraphs 25-49 of SG for mitigating factors and paragraphs 50-56 for aggravating factors.

65. The Tribunal considered the following to be aggravating factors in this case:

- The Tribunal was of the view that Dr Shah lacked the drive to pursue alternative options to aid his return to practice.
- Dr Shah has failed to respond satisfactorily when given deadlines in the past. The Tribunal noted that he had submitted his PDP and CPD documents late to the GMC on this occasion, something he had done before.
- There was a paucity of evidence from Dr Shah in his PDP of what progress he had made in trying to overcome the difficulties of getting a RO/suitable person; maintaining a mentor; seeking alternative pathways to getting clinical experience or shadowing and seeking advice from various possible bodies including his Deanery.
- Dr Shah did not provide reflections on the CPD he had undertaken since the last hearing.
- Dr Shah had failed to follow the guidance of the January 2023 Tribunal as to what would be helpful to the next Tribunal. The Tribunal considered this to be a symptom of his reverting to a passive approach.

66. Having identified the aggravating factors in the case, the Tribunal identified the following mitigating factors:

- The Tribunal accepted that Dr Shah had demonstrated insight into his original failings, as indicated in the January 2023 Tribunal's conclusion.
- Dr Shah has taken appropriate steps to remediate the original concerns in his case.
- Dr Shah has been open and honest about his limitations.
- Since the January 2023 Tribunal, Dr Shah has experienced personal difficulties. He told the Tribunal he had caring responsibility XXX

### **No action**

67. In coming to its decision as to the appropriate sanction, the Tribunal first considered whether to conclude the case by taking no action. It reminded itself that there should be exceptional circumstances to justify taking no action where a finding of impairment has been made.

68. The Tribunal considered that there were no exceptional circumstances to justify taking no action in this case. It determined that it would be neither sufficient, proportionate nor in the public interest, to conclude this case by taking no action.

### Conditions

69. The Tribunal then considered whether imposing an order of conditions on Dr Shah's registration would be appropriate. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. It had regard to paragraphs 81 to 82 of the SG which indicate the cases in which conditions might be appropriate.

70. The Tribunal was satisfied that it was appropriate, necessary and proportionate to impose conditions on Dr Shah's registration. It considered that conditions could be workable and measurable and allow Dr Shah to safely continue on his journey to return to unrestricted practice.

71. The Tribunal considered that conditions would satisfy the overarching objective.

72. The Tribunal had regard to the current conditions in place on Dr Shah's registration. It considered that these conditions continued to be appropriate for Dr Shah except for the need for one addition, which is discussed below.

73. The Tribunal noted that the January 2023 Tribunal had removed the requirement for a PDP which had been a previous condition. The Tribunal noted however that it considered that an updated PDP would be useful to a following Tribunal. Although Dr Shah had provided (very late) a document entitled 'PDP' for the current review, the Tribunal is not satisfied that it provided sufficient detail about Dr Shah's progress. It reminded itself of its earlier concern about the paucity of evidence of progress in the PDP, and lack of evidence of reflection in relation to any CPD undertaken. It determined that it was necessary for a future reviewing Tribunal to have sight of a comprehensive PDP and CPD history from Dr Shah, therefore it reinstated the PDP requirement.

74. It further noted that Dr Shah should have a mentor and that Dr C was prepared to continue to help Dr Shah with his aim of returning to work.

75. The Tribunal was cognisant that this was the fifth review of Dr Shah's case. It bore in mind its concerns at the impairment stage, in which it considered that *"the longer Dr Shah prolongs his progress, the harder it will be for him to return to unrestricted practice, and he needed to be proactive in his commitment."*

76. The Tribunal determined to impose the conditions for a period of 18 months. The Tribunal accepted Mr Jenkins' submission that a longer period of time with conditions would allow Dr Shah to both make and evidence real progress in his stated aim of returning to general practice. However, it remains concerned about the growing gap between the time Dr Shah last was able to practice unrestricted, and can only urge Dr Shah to avail himself of all the support available to him. Dr Shah will need to demonstrate the proactive attitude towards his progress that the January 2023 commented on.

77. The following conditions relate to Dr Shah's employment 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
- e of the organisation on whose medical performers list he is included
- f of the contact details of any locum agency or out of hours service he is registered with.

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 8
- 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 design a personal development plan (PDP), with specific aims to address the deficiencies in the following areas of his practice.
- Contemporary Contraceptive Practice
  - Informed Consent
  - Record Keeping
- b His PDP must be approved by his responsible officer (or their nominated deputy)
- c He must give the GMC a copy of his approved PDP on request.

- d He must meet with his responsible officer (or their nominated deputy), as required, to discuss his achievements against the aims of his PDP.
- 6
- 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 approved 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.
- 7 He must have a mentor who is approved by his responsible officer / suitable person (or their nominated deputy).
- 8 He must personally ensure the following persons are notified of the conditions listed at 1 to 7:
- a his responsible officer / suitable person (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 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 this person, he must contact the GMC for advice before working for that organisation.

c the responsible officer for the medical performers list on which he is included or seeking inclusion (at the time of application)

d 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).

### Review hearing directed

78. The Tribunal determined to direct a review of Dr Shah'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 Shah to demonstrate how he has kept his practice up to date.

It considered that a future Tribunal reviewing this matter would be assisted by:

- An up-to-date PDP showing his pathway to remediation over time with evidence of learning and reflection;
- Evidence of ongoing CPD;
- Any evidence that he may have submitted in respect of his revalidation and/or his appraisal;
- Any other development actions or progress updates that Dr Shah or his mentor considers to be appropriate.

79. Dr Shah will also be able to provide any other information that he considers will assist.

80. Should Dr Shah be in a significantly better position than he is today with respect to progress towards revalidation and clinical practice, he will be able to seek an early review from the GMC. It will be up to the GMC to grant any such application.

81. The Tribunal have directed to impose conditions on Dr Shah's registration for a period of 18 months. The MPTS will send Dr Shah a letter informing Dr Shah 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.