

**Dates:** 11/11/2019 - 15/11/2019

**Medical Practitioner's name:** Dr Hafeez-Ur Rehman AWAN

**GMC reference number:** 6032816

**Primary medical qualification:** MB BS 2000 University of Punjab  
(Pakistan)

**Type of case** **Outcome on impairment**  
New - Misconduct Impaired

**Summary of outcome**

Suspension, 9 months.

Immediate order imposed

**Tribunal:**

Legally Qualified Chair	Ms Sharmistha Michaels
Lay Tribunal Member:	Dr Bernard Herdan
Medical Tribunal Member:	Dr Prashanth Nandhabalan

Tribunal Clerk:	Ms Lauren Duffy
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**Attendance and Representation:**

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Ben Rich, Counsel, instructed by the Medical Defence Union
GMC Representative:	Mr Michael Blakey, Counsel, instructed by GMC legal

## **Record of Determinations – Medical Practitioners Tribunal**

### **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 Facts - 13/11/2019**

#### **Background**

1. Dr Awan qualified in 2000 from Punjab University in Lahore, Pakistan. He moved to the UK in 2003 and began his Senior House Officer ('SHO') training before starting his General Practitioner ('GP') training in 2007. He completed his GP training in November 2008 and, following a period of working as a Locum doctor, he worked at a GP Practice in Dewsbury for 18 months. Following this, he worked at Dr Piper House in Darlington for three years and then at a Health Centre in Middlesbrough for 18 months. At the time of the events, Dr Awan was working at Lexicon House in Leeds as well as the Urgent Care Centre in Wakefield. He was working 15-20 hours per week.
2. The Allegation that has led to Dr Awan's hearing can be summarised as follows: on 5 January 2016 and 21 January 2016, Dr Awan engaged in conversations via an online chatroom, text message and Whatsapp ('the Conversations') with Person A, who he believed and purported to accept was, a 13 year old girl. It is alleged that during the course of the Conversations, Dr Awan told Person A that he was a doctor and made inappropriate remarks to Person A. It is alleged that Dr Awan's conduct was sexually motivated. Further, it is alleged that Dr Awan failed to report Person A as a potentially vulnerable child to the relevant Child Protection Agency and the Police.
3. The initial concerns were raised with the General Medical Council ('GMC') on 15 January 2016 by Mr B of South Yorkshire Police. In an email to the GMC, he confirmed that a covert operation was being undertaken and, as part of the investigation, a number of chat logs had been obtained from a chat site called Lycos. He confirmed that an individual had engaged in a chat using the username 'XXX' and had provided a mobile telephone number. Following investigations, the police had identified the subscriber of that phone to be Dr Awan.
4. In October 2017, Mr Awan moved to Canada where he has established his own GP Practice.

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### The Outcome of Applications Made during the Facts Stage

5. On day one of the hearing, the Tribunal granted, Counsel for the GMC, Mr Blakey's, application made pursuant to rule 17(6) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') to amend the Allegation. Mr Blakey suggested the following amendment to paragraph 2c of the Allegation:

*c. made numerous inappropriate remarks to Patient Person A as set out in Schedule 2.*

6. On behalf of Dr Awan, Mr Rich, Counsel, had no objections to the amendment. The Tribunal was satisfied that the proposed change was to amend a typographical error and therefore no injustice would be caused by allowing the amendment to be made.

7. In accordance with Rule 41XXX of the Rules, the Tribunal reminded Mr Rich that matters under consideration relating to Dr Awan's XXX should be heard in private. Mr Rich submitted that Dr Awan wanted matters relating to XXX to be heard in public session. Mr Blakey did not object to this. The Tribunal determined to allow matters relating to Dr Awan's XXX to be heard in public.

### The Allegation and the Doctor's Response

8. The Allegation made against Dr Awan is as follows:

1. On 5 January 2016 and 21 January 2016, you engaged in conversations via an online chatroom, text message and WhatsApp (the 'Conversations') with an individual ('Person A') who you:
  - a. believed was a 13 year old girl; **To be determined**
  - b. purported to accept was a 13 year old girl. **Admitted and found proved**
2. During the course of the Conversations you:
  - a. told Person A that you were a doctor; **Admitted and found proved**
  - b. used the username set out in Schedule 1 which identified you as a member of the medical profession; **Admitted and found proved**
  - c. made numerous inappropriate remarks to

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Patient Person A as set out in Schedule 2. **Amended under rule 17(6). To be determined**

3. Your conduct at paragraphs 1 and 2c was sexually motivated. **To be determined**
4. You failed to report Person A as a potentially vulnerable child to the:
  - a. relevant child protection agency; **To be determined**
  - b. police. **To be determined**

### The Admitted Facts

9. At the outset of these proceedings, through his counsel, Mr Rich, Dr Awan made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

### Factual Witness Evidence

10. Dr Awan provided his own witness statement dated 14 October 2019. He also gave oral evidence at the hearing.

### Documentary evidence

11. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included, but was not limited to;
  - Email from Mr B from the Serious and Organised Crime Unit at South Yorkshire Police;
  - Online Lycos screenshots dated 5 January 2016;
  - Text message screenshots and Whatsapp screenshots (21 January 2016 according to the Allegation);
  - Sibel screenshot showing Dr Awan's registered address and mobile telephone number;
  - Dr Awan's CV;
  - Dr Awan's medical records from Pakistan;
  - Various Testimonials received on behalf of Dr Awan.
12. The Tribunal noted that there was a missing text message from Person A at pg.15 of the bundle, adduced by the GMC. It noted that whilst this was pointed out

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by Mr Rich, neither Counsel had implied that this missing text message made any material difference to the case.

### The Tribunal's Approach

13. In reaching its decision on facts, the Tribunal has borne in mind the Legally Qualified Chair's advice, which was accepted by both parties, that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. The standard required is the balance of probabilities, the civil standard. This standard does not change with the seriousness of the Allegation in dispute. *Re B Children [2008] UKHL 35* confirms that, while the seriousness of an allegation or its consequences may necessitate more careful consideration of the evidence, it does not affect the test to be applied.

14. In determining parts of the Allegation in which Dr Awan is alleged to have 'failed' to do something, the Tribunal must be satisfied that he had a duty or an obligation to do it in the first place.

### The Tribunal's Analysis of the Evidence and Findings

15. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

#### Paragraph 1a

*On 5 January 2016 and 21 January 2016, you engaged in conversations via an online chatroom, text message and WhatsApp (the 'Conversations') with an individual ('Person A') who you:*

*a. believed was a 13 year old girl;*

16. The Tribunal had regard to the initial conversation between Person A and Dr Awan which occurred on a chatlog site called Lycos:

*'XXX: how r you Person A*

*Person A: yeh gud r u*

*XXX: i am good ty*

*Person A: r u from sheff*

*XXX: i am from leeds*

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*Person A: cool*

*XXX: r u from leeds?*

*Person A: no sheff*

*XXX: r u single?*

*Person A: yeh but im m13 pleae dunt say anythign*

*XXX: what you mean m13?*

*Person A: no im 13*

*XXX: ok*

*XXX: r u at school?*

*Person A: nah shud be*

*XXX: lol ok'*

17. The Tribunal went on to consider Dr Awan's evidence. In his GMC witness statement, Dr Awan stated that he *'did not consider Lycos to be a site that is targeted towards children'*. He also denied that he believed Person A was 13 years old. He stated:

*'Having used chat rooms for so long I never take a profile at face value, rarely do people portray their true selves and this adds to the escapism factor, it's not real, you do not know who you are talking to and it does not matter because noting is taken seriously. You go along with what you are told and you do not think more about it for this reason.'*

18. In his oral evidence to this Tribunal, Dr Awan maintained that he believed that Lycos was a chat website for adults. He told the Tribunal that, in order to sign up to Lycos, there was a requirement for the user to sign up to its terms and conditions in which the user would confirm that they were over the age of 18. Taking this into account, Dr Awan said that he did not believe Person A when she told him that she was 13 years old. Dr Awan went on to explain that, as the conversation took place between the hours of 11:50 and 14:11, he did not believe Person A was 13 years old because she should have been in school. Further, he told the Tribunal that, at the time of the events, he was an experienced user of chatrooms and it was common for people to not tell the truth online. Therefore, he did not believe Person A was telling the truth.

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19. The Tribunal did not consider the explanations that Dr Awan gave in his oral evidence to be credible. The Tribunal took the view that it is not unusual for children to be on chatrooms that are designed for people over the age of 18 therefore it did not find Dr Awan's explanation that he immediately thought Person A was lying about her age to be logical. The Tribunal noted Dr Awan's explanation that he did not believe Person A was 13 as she was not in school. The Tribunal took the view that Person A could have been on Lycos during the school holidays, she could have been truanting from school or she could have accessed Lycos on her mobile phone whilst at school. Again, the Tribunal did not find this to be a plausible explanation as to why Dr Awan did not believe Person A to be 13.

20. The Tribunal went on to consider the length of the Lycos conversation. It noted that the conversation took place over approximately a two-and-a-half-hour time period. The Tribunal found it odd that Dr Awan did not appear to challenge the age of Person A at any point during the conversation. Instead of cutting off the conversation once Person A told Dr Awan that she was 13, Dr Awan continued the conversation. Further, the Tribunal noted that Dr Awan tried to find other methods of communicating with Person A in asking for her Facebook ID, Whatsapp, Yahoo Messenger and Kik details. The Tribunal rejected his explanation that the purpose for this was to verify her age. The Tribunal did not accept Dr Awan's reasons for not challenging the age of Person A in that he did not want to appear as *'impolite'*.

21. In his oral evidence, Dr Awan told the Tribunal about an incident that occurred in Pakistan in 2014. He stated that, on returning home to see his family, a group of men broke in and robbed and violently assaulted him. XXX. He explained that he blamed his XXX for the attack as she had told people that Dr Awan would be visiting. Dr Awan said he believed that the people who had attacked him thought he would have lots of money on him as his brother had purchased an expensive car with funds he had remitted from the UK. Dr Awan stated that this incident had put a strain on his relationship with XXX. On 5 January 2016, he stated that he had an argument with XXX over the phone about the incident and as a result of the argument he went on to Lycos to de-stress. In his statement to the GMC, Dr Awan stated that he was still pre-occupied with the argument and this is why he provided his telephone number to Person A. The Tribunal asked Dr Awan how he would have behaved differently on Lycos had he not had an argument with XXX that day. He stated that he might have stopped it instantly and was suffering from *'brain fog'*. Whilst the Tribunal acknowledged the impact that this incident may have had on Dr Awan, it noted that there is no evidence that Dr Awan was again *'pre-occupied'* when the second conversation took place and did not find this a plausible explanation for Dr Awan providing his telephone number to a girl he believed was 13 nor for the comments he made to her.

22. The Tribunal had regard to Dr Awan's evidence that he was only continuing to talk to Person A so that he could *'expose'* her real age and this was why he was trying to arrange to speak by phone with her and to contact her on other social

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media platforms. Throughout his oral evidence, he maintained that he believed that Person A was an *'old/older female'*. The Tribunal took the view that his oral evidence was inconsistent with his GMC witness statement in which he stated:

*'At the time of our online communication I did not pay any attention to Person A's age; it was of no consequence to me because the conversation was just words on a screen. It had no meaning to me'*.

23. The Tribunal next had regard to the conversation between Person A and Dr Awan on 21 January 2016 via text message and then on Whatsapp. Whilst the Tribunal accepted that Dr Awan might not have remembered Person A when he received the initial text from Person A, the Tribunal did not believe that Dr Awan would not have made the connection early on in the conversation via Whatsapp. In light of Dr Awan's evidence that he had not been approached by someone claiming to be a child in previous chats, the Tribunal took the view that he would have remembered the initial conversation with Person A. Further, the fact that the second conversation only took place a little more than two weeks after the initial conversation on Lycos.

24. Taking into account all of the evidence before it, the Tribunal was satisfied, on the balance of probabilities, that on 5 January 2016 and 21 January 2016, Dr Awan engaged in conversations with an individual that he believed was a 13 year old girl. It therefore found paragraph 1a of the Allegation proved.

### Paragraph 2c

*During the course of the Conversations you:*

*c. made numerous inappropriate remarks to Patient A as set out in Schedule 2.*

25. The Tribunal had regard to the dialogue of the Lycos, Text and Whatsapp conversations, as set out in schedule 2. It noted that Dr Awan had confirmed to Person A that he was a doctor at the beginning of the conversation. Given that the Tribunal has found paragraph 1a of the Allegation proved, in the context that Dr Awan believed Person A was a 13 year old girl, it took the view that it follows that there were elements to these conversations that were inappropriate.

26. Whilst it did not attach much significance to the hug emoji used by Dr Awan in his initial conversation with Person A on Lycos or the kisses at the end of the text message, it considered that the following comments by Dr Awan were inappropriate in the following context:

*'XXX: u there*

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*Person A: yeh im here*

*XXX:*



*Person A: thank u x*

*XXX: mwah hugs for u*

*Person A: thats nice I need some hugs*

*XXX: i want huggs too*

*Person A:*



*Person A: imsewdnign u some back*

*XXX:*



*XXX: ??*

*Person A: sending you a hug back*

*XXX: mmmwah*

*XXX: do you have a number?*

*Person A: telephone*

*XXX: yep*

*Person A: yeah why u want it*

*XXX: I want to call you*

*XXX: and listen to ur voice'*

27. The Tribunal noted that Dr Awan had instigated the conversation about hugging and, in the context that Person A was a 13 year old girl, the Tribunal determined that these remarks were inappropriate. The Tribunal next had regard to the fact that, following the conversation relating to hugging, Dr Awan immediately went on to ask Person A for her telephone number so he could call her and listen to her voice. Given the close proximity to the comments about hugging and, in the context that Person A was a 13 years old girl, the Tribunal also deemed that it was inappropriate for a middle-aged man to be asking for the contact details of a 13 year

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old girl so he was able to hear her voice.

28. The Tribunal next had regard to the following part of the conversation on Lycos:

!...

*Person A: i dont mind but dont want u calling when my mum is ere*

*XXX: i know what u mean*

*XXX: is ur mum there now?*

*Person A: no but my auntie is down stairs*

*XXX: i will only say hello is you like*

*Person A: ok maybe I dut want 2 get in trouble*

*XXX: ok leave it'*

29. The Tribunal took the view that this was an example of Dr Awan wanting to speak to Person A without the presence of an adult. The Tribunal took the view that this was inappropriate.

30. The Tribunal acknowledged that, whilst there were no overtly sexual remarks made by Dr Awan to Person A during the course of the two conversations, his attempts to speak to her on the phone and to contact her via other social media platforms was inappropriate. The Tribunal accepted Mr Rich's submission that there were opportunities, through some of the indirect comments made by Person A, for Dr Awan to engage in more intimate conversations and that he did not do so on Lycos or in the later messages on Whatsapp. The Tribunal did not accept the GMC's submission that Dr Awan's comment about being in bed was inappropriate. It took the view that Person A had initiated this part of the conversation by stating that she was in bed and Dr Awan had simply responded to state that he was also in bed.

31. The Tribunal went on to consider the Whatsapp conversation from 21 January 2016 where Dr Awan had said, '*we won't be able to meet till u r 16... as it will be illegal*'. The Tribunal took the view that this was inappropriate, as it judged that the implication was that he was talking about '*illegal*' in the context of 16 being the age of consent.

32. On the balance of probabilities and having reviewed all of the evidence, the Tribunal determined in the context that Dr Awan was speaking to a 13 year old girl, that he had made numerous inappropriate remarks to Person A. Accordingly, it

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found paragraph 2c of the Allegation proved.

### Paragraph 3

*Your conduct at paragraphs 1 and 2c was sexually motivated.*

33. In light of the Tribunal's determination that Dr Awan had made inappropriate remarks to Person A, the Tribunal went on to consider the motivation behind his conduct. Whilst it has found that there were no explicit sexual remarks made by Dr Awan to Person A, the Tribunal took the view that the series of Lycos messages, text messages and Whatsapp messages gave rise to the conclusion that his actions were sexually motivated and it could find no other credible explanation as to why a middle-aged man would continue to engage with Person A as soon as she had confirmed her age as 13 which was at the beginning of the Lycos conversation. It noted that it was only towards the end of the conversation, and after speaking to person A, that he directly challenged her age. The Tribunal considered the fact that Dr Awan was persistent in trying to take the conversation off Lycos to another platform. This culminated in Dr Awan providing his mobile phone number to Person A so that he could continue the interaction with her and he did attempt to call her on more than one occasion. The Tribunal did not consider it likely that these were the actions of somebody who was not trying to initiate a relationship of some kind with Person A.

34. The Tribunal went on to consider the Whatsapp conversation from 21 January 2016.

*'Telephone number B: I do remember you*

*Telephone number B: But I wasnt sure abt ur age*

*Telephone number B: I thought u were 15*

*Telephone number B: Soon to be 16*

*Telephone number B: So when is ur birthday?*

*Person A: No 13 that's why I got kicked off Lycos as someone told on me but didn't fink it was u*

*Person A: Septemeber*

*Telephone number B: Well we can only be froends Person A*

*Telephone number B: We won't be able to meet till u r 16*

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*Telephone number B: As it will be illegal*

*Telephone number B: Hope u understand*

....

*Telephone number B: I said we can chat*

*Telephone number B: But cant meet u*

*Telephone number B: R u okay with that?*

*Telephone number B: ???*

*Person A: OK up 2 u*

*Telephone number B: Can i call you now?*

35. In his GMC witness statement, Dr Awan stated:

*'I have not developed any enduring friendships from speaking with people via the internet. I have never met someone in person following online communications. This was never my aim, it was just to relax me.'*

Dr Awan, in his oral evidence stated that he had never intended to meet with Person A. The Tribunal took the view that there is an implication from the dialogue between Dr Awan and Person A that he would meet her when she was 16 as it would no longer be illegal. The Tribunal did not accept Dr Awan's evidence, and submissions made on his behalf, that he did not intend to meet Person A at some point and that he was creating 'an excuse not to meet her' given his next action, which was to call her and continue communication.

36. In his evidence, Dr Awan was asked what he meant by the term '*illegal*'. He maintained that the use of the word '*illegal*' was a poor choice of English as it is not his first language. He stated that a female is competent when 16 years old. At 16 years old they can make decisions for themselves and anyone less than 16 is not competent. He referred the Tribunal to the term '*Gillick competence*'. He stated that this is used to determine whether a child under that age of 16 is able to consent to his or her own medical treatment without the need for parental permission. The Tribunal did not accept that Dr Awan did not know that 16 is the age of sexual consent, it did not find Dr Awan's explanation credible. Dr Awan was not Person A's doctor therefore the Tribunal did not accept that he was referring to the age of medical consent.

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37. Taking into account all of the evidence before it, the Tribunal was satisfied that Dr Awan's conduct was sexually motivated. It therefore found paragraph 3 of the Allegation proved.

### Paragraph 4

*You failed to report Person A as a potentially vulnerable child to the:*

- a. relevant child protection agency;*
- b. Police.*

38. The Tribunal first considered whether Dr Awan had a duty to report Person A, as a vulnerable child, to the relevant Child Protection Agency and to the Police.

39. It had regard to Dr Awan's GMC witness statement. He stated:

*'I accept I did not report Person A as a potentially vulnerable child as I believed this was an adult messing about with me on the chat which later proved to be true...I further accept that I had a duty to do so had I thought she was a vulnerable child'.*

40. The Tribunal next had regard to Paragraph 27 of *Good Medical Practice (2013)* ('GMP') which states:

*'27 Whether or not you have vulnerable adults or children and young people as patients, you should consider their needs and welfare and offer them help if you think their rights have been abused or denied.<sup>13,14</sup>*

41. Paragraph 27 of GMP references the *General Medical Council (2012) Protecting children and young people: the responsibilities of all doctors London, GMC* which states:

*'32 You must tell an appropriate agency, such as your local authority children's services, the NSPCC or the police, promptly if you are concerned that a child or young person is at risk of, or is suffering, abuse or neglect unless it is not in their best interests to do so...'*

42. The Tribunal noted that the GMC made no specific submission on this paragraph of the Allegation. Given that the Tribunal have found paragraph 1a of the Allegation proved, it took the view, having regard to GMP, that Dr Awan did have a duty to tell an appropriate agency. In their view, the relevant agency to tell in this case would be a relevant Child Protection Agency. It determined that Dr Awan did not have a duty to tell a relevant Child Protection Agency *and* the Police.

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Accordingly, it found 4a of the Allegation proved and 4b of the Allegation not proved.

### The Tribunal's Overall Determination on the Facts

43. The Tribunal has determined the facts as follows:
1. On 5 January 2016 and 21 January 2016, you engaged in conversations via an online chatroom, text message and WhatsApp (the 'Conversations') with an individual ('Person A') who you:
    - a. believed was a 13 year old girl; **Found proved**
    - b. purported to accept was a 13 year old girl. **Admitted and found proved**
  2. During the course of the Conversations you:
    - a. told Person A that you were a doctor; **Admitted and found proved**
    - b. used the username set out in Schedule 1 which identified you as a member of the medical profession; **Admitted and found proved**
    - c. made numerous inappropriate remarks to Patient Person A as set out in Schedule 2. **Amended under rule 17(6). Found proved**
  3. Your conduct at paragraphs 1 and 2c was sexually motivated. **Found proved**
  4. You failed to report Person A as a potentially vulnerable child to the:
    - a. relevant child protection agency; **Found proved**
    - b. police. **Found not proved**

**Determination on Impairment - 14/11/2019**

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1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Awan's fitness to practise is impaired by reason of misconduct.

### The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.

### Submissions

3. On behalf of the GMC, Mr Blakey submitted that Dr Awan's fitness to practise is impaired by reason of his misconduct. He reminded the Tribunal of the two-stage process to be adopted: first, whether the facts found proved amount to serious misconduct; and secondly whether Dr Awan's fitness to practise is currently impaired by reason of his misconduct.

4. He submitted that there is a serious, sexual angle to this case which involved inappropriate and sexually motivated conduct by Dr Awan towards Person A, who he believed to be a 13 year old girl. He submitted that Dr Awan's actions fell seriously short of the conduct patients and the public are entitled to expect from medical practitioners.

5. Mr Blakey referred the Tribunal to the case of *CHRE v NMC and Grant (2011) EWHC 927 (Admin)*. He emphasised the importance of the overarching objective and reminded the Tribunal that this should be at the forefront of its consideration when dealing with the issue of impairment. He stated that Mr Awan has not demonstrated any insight or remediation and submitted that there is a real risk of repetition in this case. Given the Tribunal's finding of sexual motivation, in the context of Dr Awan believing Person A to be a 13 year old girl, Mr Blakey invited the Tribunal to conclude that Dr Awan's misconduct must be marked by a finding of impairment.

6. On behalf of Dr Awan, Mr Rich submitted that Dr Awan had accepted that a finding of misconduct is inevitable in this case and that a finding of current impairment is also inevitable.

7. Mr Rich reminded the Tribunal of its findings and stated that he would make submissions which reflected them. He noted Dr Awan did not engage in a more intimate conversation with Person A, despite being presented with such opportunities; with regard to his intent to meet with Person A when she turned 16, whilst this may appear distasteful, this would not have been illegal.

8. Mr Rich referred to the testimonials that have been provided in knowledge of the Allegation made against Dr Awan. He submitted that, prior to this Allegation, Dr

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Awan had an unblemished record and the testimonials adduced on his behalf demonstrate that he is a good doctor. He stated that Dr Awan only became aware of this Allegation whilst living in Canada and had already left the UK prior to the concerns being raised by the GMC. He told the Tribunal that Dr Awan has removed himself from Lycos and no longer uses social media platforms. Further, he submitted that Dr Awan has also attended Continuing Professional Development ('CPD') courses which demonstrate he has attempted to remediate his behaviour. He reminded the Tribunal that Dr Awan has been working for more than three years since the allegations and there have been no further issues. He submitted that the Tribunal could properly find that the likelihood of repetition in this case is low.

### The Relevant Legal Principles

9. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.

10. The Tribunal was mindful of the overarching objective of the GMC set out in section 1 of the Medical Act 1983 (as amended) which requires the Tribunal to:

- a. Protect, promote and maintain the health, safety and well-being of the public,
- b. Promote and maintain public confidence in the medical profession, and
- c. Promote and maintain proper professional standards and conduct for members of that profession.

11. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted:

- a. First, whether the facts as found proved amounted to misconduct and that the misconduct was serious;
- b. Second, whether the finding of that misconduct could lead to a finding of impairment. (*GMC v Cheatle [2009] EWHC 645 [Admin]*)

12. The Tribunal took account of *Roylance v GMC [2000] 1 AC 311* in which Lord Clyde stated that misconduct is conduct that brings the profession into disrepute and it must be serious.

13. The Tribunal must determine whether Dr Awan's fitness to practise is impaired today, taking into account Dr Awan'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.

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### The Tribunal's Determination on Impairment

#### Misconduct

14. The Tribunal began the first stage of the process by determining if Dr Awan's actions, as set out in the Allegation, amounted to misconduct.

15. It noted its findings that Dr Awan had engaged in dialogue with someone who he believed to be a 13 year old girl. He continued to try and engage with Person A via different social media platforms and made inappropriate and sexually motivated remarks to her. Further, Dr Awan persisted in trying to speak with Person A over the phone and sought to do so at a time when an adult would not be present. The Tribunal noted that Dr Awan told Person A that he was a doctor during the initial conversation on Lycos. Whilst these conversations did not take place in a clinical setting, the Tribunal considered Dr Awan to have breached his position of trust. It took the view that Dr Awan's conduct was unbecoming with that of a registered medical practitioner.

16. The Tribunal also had regard to the principles set out in GMP. It considered that paragraph 65 was engaged in this case:

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

17. In all the circumstances, the Tribunal concluded that Dr Awan's conduct did fall far short of the standards of conduct reasonably expected of a doctor and amounted to misconduct which was serious.

#### Impairment

18. The Tribunal, having determined that the facts found proved amount to misconduct, went on to consider whether, as a result of that misconduct, Dr Awan's fitness to practise is currently impaired.

19. The Tribunal reminded itself of the case of *CHRE v NMC & Grant 2011 EWHC 927* which sets out factors to be considered in determining impairment. It considered the following was relevant in this case:

*'Do our findings of fact in respect of the doctor's...misconduct...show that his fitness to practise is impaired in the sense that the doctor*

...

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- 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*
- ...'*

20. The Tribunal took the view that sexually motivated conduct is not easily remediable. However, it recognised the steps that Dr Awan has taken towards remediation. It noted from Dr Awan's GMC witness statement that he has completed a number of CPD courses to improve his knowledge and understanding of social media. The Tribunal considered that Dr Awan has made some efforts to reflect on his behaviour and has started to put measures in place to ensure that this conduct is not repeated. He told the Tribunal that he no longer uses chat rooms and has found other methods to 'de-stress'. The Tribunal had regard to the positive testimonials provided in support of Dr Awan. It is clear that he is a well-regarded doctor and that there are no clinical concerns. The Tribunal noted that there is no evidence that Dr Awan has repeated his misconduct. For all these reasons, it therefore determined that the risk of repetition in this case is low.

21. The Tribunal went on to consider Dr Awan's insight into his behaviour. Whilst the Tribunal acknowledged that Dr Awan has reflected on his behaviour, it considered Dr Awan's insight to be limited. The Tribunal took the view that Dr Awan is yet to recognise that his actions towards Person A were inappropriate. The Tribunal noted that Dr Awan has not expressed any remorse or addressed the impact that his actions could have had on the public trust in, and the reputation of, the medical profession. The Tribunal determined that Dr Awan needs to develop greater insight in order to fully remediate its findings.

22. The Tribunal accepted that Dr Awan does not pose a risk to patients and his clinical competence has not been called into question. However, given the finding of sexual motivation in this case, the Tribunal determined that a finding of impairment is necessary in order to satisfy the relevant limbs of the overarching objective namely, 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. The Tribunal considered that Dr Awan had breached one of the fundamental tenets of the medical profession as reflected at paragraph 16 of this determination and that public confidence would be undermined if a finding of impairment were not made.

23. Accordingly, the Tribunal determined that Dr Awan's fitness to practise is impaired by reason of his misconduct.

### **Determination on Sanction - 15/11/2019**

## **Record of Determinations – Medical Practitioners Tribunal**

1. Having determined that Dr Awan’s fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

### **The Evidence**

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant when reaching a decision on sanction.

### **Submissions**

3. On behalf of the GMC, Mr Blakey submitted that the appropriate and proportionate sanction in this case is to erase Dr Awan’s name from the medical register.

4. He reminded the Tribunal of the gravity of Dr Awan’s misconduct and stated that it involved inappropriate, sexually motivated and concerning behaviour towards Person A, who he believed to be a 13 year old girl. He submitted that Dr Awan’s conduct amounted to predatory behaviour and that public confidence would be undermined if Dr Awan was not erased from the medical register.

5. Mr Blakey referred the Tribunal to the *Sanctions Guidance 2018* (‘SG’). He submitted that Dr Awan’s conduct amounted to an offence of a sexual nature and that he had abused his position of trust as a doctor. He further submitted that Dr Awan’s conduct was a particularly serious departure from GMP and stated that his behaviour is fundamentally incompatible with the continued registration of a medical practitioner.

6. On behalf of Dr Awan, Mr Rich submitted that the gravity of this case could be met by a period of suspension. Mr Rich submitted that a wide range of conduct is covered under misconduct of a sexual nature. He submitted that Dr Awan’s conduct was at the lower end of the spectrum. He submitted that Dr Awan had been able to demonstrate some insight albeit only partial.

7. He reminded the Tribunal that Dr Awan has undertaken a considerable body of CPD courses to educate himself on the impact of social media as well as his reporting obligations in respect of vulnerable children. He submitted that Dr Awan has continued practising since 2016 without any further issues. He submitted that a period of suspension would be the appropriate and proportionate sanction in this case. He stated that this would have a deterrent effect and would send out a signal to Dr Awan, the profession and the public about what is regarded as behaviour unbecoming a registered doctor.

### **The Tribunal’s Determination on Sanction**

## **Record of Determinations – Medical Practitioners Tribunal**

8. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement.

9. In reaching its decision, the Tribunal has taken account of the SG. It has borne in mind that the purpose of a sanction is not to be punitive, but to protect patients and maintain public confidence, although it may have a punitive effect.

10. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Awan's interests with the public interest. It has taken account of the overarching objective, which includes the protection of the public, the maintenance of public confidence in the profession, and promoting and maintaining proper professional standards and conduct for members of the profession.

### **Mitigating and Aggravating factors**

11. The Tribunal considered the following to be mitigating factors in this case:

- No evidence that Dr Awan has committed a sexual offence;
- Dr Awan has made positive steps towards remediation and put measures in place, such as discontinuing his use of social media platforms to ensure this misconduct is not repeated;
- There were opportunities for Dr Awan to engage in a more sexually explicit dialogue with Person A however he did not do so;
- The sexual misconduct was at the lower end of the spectrum;
- No one came to any harm;
- Doctor of good standing with an unblemished record;
- The impact of the assault on Dr Awan in 2014.

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

- Dr Awan has demonstrated limited insight into the effect his conduct, including revealing his identity as a doctor, had on the public trust and confidence in the medical profession;
- There has been no expression of remorse;
- The findings of inappropriate behaviour and sexual misconduct towards Person A who Dr Awan believed to be a 13 year old girl;
- The Tribunal considered Dr Awan's actions to be a serious departure from the principles set out in GMP.

### **No action**

13. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Awan's case, the Tribunal first considered whether to conclude the case by taking no action.

## Record of Determinations – Medical Practitioners Tribunal

14. The Tribunal considered that there are no exceptional circumstances in which it might be justified in taking no action against Dr Awan's registration. The Tribunal determined that in view of its findings on impairment, it would not be sufficient, proportionate or in the public interest, to conclude this case by taking no action.

### Conditions

15. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Awan's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

16. It had regard to paragraph 81 of the SG which states:

*'81 Conditions might be most appropriate in cases:*

*a) involving the doctor's health*

*b) involving issues around the doctor's performance*

*c) where there is evidence of shortcomings in a specific area or areas of the doctor's practice*

*d) where a doctor lacks the necessary knowledge of English to practise medicine without direct supervision.'*

17. The Tribunal was of the view that none of the above applied in this case. While the Tribunal recognised that paragraph 81 did not exhaustively limit the circumstances in which conditions might be appropriate, it concluded that it was not possible to formulate relevant and workable conditions appropriate to the facts of this case. Moreover, it determined that conditions would be insufficient to meet the public interest and to maintain proper professional standards of conduct for the members of the profession.

### Suspension

18. The Tribunal then went on to consider whether imposing a period of suspension on Dr Awan's registration would be appropriate and proportionate.

19. The Tribunal accepted that suspension has a deterrent effect and can be used to send a signal to the doctor, the profession and the public about what is regarded as behaviour unbecoming of a registered doctor.

20. It had regard to the following paragraphs of the SG:

## Record of Determinations – Medical Practitioners Tribunal

'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 unbecoming 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).*

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

a. *A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.*

...

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

f. *No evidence of repetition of similar behaviour since incident.'*

21. The Tribunal noted that, although Dr Awan resides in Canada, he has fully engaged with the hearing process. The Tribunal has found no evidence of repetition of the misconduct since the events in question and was mindful of Dr Awan's positive steps towards remediation. Whilst it noted that Dr Awan has taken steps to ensure his misconduct is not repeated, it considered that Dr Awan needed to reflect further on the impact his actions had on public trust and public confidence in the medical profession.

22. The Tribunal had regard to the relevant paragraphs of the SG which refer to sexual misconduct:

## Record of Determinations – Medical Practitioners Tribunal

*'149 This encompasses a wide range of conduct from criminal convictions for sexual assault and sexual abuse of children (including child sex abuse materials) to sexual misconduct with patients, colleagues, patients' relatives or others...*

*150 Sexual misconduct seriously undermines public trust in the profession. The misconduct is particularly serious where there is an abuse of the special position of trust a doctor occupies, or where a doctor has been required to register as a sex offender. More serious action, such as erasure, is likely to be appropriate in such cases.'*

23. The Tribunal took into account the seriousness of the misconduct. Whilst the Tribunal accepted that there was no victim in this case, it has found that Dr Awan made inappropriate and sexually motivated remarks towards Person A, who he believed to be a 13 year old girl. The Tribunal was satisfied that action must be taken to maintain public confidence in the profession as well as to maintain proper professional standards. The Tribunal considered paragraph 149 of the SG which sets out a wide range of conduct from sexual assault, sexual abuse of children to sexual misconduct. The Tribunal considered that the sexual misconduct in this case was at the lower end of the spectrum. The Tribunal also noted that many of the paragraphs in the SG concerning sexual misconduct are in fact related to misconduct involving patients and were not relevant to this case.

24. The Tribunal had considered whether to erase Dr Awan's name from the Medical Register. In light of the positive testimonials, along with no evidence of repetition, the Tribunal carefully balanced the interests of Dr Awan with the interests of the Public. The Tribunal is of the opinion that Dr Awan's misconduct was serious, but falls short of being fundamentally incompatible with continued registration. The Tribunal took the view that erasing Dr Awan's name from the medical register would be disproportionate, given the circumstances of this case and that a period of suspension would suffice in order to send a signal to the doctor, the profession and the public about what is regarded as behaviour unbecoming of a registered doctor. It also considered the public interest would be best served by not depriving the public of an otherwise competent doctor.

25. In all the circumstances, therefore, the Tribunal concluded that suspension would be the most appropriate and proportionate sanction in this case.

26. The Tribunal was mindful of the aggravating and mitigating factors set out in paragraph 11 of this determination, and SG paragraphs 99 to 102 which provides Tribunals with guidance on determining the length of a suspension. Given the steps, although limited, that Dr Awan has taken so far to remediate and the lack of repetition, that it is appropriate to impose nine months' suspension on his registration. The Tribunal determined that the period of nine months would allow Dr Awan to further reflect on the seriousness of his misconduct and the impact it had

## Record of Determinations – Medical Practitioners Tribunal

on public trust and confidence in the medical profession. It also concluded that such a period of suspension would send the appropriate message to the public and to the profession.

27. The Tribunal determined to direct a review of Dr Awan's case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought.

28. The Tribunal wishes to clarify that at the review hearing the onus will be on Dr Awan to demonstrate how he has remediated his misconduct and how he has kept his skills and knowledge up to date. It therefore may assist the reviewing Tribunal if Dr Awan provided:

- Evidence that he has reflected on his misconduct and developed full insight;
- Evidence of his Continuing Professional Development and that he has kept his skills and knowledge up to date;
- Any other information that he considers will assist.

### Determination on Immediate Order - 15/11/2019

1. Having determined to suspend Dr Awan's registration for a period of nine months, the Tribunal has now to decide, in accordance with Rule 17(2)(o) of the Rules, whether Dr Awan's registration should be subject to an immediate order.

#### Submissions

2. On behalf of the GMC, Mr Blakey submitted that an immediate order is necessary in this case. He referred to the following paragraphs of the SG:

*'172) The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.'*

*173) An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where*

## Record of Determinations – Medical Practitioners Tribunal

*immediate action must be taken to protect public confidence in the medical profession.'*

3. On behalf of Dr Awan, Mr Rich submitted that an immediate order was not necessary in this case. He reminded the Tribunal of its findings that there are no issues of patient safety arising in this case and submitted that it is not necessary for the Tribunal to impose an immediate order of suspension in order to protect the public. He referred to the case of *Ashton v GMC [2013] EWHC 943* and submitted that the public interest would not be undermined by the order not coming into force immediately as this has already been met by virtue of the substantive sanction.

### The Tribunal's Determination

4. In reaching its decision the Tribunal referred to the relevant paragraphs of the SG. It exercised its own judgement and had regard to the principle of proportionality. It also took into account the submissions made by Mr Blakey and Mr Rich.

5. The Tribunal considered the seriousness of the matter and whether it would be appropriate to immediately suspend Dr Awan's registration. It took account of the fact that it had found that Dr Awan's actions amounted to misconduct and that he was currently impaired. The Tribunal determined that, given the serious nature of Dr Awan's misconduct, it was both necessary and proportionate to impose an immediate order of suspension on his registration. This immediate order serves to uphold public trust and public confidence in the medical profession, and to maintain and uphold proper standards of conduct and behaviour.

6. This order means that Dr Awan's registration will be suspended from the time when notification of this decision is deemed to have been served on him.

7. The substantive direction of a nine months suspension, as already announced, will take effect 28 days from when written notice of this determination has been served upon Dr Awan, unless an appeal is made in the interim. If an appeal is made, the immediate order of suspension will remain in force until the appeal has concluded.

8. The interim order currently imposed on Dr Awan's registration will be revoked when the immediate order takes effect.

9. That concludes this case.

### Confirmed

**Record of Determinations –  
Medical Practitioners Tribunal**

**Date** 15 November 2019

Ms Sharmistha Michaels, Chair

**Record of Determinations –  
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**SCHEDULE 1**

**XXX**

## Record of Determinations – Medical Practitioners Tribunal

### SCHEDULE 2

No	Date	Username	Content
1.	05/01/2016	XXX Person A XXX Person A XXX XXX Person A XXX	r u single? yeh but im m13 pleae dunt say anything wat u mean m13? no im 13 ok r u at school? nah shud be lol ok
2.	05/01/2016	XXX Person A Person A Person A XXX XXX	what r u doing? talking 2 u  im sat in bed nice i am in bed too

## Record of Determinations – Medical Practitioners Tribunal

3.	05/01/2016	<p>XXX</p> <p>Person A</p> <p>XXX</p> <p>Person A</p> <p>XXX</p> <p>Person A</p> <p>Person A</p> <p>XXX</p> <p>XXX</p> <p>Person A</p> <p>XXX</p> <p>XXX</p> <p>Person A</p> <p>XXX</p> <p>Person A</p> <p>XXX</p> <p>XXX</p> <p>Person A</p> <p>XXX</p>	<p></p> <p>thank u x</p> <p>mwah huggs for u</p> <p>that's nice I need some hugs i</p> <p>want huggs too</p> <p></p> <p>imsewdnign u some back</p> <p></p> <p>??</p> <p>sending you a hug back</p> <p>mmmwah</p> <p>do u have a number?</p> <p>telephone</p> <p>yep</p> <p>yeah why u want it i</p> <p>want to call u</p> <p>and listen to ur voice</p> <p>ok but i dunt no u very well at the minute ok</p> <p>Person A</p> <p>no worries</p> <p>i dunt mind but dunt want u calling wen my mum is ere</p> <p>i know what u mean</p>
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## Record of Determinations – Medical Practitioners Tribunal

	XXX Person A XXX Person A XXX	is ur mum there now? no but my auntie is down stairs i will only say hello if you like ok maybe i dut want 2 get in trouble ok leave it
05/01/2016	XXX Person A XXX Person A XXX XXX Person A Person A XXX Person A XXX Person A XXX	i am looking for yahoo messenger i cant find u u can talk to me on fone ok wats ur number? ??? sorry ewent to piss i dunt want 2 give u my number in case my mum has my fone ok wats ur and I can text wen I can speak [Telephone number B] ok will text u x ok
21/01/2016	Telephone number B	I am at work finish at 6 what are you upto? Xxxxx
21/01/2016	Telephone number B Person A Telephone number B Person A Telephone number B Person A	R u in classroom? Just in loo Called u but u didn't answet Just havina piss lol but my mates with me u on ur own Ur mates with u in the loo? Got 2 go back 2 class could speak wen dun

## Record of Determinations – Medical Practitioners Tribunal

7.		Telephone number B Person A	Wat time u finish school? In a bit
8.	21/01/2016	Telephone number B Telephone number B	We wont be able to meet till u r 16 As it will be illegal
9.	21/01/2016	Telephone number B Person A Telephone number B	Where r u now? Still at school leavug soon why R u in classroom?
10.	21/01/2016	Telephone number B Person A Telephone number B Telephone number B	Can I call u now? Yeah U sound nice buut not 13 U sound a lot older tbh