

Record of Determinations Medical Practitioners Tribunal Review on Papers

2. The 2015 Tribunal found that Dr Babar's fitness to practise was impaired both on the ground of misconduct and the ground of deficient professional performance. There were a number of aspects to the finding of impairment in relation to misconduct. It is unnecessary to say a great deal about the misconduct because that no longer features as a basis for current impairment. Insofar as deficient professional performance was concerned, the 2015 Tribunal found that Dr Babar's professional performance was unacceptable in two areas (maintaining professional performance, and assessment), and that it gave cause for concern in three areas (clinical management, operative/technical skills, and working with colleagues). As a result, a finding of current impairment was necessary. The 2015 Tribunal imposed a sanction of six months suspension with a review.

3. Dr Babar's case has subsequently been reviewed on three occasions: in January 2016, July 2017, and February 2019. The 2016 Tribunal decided that Dr Babar was no longer impaired on the ground of misconduct. However, it decided that his fitness to practise remained impaired on the ground of deficient professional performance. The 2016 Tribunal decided that it could formulate suitable conditions to enable Dr Babar to return to work whilst also protecting patients, and accordingly it imposed conditions on Dr Babar's registration for a period of 18 months. It ordered a review. The 2017 Tribunal, for its part, concluded that Dr Babar's fitness to practise remained impaired by reason of his deficient professional performance. It, too, decided to impose conditions, albeit in slightly amended terms, again for a period of 18 months, with a review.

4. The third review took place on 7 February 2019. Prior to the hearing a performance assessment had been carried out in respect of Dr Babar. That assessment found his performance to be acceptable in one area (working with colleagues), a cause for concern in two areas (assessment, and relationships with patients), and unacceptable in two areas (maintaining professional performance, and clinical management). Insofar as assessment was concerned, Dr Babar's score on the knowledge test was 56.67%, which was below the standard set mark of 67.25%.

5. In light of that background, Dr Babar conceded that his fitness to practise remained impaired by reason of his deficient professional performance. The 2019 Tribunal noted that Dr Babar had demonstrated understanding about the nature of the deficiencies in his practice, and acknowledged that he had undertaken serious academic study for the examination for Membership of the Royal College of Physicians. However, it was concerned about his level of insight into the importance of addressing the deficiencies in his practice, and also that he had failed to provide the evidence suggested by the 2017 Tribunal or to address the concerns raised by the previous performance assessment. It concluded that a finding of impairment was necessary to promote and maintain public confidence in the medical profession and to promote and maintain professional standards.

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6. Insofar as sanction was concerned, the 2019 Tribunal was concerned about Dr Babar's failure to comply with one of the conditions previously imposed, but was nevertheless satisfied that he had the potential to respond positively to retraining and supervision. Accordingly, the 2019 Tribunal determined to impose conditions on Dr Babar's registration for a further period of 18 months. However, it altered the conditions slightly from those imposed by the 2017 Tribunal to take account of the results of the performance assessment.

7. The 2019 Tribunal directed a review. In order to provide assistance at this review the 2019 Tribunal recommended that Dr Babar provide the following:

- Results of any performance assessment undertaken;
- A personal development plan based upon the advice and guidance of a senior clinician/suitable person, which will seek to address the issues concerning Dr Babar's deficient professional performance;
- A reflective statement that demonstrates depth of insight and the need for remediation;
- Evidence of weekly meetings with Dr Babar's supervisor(s);
- Reports from clinical supervisor(s) and educational supervisor(s);
- Evidence of continued professional development to include work based assessments and case based learning;
- Testimonials from patients and colleagues; and
- Any other evidence Dr Babar considers would assist a reviewing Tribunal.

8. A review hearing had been scheduled for 3 August 2020, but Dr Babar and the GMC have agreed that this review should be considered on the papers in accordance with Rule 21B of the General Medical Council (Fitness to Practise) Rules 2004. They have provided agreed terms of an order which I could make at this review.

9. I have considered all of the information presented to me, including the hearing bundle, the signed agreement between Dr Babar and the GMC setting out the agreed order, and the submission sheet prepared by the GMC. In the submission sheet, the GMC sets out its submissions as to why Dr Babar's fitness to practise remains impaired, and as to the proposed order. The order proposed is that the current period of conditional registration should be extended for a further period of 18 months. The conditions proposed are similar to those imposed by the 2019 Tribunal, but with some changes, including variations to bring them into line with the new conditions bank and glossary, which came into effect shortly after the 2019 Tribunal made its decision.

10. I have taken into account that since the date of the last review Dr Babar has not worked. I think the GMC is correct when it says in its submission that the only

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further evidence provided by Dr Babar is an early draft of a personal development plan. It is a fairly rudimentary document – Dr Babar describes it as “an early draft” – and it has not been approved by Dr Babar’s responsible officer. Dr Babar agreed to undergo a further performance assessment. The process was started in August last year, when an Assistant Registrar decided that a further performance assessment would assist a tribunal carrying out a review. It was delayed because Dr Babar hoped to secure employment in a clinical setting. The performance assessment had been due to take place on 6 and 7 April this year, but unfortunately it could not proceed at that time because of the coronavirus pandemic.

11. In reaching my decision, I have taken account of the Sanctions Guidance. I have borne in mind that the purpose of the sanction is not to be punitive, but to protect patients and the wider public interest, although it may have a punitive effect.

12. I have applied the principle of proportionality, balancing Dr Babar’s own interests with the public interest. The public interest includes amongst other things, the protection of patients, the maintenance of public confidence in the profession, and declaring and upholding of proper standards of conduct and behaviour.

13. I am satisfied that the proposed conditions would be proportionate and sufficient to protect the public and the public interest. I have therefore determined that Dr Babar’s registration be made subject to the following conditions for a period of 18 months:

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

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- e. 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 13
 - 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:
 - Maintaining professional performance.
 - Assessment.
 - Clinical management.
 - Operative/technical skills.
 - Relationships with patients.

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- b. His PDP must be approved by his responsible officer (or their nominated deputy). If he does not have a responsible officer, he may identify another suitable person with the necessary expertise to fulfil this role, subject to their agreement, such as the Head of Foundation School, Director of Medical Education or Dean (or their nominated deputy).
 - c. He must give the GMC a copy of his approved PDP within three months of these substantive conditions becoming effective.
 - d. He must give the GMC a copy of his approved PDP on request.
 - e. He must meet with his responsible officer (or their nominated deputy) or alternative suitable persons, as required, to discuss his achievements against the aims of his PDP.
- 6.
- a. He must have an educational supervisor 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 educational supervisor
 - ii. he has personally ensured that the GMC has been notified of the name and contact details of his educational supervisor.
7. He must only work in a foundation trainee level post.
8. He must get the approval of the GMC before working in a non-NHS post or setting.
- 9.
- a. He must get the approval of his responsible officer (or their nominated deputy), before working as:
 - i. a locum/in a fixed term contract
 - ii. out of hours
 - iii. on-call.
 - b. He must not work until:

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- i. his responsible officer (or their nominated deputy) has confirmed approval
 - ii. he has personally ensured that the GMC has been notified of the approval of his responsible officer (or their nominated deputy).
10. He must not work in any locum post or fixed term contract of less than three months duration.
11.
 - a. He must be closely 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.
12. He must undertake an assessment of his performance, if requested by the GMC.
13. He must personally ensure the following persons are notified of the conditions listed at 1 to 12:
 - a. his responsible officer (or their nominated deputy)
 - b. the responsible officer of the following organisations:
 - i. his place(s) of work, and any prospective place of work (at the time of application)
 - ii. all 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)

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- 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. 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).

14. In reaching this decision, I have considered all of the information presented to me. Insofar as impairment is concerned, as the 2019 Tribunal noted, in a review case there is a persuasive burden on the doctor to demonstrate that the concerns giving rise to the sanction have been adequately remediated. I accept the GMC's submission that, as he has not worked since the last review hearing, and as he has not undergone the scheduled performance assessment, Dr Babar is unable to provide (and in any event has not provided) sufficient objective evidence of remediation. It follows, in my view, that Dr Babar's fitness to practise remains impaired by reason of his deficient professional performance.

15. Insofar as sanction is concerned, the only options open to me are either to make the order in the agreed terms or to direct that the previously scheduled hearing takes place to conduct a review. Nevertheless, it is appropriate for me to consider the available sanctions in ascending order of severity in order to consider whether the proposed sanction is proportionate.

16. In my view, there are no exceptional circumstances which would justify taking no further action in this case. Insofar as conditions are concerned, I am a little concerned about the apparent lack of progress towards satisfying the existing conditions, which (subject to minor variations over time) have now been in place for a considerable time. Nevertheless, I accept that, on this occasion, there were reasons for that that were beyond Dr Babar's control. This case is still one where conditions are appropriate (Sanctions Guidance, paragraph 81b and c) and where they are likely to be workable (Sanctions Guidance, paragraph 82a, b, c, and d). For those reasons, it is appropriate to extend his conditional registration for a further period of time. For those same reasons, it would be disproportionate to impose a period of suspension. The agreed conditions seem to me to address the concerns identified.

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17. The period of conditional registration agreed by the parties is 18 months. The GMC submits that that is an appropriate period of time because it will provide Dr Babar with sufficient time to take steps towards remediation and to address the concerns raised by previous tribunals. It will also allow him to develop his insight, which was a matter of concern to the 2019 Tribunal. The GMC also points out that it is currently unable to arrange performance assessments because of the constraints imposed by the coronavirus pandemic and it is not yet clear when such assessments will be able to resume. The GMC submits that a period of 18 months provides some flexibility during this period of uncertainty. I accept those submissions and I agree that 18 months is a sensible period, which balances the competing interests.

18. The effect of this direction is that, unless Dr Babar exercises his right of appeal, the conditions will take effect 28 days from when written notice of this determination has been served upon him. The current order of conditions will remain in place until the appeal period has ended, or, in the event that he does appeal, until that appeal is decided. A note explaining Dr Babar's right of appeal will be provided to him.

19. Finally, since a review was ordered by each the three previous reviewing panels, I think I should, for Dr Babar's benefit, make it clear that I have no power to direct a review of this order, but that the Registrar (or the Assistant Registrar acting under delegated authority) does have such a power. Accordingly, Dr Babar should be aware that it is for the Registrar (or the Assistant Registrar acting under delegated authority) to decide whether there will be a review of this order.

20. Notification of this decision will be served on Dr Babar in accordance with the Medical Act 1983, as amended.

Confirmed
Date 17 July 2020

Mr David McLean, Chair