

PUBLIC RECORD

Date: 04/12/2023

Medical Practitioner's name:	Dr Humair NASIM
GMC reference number:	7028593
Primary medical qualification:	MB BS 1991 University of Punjab (Pakistan)
Type of case	Outcome on impairment
Review - Misconduct	Consideration of impairment not reached

Summary of outcome

Adjourned to a new tribunal. Current sanction to remain in place.

Tribunal:

Legally Qualified Chair	Mr Tim Bradbury
Lay Tribunal Member:	Mr John Elliott
Medical Tribunal Member:	Dr Bridget Langham
Tribunal Clerk:	Miss Emma Saunders

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Ms Sarah Przybylska, Counsel, instructed by Medical Protection
GMC Representative:	Mr Neil Shand, Counsel

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public

confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on preliminary issue prior to commencing substantive review - 04/12/2023

1. At the outset of the hearing, a question arose as to whether the MPTS Tribunal Circular titled *'Taking/Receiving evidence from witnesses abroad'* (October 2023) and *'Receiving witness evidence at Medical Practitioners Tribunal hearings'* (October 2023) ('the guidance') applied in this case. The guidance makes reference to the case of *Re Agbabiaka (Evidence from Abroad: Nare Guidance: Nigeria)* [2021] UKUT 286 (IAC).

2. The Tribunal clarified with Ms Przybylska, Counsel on behalf of Dr Nasim, that Dr Nasim was currently in the Republic of Ireland and the intention was that he would give oral evidence to the Tribunal. Permission had not been sought from the Irish authorities to allow Dr Nasim to give oral evidence from the Republic of Ireland and so the Tribunal had to consider whether it would be appropriate for him to give oral evidence at this hearing in the absence of such permission.

Submissions

Submissions on behalf of Dr Nasim

3. Ms Przybylska referred to paragraph 60 of the guidance:

"In these circumstances the tribunal will need to invite submissions from the parties on how to proceed. The tribunal may wish to consider whether or not it can properly receive the evidence in accordance with Rule 34(1) and, if not, the interests of justice and fairness in proceeding with the hearing including the impact of not receiving evidence from the witness or of any delay in the hearing proceeding if evidence from the witness is not received at that time. The tribunal may wish to consider whether the evidence may reasonably be obtained solely in writing (including by questions being put in writing by the cross-examining party and by the tribunal if necessary) or by the witness being required to attend."

4. She stated that there was some hint that it might be possible that the Tribunal could receive Dr Nasim's oral evidence via Rule 34(1) of the GMC (Fitness to Practise) Rules 2004, as amended ('the Rules'). Rule 34(1) states:

“The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.”

5. Ms Przybylska stated that there were a number of alternatives, including that the hearing be adjourned until the permission could be obtained. She submitted that, if the hearing were to adjourn, Dr Nasim was under very significant financial strain at present. Ms Przybylska submitted that there was quite a strong interest in proceeding with the hearing today but she stated that she bore in mind that there was also a strong interest in preserving the diplomatic relationship between the UK and the Republic of Ireland. Ms Przybylska submitted that the extent to which that was likely to be prejudiced by this review hearing was perhaps limited, and that may be something else that the Tribunal could factor in.

6. Ms Przybylska referred to the alternative of proceeding with this hearing on the papers. She stated that Dr Nasim had submitted a two page reflective piece but she would have wanted to call more detailed evidence from him. Ms Przybylska stated that it was envisaged that the Tribunal may have questions of Dr Nasim.

7. Furthermore, Ms Przybylska stated that if the hearing proceeded on the papers and the decision was made to lift the suspension then there would be no difficulty on their part. But, if the Tribunal found that Dr Nasim’s fitness to practise remained impaired, then a further urgent review would be sought on the basis that Dr Nasim had not had the opportunity to give evidence and advance his case as he would have wished.

8. Following Tribunal questions, Ms Przybylska stated that it would be possible for Dr Nasim to travel to his solicitors in Northern Ireland and participate remotely from their offices on another date (it would not be practically possible today).

Submissions on behalf of the GMC

9. Mr Shand, Counsel on behalf of the GMC, submitted that he did not think it would be appropriate to proceed with this hearing on the papers today. In his submission, it was likely that the Tribunal would be required to consider the credibility and sincerity of Dr Nasim, which obviously would be difficult to assess in the absence of oral evidence from him.

10. Mr Shand submitted that, in those circumstances and based on the guidance, he thought it would be potentially problematic to proceed without the relevant permission and therefore an adjournment and a fresh hearing being fixed before 22 December 2023 appeared to be the best option.

Tribunal's Decision

11. The Tribunal had regard to the current circumstances in this case, the guidance and the submissions of both parties.

12. The Tribunal noted that permission had not been sought or obtained to allow Dr Nasim to give oral evidence from Ireland at the hearing today. The Tribunal considered whether it could proceed to hear oral evidence from Dr Nasim today without the permission under Rule 34(1) of the Rules. It paid particular regard to paragraph 45 of the guidance, which states:

“Where the witness is located in a state outside the UK, consideration must also be given to whether that state has given permission for that oral evidence to be received, as to so without permission risks damaging UK diplomatic relations with other states. It is not for individual tribunals to form their own view of what may, or may not, damage the UK's relations with another state.”

The Tribunal was clear that it was not its role to form its *“own view of what may, or may not, damage the UK's relations with another state”*. As such, the Tribunal determined that, although it could proceed under Rule 34(1) of the Rules to hear oral evidence from Dr Nasim without the permission, in the light of authority and the MPTS guidance it would not be appropriate to do so.

13. The Tribunal next considered whether it could proceed with the hearing today ‘on the papers’ with reference to the reflective piece prepared by Dr Nasim. The Tribunal determined that this course of action would be unfair to Dr Nasim. His fitness to practise was previously found to be impaired by reason of misconduct, which was serious, and this Tribunal concluded that it would not be appropriate for it to make a determination on his fitness to practise without Dr Nasim having the opportunity to give evidence on oath or affirmation. Furthermore, it is likely that the GMC and/or the Tribunal might have wished to ask questions of him.

14. The Tribunal noted Ms Przybylska's submission that it would be possible for Dr Nasim to travel to his solicitors in Northern Ireland and participate remotely from their offices on another date.

15. Accordingly, the Tribunal determined that the fairest way to proceed was to adjourn the hearing under Rule 29(2) of the Rules, which reads as follows:

'Where a hearing of which notice has been served on the practitioner in accordance with these Rules has commenced, the Committee or Tribunal considering the matter may, at any stage in their proceedings, whether of their own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as they think fit.'

16. The Tribunal was mindful that Dr Nasim's current substantive order of suspension was due to expire on 22 December 2023.

17. Checks were made with the MPTS Case Management Team as to available relisting dates. Following discussions, it became clear that the first available date for the MPTS and all parties was 18 December 2023.

18. The Tribunal was mindful that its own availability was not required - which would have been an issue - as this hearing was still at a preliminary stage and so it was not seized of the matter.

19. As the hearing can be relisted on 18 December 2023 which is before the expiry date of the substantive order, the Tribunal has not been required to consider making any extension to the current order.