

PUBLIC RECORD

Dates: 10/08/2022 - 12/08/2022

Medical Practitioner's name: Dr Jitendra NAYAR

GMC reference number: 4740924

Primary medical qualification: MB BS 1985 University of Delhi

Type of case	Outcome on facts	Outcome on impairment
New - Conviction / Caution	Facts relevant to impairment found proved	Impaired

Summary of outcomeSuspension, 3 months.
Review hearing directed**Tribunal:**

Legally Qualified Chair	Miss Sally Cowen
Lay Tribunal Member:	Mr Sean Kyne
Medical Tribunal Member:	Professor Robert Mansel

Tribunal Clerk:	Ms Angela Carney
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Attendance and Representation:

Medical Practitioner:	Present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Ms Jade Bucklow, Counsel

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 Facts and Impairment - 11/08/2022

1. This determination will be handed down in private. However, as this case concerns Dr Nayar's conviction, a redacted version will be published at the close of the hearing with confidential matters removed.

Background

2. Dr Nayar qualified as a doctor in 1985. At the time of the events Dr Nayar was practising as a Consultant Psychiatrist at the East London Foundation Trust in Bedford.

3. The background to the conviction is that on 31 December 2021 at approximately 20.00 hrs a member of the public contacted the police due to the erratic driving and Dr Nayar's manner once he had exited his car. The member of the public believed Dr Nayar to be drink-driving. The police attended and reported that Dr Nayar smelt of intoxicating liquor, was unsteady on his feet and his speech was slurred. Dr Nayar provided a positive breath sample and was arrested. At the police station Dr Nayar provided a positive breath test with a reading of 138 microgrammes of alcohol in 100 millilitres of breath and was detained overnight.

4. On 1 January 2022 Dr Nayar was interviewed by the police in the presence of a solicitor. Dr Nayar's initial account to the police was that at around 18.00hrs he drove to a local shop to buy some wine and a sandwich. He said as it was New Years' Eve there was limited parking outside his house, so he decided to leave his car parked outside the shop which was very close to his house. Later he was at home when some friends arrived who had brought wine with them, so he drank some wine. His friends invited him to go to the pub with them, but he declined. When they left to go to the pub, there was wine remaining which he drank. Dr Nayar told the police that around 20.20 hrs he thought he had experienced a 'brain fade' and he decided to return to the shop to purchase more wine, but the lady in the shop refused to serve him as she thought he was over the limit. He said that there was also another male customer in the shop who wanted to take his car keys from him and said that he should not be driving. Dr Nayar said that he assured them he would not be driving and that he would walk home. He said he started to walk home but realised that he had left his

cap in the car, so he got into the car to get it. He said that the shopkeeper and the customer were standing outside and again told him not to drive and tried to take his keys from him. The customer then telephoned the police.

5. Dr Nayar's account of when he arrived at the shop differed from that of the customer and shop keeper. When the police told Dr Nayar that the customer had seen him driving his car around 20.20hrs and they would look at CCTV, he accepted the account of the customer. Dr Nayar was subsequently charged and bailed to appear at Luton Magistrates' Court.

6. On 10 February 2022 at Luton Magistrates' Court, Dr Nayar pleaded guilty and was therefore convicted of driving a motor vehicle on a road on 31 December 2021 after consuming so much alcohol that the proportion of it in his breath, namely 138 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit, contrary to Section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988. He was sentenced to eight weeks' imprisonment, suspended for 12 months, unpaid work for 100 hours during the 12 months and disqualification from holding or obtaining a driving licence for 33 months.

The Outcome of Applications Made during the Facts Stage

7. The Tribunal granted the GMC's application, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to amend the word 'milligrams' to 'microgrammes' in paragraph 1 of Allegation. Dr Nayar made no objection to the application.

The Allegation and the Doctor's Response

8. At the outset of these proceedings, Dr Nayar made admissions to the Allegation in full, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced the Allegation in full as admitted and found proved, as follows:

1. On 10 February 2022 at Luton Magistrates' Court, you were convicted of driving a motor vehicle on a road on 31 December 2021 after consuming so much alcohol that the proportion of it in your breath, namely 138 milligrams microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit, contrary to Section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988.

Admitted and found proved

2. On 10 February 2022 you were sentenced in relation to the matters set out in paragraph 1 to:

a. eight weeks' imprisonment, suspended for 12 months;

Admitted and found proved

- b. unpaid work for 100 hours during the 12 months;

Admitted and found proved

- c. disqualification from holding or obtaining a driving licence for 33 months.

Admitted and found proved

DETERMINATION ON IMPAIRMENT

9. 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 Nayar's fitness to practise is impaired by reason of a conviction.

Documentary Evidence

10. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:

- Dr Nayar's self-referral to the GMC, dated 4 January 2022
- Police referral to the GMC, dated 4 January 2022
- Transcript of Dr Nayar's police interview, dated 1 January 2022
- XXX
- Certificate of Conviction dated 10 February 2022
- Certificate of Conviction dated 16 September 2011
- GMC Letter and warning in relation to the 2011 offence, dated 9 February 2012
- XXX
- XXX
- XXX
- Statement from Dr A, Dr Nayar's Clinical Director, dated 24 May 2022
- Dr Nayar's curriculum Vitae
- Dr Nayar's Appraisal documents
- Dr Nayar's Personal Development Plan
- Evidence of Dr Nayar's Continuing Professional Development
- Testimonials from Dr Nayar's professional colleagues

Witness Evidence

11. The Tribunal received evidence by telephone from the following witness on Dr Nayar's behalf:

- Dr B, Consultant psychiatrist and Associate Clinical Director, Florence Ball House

12. Dr B confirmed that she has been Dr Nayar's line manager since 2019 and has known him in a professional capacity since 2007. She confirmed that Dr Nayar had informed her in 2016 of his drink-driving conviction in 2011 and disclosed details of XXX at a formal meeting when she became his line manager.

13. Dr B denied that she had been instructed by anyone about the content of her testimonial and said that the reason that similar words were used in her testimonial and that of others relied upon, was that they were common, relevant words and that this was the way she always wrote testimonials/references.

14. Dr Nayar provided three statements (undated) and also gave oral evidence at the hearing.

Dr Nayar's oral evidence

15. Dr Nayar described how he and others had been advised to structure testimonials, usually using a pro-forma from the Deanery. He said that the incident occurred seven and a half months ago, and he is still shocked and ashamed. He said that he feels an immense amount of guilt, but fully accepts that it was his decision to drink wine XXX. He described the sentencing and that he was shocked by the custodial sentence. He said that he was assessed by the probation service. He said that he undertook the unpaid community work in a charity shop and completed the community order on 10 May 2022. He said that he was surprised that he had enjoyed the experience of working in the shop.

16. XXX

17. Dr Nayar told the Tribunal that he is a consultant psychiatrist with a specialism in drugs and alcohol abuse. XXX.

18. Dr Nayar told the Tribunal that he had not drunk for ten years but did so due to personal circumstances. XXX. He said that his employers have been very supportive. He also told the Tribunal that he was going through a divorce after 34 years of marriage and received the decree absolute in December 2021.

19. He said that on 31 December 2021 he was at home feeling lonely when his friends arrived, and he knew that they were coming for a party. He said that he knew he had taken medication and that he should not drink but XXX, led him to join in with them. He now knows that he cannot do this.

20. On questioning by Ms Bucklow, Dr Nayar said that he has no recollection of how he arrived at the shop on 31 December 2021. Dr Nayar clarified that when the police were called, he was not attempting to walk away from the shop but walking towards his home. He said that during the police interview, he was able to give some version of events, as even during what he considered to be blackouts, he remembered 'snippets' of events. He

explained the difference between memory and ‘flashes’ and said when he tried to jog his memory, in retrospect, he remembered ‘snippets’ of events.

He said that the police interview was twenty hours after the incident and during that time he tried to work out what ‘could’ have happened as he was unsure about what had happened. He said that during the police interview, as soon as the police mentioned the witness, it was the first time it came into his consciousness that he had driven and he immediately accepted it. Dr Nayar said that when people have memory loss, they try to fill in the gaps with what ‘might’ have happened which is what he did, but as soon as the evidence was put to him, he accepted it.

21. In relation to his previous GMC warning, Dr Nayar accepted that his actions were repeated but said the circumstances were different, XXX, but when his drink-driving occurred in December 2021 he had not drunk alcohol for ten years. He said that since his conviction in 2011 he has turned his life around. XXX. He said that his recent drink-driving offence was a very impulsive act and there was a lot going on in his life; XXX. He said since his conviction he has XXX. XXX. He said that perhaps he did not have full insight in 2011.

22. Dr Nayar told the Tribunal that the overwhelming factor at the time of his 2021 offence was his divorce and his relationship with his ex-wife was difficult, which has now improved. He said that his life is now regimented, he has returned to previous hobbies, takes regular exercise and will be joining his family soon. He said that he has gained insight into XXX. XXX. Dr Nayar told the Tribunal that he knew his medication mixed with alcohol would result in side-effects and accepted that he should have known better. Dr Nayar said that his decision to drink alcohol was impulsive.

23. Dr Nayar said in response to questions, that he recognises that his actions have an impact on public confidence in the profession and an impact on his colleagues. He said that he regrets his actions and continues to feel guilty. He said that he must ensure that he exhibits good behaviour both in public and in private in order to gain the confidence of the public and colleagues. In answer to a question, he said that he has reflected that his drink-driving could have injured members of the public or himself and he is shocked by his actions.

GMC Submissions

24. On behalf of the GMC, Ms Bucklow submitted that the overarching objective limbs b) and c) are engaged in this case; to promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for the members of the profession. She reminded the Tribunal that Dr Nayar’s conviction was for drink-driving, and he was almost four times over the legal limit. She reminded the Tribunal that Dr Nayar has previously received a written warning from the GMC for drink-driving.

25. Ms Bucklow also reminded the Tribunal that Dr Nayar received a criminal conviction which was in the highest category for this type of offence. She said the seriousness of the offence is reflected in the sentencing guideline and this, in itself, poses a risk to public confidence.

26. Ms Bucklow submitted that a fully informed member of the public aware of all the facts, is likely to be surprised if a finding of impairment was not made. She said that it was a member of the public who informed the police. She submitted that the Tribunal may consider that Dr Nayar's police interview was an attempt to minimise his actions and evade conviction. She reminded the Tribunal that Dr Nayar drank alcohol whilst taking medication which he knew could have adverse side effects.

27. Ms Bucklow submitted that the Tribunal may consider Dr Nayar's remediation is limited. XXX. Ms Bucklow stated that Dr Nayar could not describe the coping mechanisms he has put in place to prevent reoccurrence which may indicate a lack of insight. She submitted that there is limited information on Dr Nayar's reflections on the impact of his actions on others and the Tribunal may consider his insight is developing.

28. Ms Bucklow referred the Tribunal to Dr Nayar's testimonials and cautioned it on giving weight to them in respect of clinical opinion. XXX. Ms Bucklow submitted that Dr Nayar's conviction is a repetition of his previous conviction for which he received a warning and referred the Tribunal to the guidance on warnings.

Dr Nayar's Submissions

29. Dr Nayar accepted that his conviction was serious and affects public confidence in the profession. He also accepted that his actions could also be a danger to members of the public. He said that he accepted the gravity of his conviction. He reminded the Tribunal, that he pled guilty to the offence. Dr Nayar strenuously denied that he had tried to mislead the police.

30. Dr Nayar said that insight is something that occurs over a period of time and his is currently developing and will continue to do so over a number of years. Dr Nayar said that he deals with insight with his patients on a daily basis. Dr Nayar apologised as English is not his first language, but he fully understands the gravity of his offence. He said that he thinks of his offence every day and he accepts that he is solely responsible for his actions. He accepted that he has damaged public confidence, his reputation and his colleagues' confidence in him. XXX. In relation to his coping mechanisms, he said that they are individual to him, his main one being daily physical exercise and to be aware and mindful. He said that his single most useful coping mechanism is mindfulness, which he practises every day. Dr Nayar referred the Tribunal to all of the positive testimonials from his professional colleagues and his co-workers at the charity where he worked as part of his community service.

31. Dr Nayar told the Tribunal that prior to his offence he suffered from a black out and speculated that the combination of alcohol, his medication and his personal situation affected him. XXX. He said that he has continued to work without any issues and his employers are supportive. He accepted that he was guilty and recognised that a custodial sentence on a doctor affects public confidence but said that his conviction should be considered in context.

The Relevant Legal Principles

32. 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. The Tribunal must determine whether Dr Nayar's fitness to practise is impaired today by reason of his conviction. It will take into account Dr Nayar's conduct at the time of the event and any relevant factors, such as whether the matters are remediable, have been remedied and any likelihood of repetition. The Tribunal will have regard to the statutory overarching objective.

The Tribunal's Determination on Impairment Conviction

33. The Tribunal noted that Dr Nayar pleaded guilty to the offence which resulted in a reduced sentence. Dr Nayar promptly reported himself to the GMC and has engaged with the GMC's investigation and these proceedings. It also noted that Dr Nayar has been open and honest about his conviction to his employers and colleagues. The Tribunal took account of the positive testimonials from Dr Nayar's professional colleagues and his colleague at the charity and that he is clearly well thought of. The Tribunal did not accept Ms Bucklow's inference that the testimonials were less reliable due to the similarity of phraseology. It also noted that there are no concerns about Dr Nayar's clinical practice.

34. Nevertheless, the Tribunal noted the gravity of Dr Nayar's offence, driving whilst under the influence of alcohol and being approximately four times over the legal limit. The gravity of the offence was reflected in the sentencing of eight weeks' imprisonment, suspended for 12 months, unpaid work for 100 hours and disqualification from holding or obtaining a driving licence for 33 months.

35. The Tribunal was concerned that Dr Nayar knew that he had taken medication which should not be mixed with alcohol but then proceeded to drink wine. The Tribunal noted that Dr Nayar then chose to drive to the local shop, which was by his own account was approximately 3-to-4-minute walk from his house. The Tribunal were particularly alarmed that Dr Nayar could not even remember driving the car. The Tribunal noted that members of the public were so concerned that they telephoned the police. The Tribunal considered that Dr Nayar's recklessness, in driving a car whilst under the influence of alcohol, could have had serious consequences resulting in an accident involving injury to himself or members of the public.

36. The Tribunal noted Dr Nayar's explanation of the incident to the police. It considered that Dr Nayar was not attempting to wilfully mislead the police, but that he could not remember all the details of the events and that his inconsistency was due to his genuine attempt to fill in the gaps in his own recollection.

37. The Tribunal noted that this is Dr Nayar’s second conviction for drink driving, having driven to a shop after consuming alcohol. His first offence occurred in August 2011 and as a result Dr Nayar was disqualified for 32 months and sentenced to a community order of 250 hours of unpaid work. It also noted that Dr Nayar’s first conviction resulted in a GMC warning being imposed on his registration for a period of five years, which expired on 9 February 2017.

38. XXX.

39. The Tribunal accepted Ms Bucklow’s submission that this is a conviction case, and the GMC does not consider this to be XXX.

40. The Tribunal considered whether Dr Nayar’s conviction is remediable. It noted that Dr Nayar has completed his community work but there remains 4 and a half months on his suspended custodial sentence. However, the Tribunal took account of XXX and therefore considered that there is a medium risk of repetition in the long term.

41. The Tribunal next considered whether Dr Nayar has remediated his actions. Dr Nayar stated that he has been XXX since his offence. The Tribunal noted that Dr Nayar has XXX. XXX. Dr Nayar was unable to provide details of any specific coping mechanisms XXX at times of adversity. Whilst the Tribunal considered that Dr Nayar has good work-based support, it received no information of his support network outside of work.

42. The Tribunal considered that Dr Nayar failed to address himself the gravity of his offence and the impact on the public and public confidence in the medical profession. The Tribunal considered that Dr Nayar’s insight is developing, which he himself agrees and as such his remediation is not complete and there remains a risk of repetition.

43. The Tribunal has borne in mind its primary duty to protect patients and the public, to maintain public confidence in the profession, and to declare and uphold proper standards of conduct and behaviour within the profession.

44. The Tribunal noted that this is Dr Nayar’s second conviction for drink-driving and that he received a GMC warning for his first conviction. The Tribunal considered that Dr Nayar’s offence was so serious that a finding that his fitness to practise is not impaired would undermine public confidence in the profession and bring the profession into disrepute.

45. Taking into account all these findings, the Tribunal determined that Dr Nayar’s fitness to practise is impaired by reason of his conviction.

Determination on Sanction - 12/08/2022

1. This determination will be handed down in private. However, as this case concerns Dr Nayar’s conviction, a redacted version will be published at the close of the hearing with confidential matters removed.

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

Submissions

3. On behalf of the GMC, Ms Bucklow submitted that the most appropriate sanction in this case is suspension. She reminded the Tribunal of its overarching objective and referred it to the Sanctions Guidance (November 2020) (the SG). She referred the Tribunal to paragraph 16 and 17 which states:

‘16. Sanctions are not imposed to punish or discipline doctors, but they may have a punitive effect.’

4. Ms Bucklow acknowledged that this case is one which engages the second and third limbs of the overarching objective and the public interest is referred to in paragraph 17 of the SG, which states:

‘17. Patients must be able to trust doctors with their lives and health, so doctors must make sure that their conduct justifies their patients’ trust in them and the public’s trust in the profession (see paragraph 65 of Good medical practice). Although the tribunal should make sure the sanction it imposes is appropriate and proportionate, the reputation of the profession as a whole is more important than the interests of any individual doctor.’

5. Ms Bucklow submitted that taking no action would not be appropriate in this case as there are no exceptional circumstances that would warrant taking no action. She submitted that conditions would not be appropriate as this is a conviction case brought in the public interest XXX. XXX. She stated that conditions are not designed to address criminal conduct.

6. Ms Bucklow submitted that suspension is the most appropriate sanction in this case. She referred the Tribunal to paragraphs 91 and 93 in the SG, which state:

‘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 unbefitting 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.

93. Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated...’

7. Ms Bucklow submitted that Dr Nayar’s conviction is so serious that a suspension is appropriate. She reminded the Tribunal of the aggravating factors in this case which includes criminal conduct attracting a custodial sentence, Dr Nayar was four times over the legal limit, this was his second conviction for drink driving, he mixed alcohol and medication and it involved members of the public. Ms Bucklow also stated that Dr Nayar remains surprised at the Court’s sentencing decision, his insight into the impact of his actions is developing, but he has demonstrated less insight into how he would prevent reoccurrence. She submitted that some of Dr Nayar’s insight was still developing during the later stage of these proceedings

8. Ms Bucklow made no submission as to the length of any suspension but referred the Tribunal to paragraph 119 of the SG, which states:

‘119. As a general principle, where a doctor has been convicted of a serious criminal offence or offences, they should not be permitted to resume unrestricted practice until they have completed their sentence.’

9. She stated that the GMC is not suggesting that erasure is appropriate in this case but stated that the decision is a matter for the Tribunal.

10. Ms Bucklow referred the Tribunal to paragraph XXX of the SG, which state:

[XXX]’

11. In response to a question from the Tribunal about the balance between suspending Dr Nayar and depriving the public of a doctor with no clinical concerns, Ms Bucklow stated that the public interest is paramount in this case. She reminded the Tribunal that Dr Nayar’s conduct was serious, it attracted a custodial sentence and was repeated criminal conduct and it should balance the public interest against the fact that there are no clinical concerns about Dr Nayar’s clinical practice.

12. Ms Bucklow stated that, whilst the GMC does not submit that an immediate order is necessary, a review is required to assess Dr Nayar’s remediation in relation to his developing insight.

13. Dr Nayar referred the Tribunal to its determination on impairment and set out that he still has the remainder of his suspended sentence to serve. Dr Nayar clarified that he sees a probation officer once per month, which has been going well. He submitted that the remainder of his sentence has not, and would not, have any impact on his work.

14. XXX.

15. Dr Nayar addressed the Tribunal on his coping mechanisms. He referred the Tribunal to his statement in which he stated:

'I am using structured exercise regime, mindfulness, Mantra recitation, activity planning and constant self-awareness to deal with [XXX]'

16. Dr Nayar expanded and told the Tribunal that he walks to work, he lives alone and manages household chores. He explained about his structured exercise regime which takes up two to three hours per day in addition to his work. He also stated that he practises mindfulness and mantra recitation daily.

17. Dr Nayar accepted that public interest is paramount. He stated that he had put his reputation and the profession's reputation at risk. He said that public confidence should be restored. He accepted that a member of the public would be concerned if they were being treated by a doctor with a conviction. He told the Tribunal that since January 2022 he has completed over 200 hours of Continuing Professional development and is up to date with mandatory training and clinical work. He stated that he also practises and teaches yoga. He reminded the Tribunal that there are no concerns about his clinical practice.

18. Dr Nayar accepted that insight is a developing matter. He reminded the Tribunal that it was 11 years until he had XXX.

19. In relation to the GMC's submission on suspension Dr Nayar stated that prior to his offence he had not been working which led to loneliness as he had no access to his colleagues or his team. He stated that he has been working since January 2022 which is part of his life. He said that he understood that a suspension would reflect the gravity of his offence but stated that suspension would have a detrimental impact on him on a personal level. He stated he could not understand how a period of suspension would assist with his remediation.

The Tribunal's Approach

20. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken account of the Sanctions Guidance (November 2020) (the SG). It has borne in mind that the purpose of the sanctions is not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect.

21. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Nayar's 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 the declaring and upholding of proper standards of conduct and behaviour.

22. The Tribunal has already given a detailed determination on impairment, and it has taken those matters into account during its deliberations on sanction.

The Tribunal's Determination on Sanction

Mitigating and aggravating factors

23. Before considering what action, if any, to take in respect of Dr Nayar's registration, the Tribunal considered and balanced the aggravating and mitigating factors in this case.

24. The Tribunal first considered the aggravating factors. It had regard to its earlier finding of the gravity of Dr Nayar's offence, driving whilst under the influence of alcohol and being approximately four times over the legal limit, which was reflected in the criminal court sentencing. This was Dr Nayar's second conviction for drink driving. Dr Nayar knew that he had taken medication which should not be mixed with alcohol but then proceeded to drink wine. Dr Nayar then chose to drive to the local shop when he could have walked, he could not remember driving the car, members of the public were involved in the situation and whilst drink driving, he could have injured himself or members of the public.

25. The Tribunal has already set out its concerns as to Dr Nayar's insight at the impairment stage. Whilst the Tribunal acknowledged that in his statements Dr Nayar demonstrated that he was developing insight, it considered that he failed to focus on the impact of his conviction on the public and public confidence in the medical profession which was compounded by the fact that this was his second conviction. It considered that Dr Nayar's lack of appreciation of the impact of his actions was an aggravating factor.

26. In considering any mitigating factors, the Tribunal reminded itself that there are no concerns about Dr Nayar's clinical practice and that he is considered a good doctor by his professional colleagues, as evidenced in their testimonials. Dr Nayar self-referred promptly, has cooperated with the GMC's investigation and engaged in these proceedings. The Tribunal noted that Dr Nayar has apologised and expressed remorse for his convictions and taken responsibility for his XXX. The Tribunal also acknowledged Dr Nayar's steps towards remediation by XXX and having a structured regime. Dr Nayar also stated that he intends to engage with XXX. The Tribunal also noted that Dr Nayar's personal circumstances have improved. It considered these to be a positive steps towards rehabilitation. However, it was of the view that Dr Nayar still had further work to do in order to demonstrate further insight and remediation.

27. The Tribunal considered the aggravating and mitigating factors throughout its deliberations on what the appropriate and proportionate sanction to impose would be, if any. The Tribunal considered each sanction in ascending order of severity, starting with the least restrictive.

No Action

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

29. The Tribunal considered that there are no exceptional circumstances in which it might be justified in taking no action against a Dr Nayar's registration. The Tribunal determined that

in view of the serious nature of the Tribunal's findings on impairment, it would be neither sufficient, proportionate nor in the public interest, to conclude this case by taking no action. The Tribunal considered that taking no action would send the wrong message to the public and the profession.

Conditions

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

31. Whilst the Tribunal is of the opinion that both of Dr Nayar's convictions were inextricably linked to his XXX, this is a conviction case. XXX

{XXX}'

32. The Tribunal recognised that conditions would be in the doctor's best interest as this would allow him to continue to practice, but to have the oversight of his employer and the GMC. However, as this was not a XXX, the Tribunal were compelled to place greater emphasis on the public trust in the profession and message to the profession as a result of his conviction. The Tribunal is of the opinion that a period of conditional registration would not adequately reflect the serious nature of Dr Nayar's conviction, nor could conditions be devised that would be sufficient to reflect the need to protect the public interest and maintain public confidence in the medical profession. The Tribunal has, therefore, determined that it would not be appropriate to direct the imposition of conditions on Dr Nayar's registration.

Suspension

33. The Tribunal then went on to consider whether suspending Dr Nayar's registration would be appropriate and proportionate.

34. Given the seriousness of Dr Nayar's conviction and the aggravating factors in this case (as listed above), the Tribunal determined that a three months' suspension is the appropriate and proportionate sanction. The Tribunal considered that imposing a suspension on Dr Nayar's registration will have a deterrent effect and send out a signal to him, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Whilst the Tribunal noted that suspension from the medical register will also have a punitive effect on Dr Nayar, in that it prevents him from practising during the suspension, this is not its intention.

35. In determining the length of the sanction the Tribunal carefully considered Paragraphs 116, 117 and 119 of the SG which state:

‘116. The purpose of the hearing is not to punish the doctor a second time for the offences they were found guilty of. The purpose is to consider whether the doctor’s fitness to practise is impaired as a result. If so, the tribunal then needs to consider whether to restrict the doctor’s registration to protect the public (who might come to the doctor as patients) and to maintain the high standards and good reputation of the profession. The tribunal should take account of paragraphs 65–67 of Good medical practice regarding the need to be honest and trustworthy, and to act with integrity.

117. However, the tribunal should bear in mind that the sentence or sanction previously imposed is not necessarily a definitive guide to the seriousness of the offence. There may have been personal circumstances that led the court or regulatory body to be lenient. For example, the court may have expressed an expectation that the regulatory body would erase the doctor. Similarly, the range of sanctions and how they are applied may vary significantly amongst other regulatory bodies.

119. As a general principle, where a doctor has been convicted of a serious criminal offence or offences, they should not be permitted to resume unrestricted practice until they have completed their sentence.

36. Whilst the Tribunal recognises that Dr Nayar was given a custodial sentence suspended for 12 months, it took account of the fact that his conviction was dealt with by the Magistrates Court and that the maximum sentence available to it was not imposed.

37. The Tribunal is cognisant that Dr Nayar’s sentence will have been served by February 2023 and noted that paragraph 119 does not prohibit imposing a shorter sanction than a criminal sentence.

38. The Tribunal reminded itself that the main reason for imposing sanctions is to protect the public which is set out in the statutory overarching objective:

- a) to protect and promote the health, safety and wellbeing of the public
- b) to promote and maintain public confidence in the medical profession
- c) to promote and maintain proper professional standards and conduct for the members of the profession.

39. There is no suggestion that Dr Nayar is not fit to practise safely as a doctor. The Tribunal considered that a lengthier suspension would deprive the public of an otherwise good doctor and would be disproportionate. The Tribunal considered that imposing an order of suspension satisfies limbs b) and c) of the overarching objective.

40. The Tribunal determined that erasure was not appropriate or proportionate in this case.

41. The Tribunal determined to direct a review of Dr Nayar's case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Nayar to demonstrate how he has developed further insight and remediated. It therefore may assist the reviewing Tribunal if Dr Nayar provided:

- Evidence that he has kept his skills and knowledge up to date
- XXX
- XXX
- XXX
- Further reflective writings on the impact of his actions on the profession and the views of the public towards the profession.
- A plan to cope with future personal crises XXX
- Dr Nayar will also be able to provide any other information that he considers will assist.

42. In her submission Ms Bucklow indicated that if the Tribunal were to suspend Dr Nayar, the GMC would not be seeking an immediate order. This means that Dr Nayar's registration will be suspended from the Medical Register 28 days from the date on which written notification of this decision is deemed to have been served, unless he lodges an appeal. If Dr Nayar does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

43. That concludes this case.