

PUBLIC RECORD

Dates: 09/11/2020 & 23/12/2020

Medical Practitioner's name: Dr Joseph SMITH

GMC reference number: 7140358

Primary medical qualification: MB BChir 2011 University of Cambridge

Type of case Outcome on impairment
Review – Misconduct Impaired

Summary of outcome

Conditions, 12 months
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Robert Ward
Lay Tribunal Member:	Dr Mohammed Anwar
Medical Tribunal Member:	Mr Geoffrey Brighton
Tribunal Clerk:	Ms Jeanette Close

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Andrew Kennedy, Counsel, instructed by Hempsons
GMC Representative:	Mr Carlo Breen, Counsel, instructed by GMC Legal

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. 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 Impairment - 23/12/2020

1. The Tribunal has convened to review Dr Smith's case in accordance with Rule 22 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). In accordance with Rule 22(1)(f), it first has to decide whether Dr Smith's fitness to practise remains impaired by reason of misconduct.

The Outcome of Applications Made during the Impairment Stage

2. The Tribunal granted the GMC's application, made pursuant to Rule 34 of the Rules, to adduce additional documentary evidence that had not been available until late. The Tribunal's full decision on the application is included at Annex A.

Background

3. Dr Smith's case was first considered by a Medical Practitioners Tribunal ('MPT') in December 2019 ('the 2019 Tribunal'). Dr Smith qualified in 2011 from the University of Cambridge and at the time of the events in 2018, Dr Smith was practising as a third year GP Speciality Trainee ('ST3') with Health Education England ('HEE'). He completed his training in April 2018 and obtained his Membership of the Royal College of General Practitioners ('MRCGP') soon after.
4. On 20 April 2018, Dr Smith was referred to the GMC by the postgraduate dean for HEE. The Allegations that led to Dr Smith's referral can be summarised as follows. On or about 22 January 2018, Dr Smith dishonestly completed an Out of Hours ('OOH') supervision form ('the form') and forged the signature of his OOH supervisor on the form; when

subsequently challenged about the completion of the form by his educational supervisor and the postgraduate dean on 20 March 2018 and on 26 March 2018, Dr Smith denied responsibility for falsifying the form.

5. It was also alleged that Dr Smith failed to follow the correct protocol in relation to the cancellation of the OOH shifts he had previously booked and, when challenged about his alleged failures, had made a number of untrue statements to his supervisor of the clinical resources team to conceal and/or justify his failures.
6. It was further alleged that on three occasions, namely 16 March, 24 August and 31 August 2018, Dr Smith communicated with colleagues either by email or in conversation in an inappropriate manner.

The 2019 Tribunal

Misconduct

7. The 2019 Tribunal considered that Dr Smith's conduct in forging a supervisor's signature on a feedback form was a deliberate and calculated act of dishonesty. It considered that Dr Smith's dishonesty was compounded by his repeated denials, verbally on 20 March 2018, and in emails sent on 26 March 2018 and 28 March 2018. The 2019 Tribunal noted that in his first email Dr Smith categorically denied forging his supervisor's signature and had stated that he was 'very upset and annoyed by this allegation'. The 2019 Tribunal noted that Dr Smith's sustained dishonesty was within the context of his qualifying as a general practitioner ('GP').
8. The 2019 Tribunal acknowledged that Dr Smith had fully admitted his dishonesty at the outset of the proceedings and it accepted that Dr Smith had apologised to his educational supervisor during a meeting and, at a later date, to his clinical supervisor. However, it considered that Dr Smith having repeatedly lied to his colleagues undermined the public's trust in the medical profession, and that fellow medical professionals would regard Dr Smith's conduct as deplorable.
9. The 2019 Tribunal determined that Dr Smith's conduct fell far short of the standards of conduct reasonably expected of a doctor as to amount to misconduct.
10. The 2019 Tribunal next considered the way in which Dr Smith had communicated with colleagues either verbally or by email. It noted that due to the lack of evidence it could

not determine the tone or manner of Dr Smith’s comments to his colleagues and whether these were made in the context of ‘banter’ within the work environment. The 2019 Tribunal concluded that Dr Smith’s conduct had been unprofessional and demonstrated a lack of consideration to his colleagues. It further concluded that Dr Smith’s email communications to be ill-thought out and inappropriate. However, the 2019 Tribunal did not consider that the three incidents were sufficient to pass the threshold of misconduct in Dr Smith’s case.

Impairment

11. In considering whether Dr Smith’s fitness to practise was impaired by reason of his misconduct, the 2019 Tribunal was mindful that no concerns or incidents had been identified regarding Dr Smith’s clinical performance. It acknowledged that Dr Smith had engaged with the regulatory process and had demonstrated a degree of insight and reflection into his dishonesty. However, it was of the view that Dr Smith’s insight and reflection was incomplete as he could not adequately explain what motivated his dishonesty.
12. The 2019 Tribunal considered that Dr Smith’s lack of full insight into his dishonesty could result in him acting dishonestly in the future and therefore a risk of repetition of dishonest behaviour remained. The 2019 Tribunal concluded that public confidence in the profession would be undermined if Dr Smith’s fitness to practise was not found to be impaired.
13. The 2019 Tribunal concluded that a finding of impairment was necessary to protect the public, to promote and maintain the reputation of the profession and to declare and uphold proper standards of conduct and behaviour. It therefore determined that Dr Smith’s fitness to practise was impaired by reason of his misconduct.

Sanction

14. In reaching its decision on the appropriate sanction to impose, the 2019 Tribunal considered the aggravating and mitigating factors in Dr Smith’s case before then considering each sanction in ascending order of severity.
15. The 2019 Tribunal identified the following mitigating factors in relation to Dr Smith’s proven misconduct:

- Although in the weeks following the falsification of the OOH form Dr Smith made a series of denials when challenged, he did in due course admit to his educational supervisor that he had been responsible for the falsification; he made a similar admission at the earliest opportunity within the regulatory proceedings and he made full admissions to the Allegation at this hearing;
- Dr Smith apologised through the GMC investigatory process to his clinical supervisor and the postgraduate dean, and expressed remorse;
- His falsification of the feedback form represented a single episode of dishonesty, albeit it was followed by subsequent denials;
- The 2019 Tribunal accepted that this episode of dishonesty did not put patients at risk of harm and did not result in Dr Smith obtaining a qualification which he would not have otherwise obtained.

16. The 2019 Tribunal then considered the aggravating factors:

- The 2019 Tribunal noted that this was not simply a falsification of a record but included the act of forging a colleague’s signature so as to reinforce the document’s apparent authenticity;
- When challenged, Dr Smith denied that he had fabricated the form and he had done so on three occasions. First, on 20 March 2018 when he lied to his educational supervisor. Secondly, when he emailed the postgraduate dean on 26 March 2018. This email referred to a reflective piece written by Dr Smith and uploaded to his e-portfolio. In that piece Dr Smith had, in the Tribunal’s judgement, brazenly denied falsifying the form and explicitly challenged the credibility of his training supervisor, who had reported the forgery of her signature. Thirdly, in a further email to the postgraduate dean on 28 March 2018 he repeated his denials;
- The document that was being falsified was required for the purpose of medical qualification and the forgery had a tendency to undermine the integrity of the professional education system.

17. The 2019 Tribunal gave careful consideration to the Sanctions Guidance (‘SG’). It was mindful that Dr Smith’s insight was incomplete and that a risk of repeated behaviour remained. It considered that given the seriousness of Dr Smith’s misconduct and the lack of exceptional circumstances, taking no action could not be justified.

18. The 2019 Tribunal then considered whether it would be sufficient to impose conditions on Dr Smith’s registration. It determined that, given its finding of impairment and the seriousness of the conduct, conditions would not be appropriate.

19. The 2019 Tribunal determined that a period of suspension was the appropriate and proportionate sanction in Dr Smith’s case. It considered that although Dr Smith’s misconduct was serious it was not fundamentally incompatible with continued registration.
20. The 2019 Tribunal determined to suspend Dr Smith’s registration for a period of five months. It considered that this would allow Dr Smith time to reflect and further develop insight into what had led to his misconduct, and thereby minimise any risk of repetition. The 2019 Tribunal concluded that a period of five months would enable Dr Smith to achieve both objectives.
21. The 2019 Tribunal determined to direct a review of Dr Smith’s case. It considered that it would assist the reviewing Tribunal if Dr Smith provided:
 - A further reflective statement into his dishonesty and developing insight;
 - Evidence of completion of the course that he was undertaking; and
 - Any other information that Dr Smith considered would assist the Tribunal, including but not limited to, any further testimonials.

May 2020 Review on the Papers

22. Dr Smith’s case was reviewed on the papers (‘RoP’), with the agreement of both parties, by a Legally Qualified Chair on 4 May 2020 (‘the RoP’).
23. The Chair of the RoP had regard to the submissions made by the GMC and Dr Smith, that his registration be subject to a period of conditional registration for 6 months.
24. The Chair of the RoP considered the reflective statement provided by Dr Smith and evidence provided of his continued CPD by his attendance on courses and enrolling on further training. The Chair of the RoP considered that although Dr Smith’s process of reflection and insight had developed significantly since the MPT hearing in December 2019, it was still developing.
25. The Chair of the RoP noted that Dr Smith sought to replace the order of suspension with a period of conditional registration in order to return to practise to help with the Covid-19 pandemic. In support of his application, Dr Smith provided a testimonial statement and correspondence from Dr A, Emergency Physician at Bedfordshire Hospitals NHS Trust, who urged the MPTS “*to consider reinstating Dr Smith’s registration*”, Dr A continued

“many departments are severely undermanned, putting patients at considerable risk. Particularly hard hit are the A&E and ITU departments. Dr Smith has considerable experience in both the aforementioned departments”.

26. The Chair of the RoP was satisfied that a period of conditional registration would be proportionate and sufficient in Dr Smith’s case and that conditions could be formulated to protect the public and the public interest.
27. Dr Smith’s registration was therefore made subject to a period of conditions for 6 months.

Today’s review hearing

28. The Tribunal has to decide in accordance with Rule 22(1)(f) of the Rules whether Dr Smith’s fitness to practise remains impaired.

The Evidence

29. The Tribunal has taken into account all the evidence adduced during this review hearing, as summarised below:
- Record of Determinations of the MPT Hearing, dated 9 – 18 December 2019;
 - Record of Determination of the MPT Review on the Papers, dated 4 May 2020;
 - General correspondence between the GMC, Hempsons (Dr Smith’s solicitors) and Dr Smith, dated between 7 May 2020 and 27 July 2020;
 - The Assistant Registrar’s decision on a Review Hearing, dated 10 June 2020;
 - Email correspondence from Dr B, regarding the appointment of a Workplace Reporter, a Mentor and an Educational Supervisor, various dates in June and July 2020;
 - Email from Dr Smith to Hempsons, dated 24 July 2020, confirming the appointment of:
 - Dr B, Responsible Officer;
 - Dr C, Workplace Reporter;
 - Dr D, Mentor; and
 - Dr E, Educational Supervisor;
 - Letter from the MPTS to Dr Smith containing listing information, dated 18 August 2020;

- Completed Patient Questionnaires, dated from September 2020;
- Dr Smith’s approved Personal Development Plan (‘PDP’), dated 23 September 2020;
- Parkside Staff Review Template document, dated 28 September 2020;
- Email correspondence between Dr C and Dr B, dated 28 September 2020, forwarded to the GMC on the same date;
- Email correspondence between Hempsons and the GMC, various dates in October 2020;
- Letter from Dr E, Dr Smith’s Educational Supervisor, dated 5 October 2020, together with a completed GMC report form, dated 7 October 2020;
- Colleague Feedback Summary Report, generated on 11 October 2020;
- Assistant Registrar’s initial Allegation of Impairment decision, dated 13 October 2020;
- GMC report form, dated 16 October 2020;
- Patient Feedback Summary Report, generated on 20 October 2020;
- Correspondence between Hempsons and the GMC regarding remote hearing attendance, dated 20 October 2020 and 22 October 2020;
- Staff Review Report, dated 26 October 2020;
- Email correspondence between Dr F and Dr B, dated 29 October 2020;
- Parkside Staff Review – For Dr Joseph Smith, dated 29 Oct 2020;
- Joint Testimonial of Dr F and Dr G, GP Partners at Parkside Medical Centre, dated 29 October 2020;
- Email from Dr C to Dr A, dated 30 October 2020;
- Letter of Support from Dr D, Dr Smith’s mentor, dated 3 November 2020;
- Letter from Hempsons to the GMC, dated 3 November 2020;
- Colleague Feedback Summary Report and Patient Feedback Summary Report, generated on 4 November 2020;
- Letter from Hempsons to the GMC, dated 6 November 2020; and
- Assistant Registrar’s decision letter, dated 6 November 2020.

30. The Tribunal also heard evidence from Dr Smith.

Submissions

31. On behalf of the GMC, Mr Breen submitted that recent allegations of impairment, although not to be considered as fact, provide new evidence of a potential likelihood that Dr Smith’s fitness to practise remains impaired.

32. Mr Breen stated that it was accepted by Dr Smith that he made the comment to the nurse and that his explanation that it was not a generic comment was no excuse as it was directed towards a specific individual. Mr Breen submitted that this comment should be considered in light of the matters which were admitted and found proved in Dr Smith's 2019 Tribunal hearing, relating to his communication with others.
33. Mr Breen submitted that, on the basis of Dr Smith's comment to the nurse, it was clear the he had not yet finished his remediation journey in relation to communication issues and he has not yet gained full insight. Moreover, there are continued concerns in relation to a risk of repetition despite the courses and learning that Dr Smith has undertaken.
34. Mr Breen stated that although Dr Smith's comment to the nurse was not the same as the comments he had admitted and that the 2019 Tribunal found proved, it demonstrated a pattern of communication issues that Dr Smith has not yet fully addressed. He stated that there is a concern of potential impairment as a result.
35. In relation to the concern arising from the appointment of Dr Smith's workplace reporter, Mr Breen submitted that it was legitimate for the GMC, having had regard to the email chain, to question whether the information was factually correct or not. He stated that the GMC was entitled to take the information in the email at face value which raised a potential probity concern.
36. Mr Breen submitted that, taken together, these two matters were serious. He stated the Tribunal cannot be fully satisfied today that there has been full insight and full remediation on Dr Smith's part and the risk of repetition remains.
37. Mr Breen stated that in a case where conditions have been imposed, in order for the doctor to return to unrestricted practice, the Tribunal must be satisfied that the doctor is safe to do so. Mr Breen submitted that, at this point in time, the Tribunal could not be satisfied.
38. Mr Breen stated that whilst he acknowledged that Dr Smith is doing his best not to make specific comments but, in light of his recent comments his insight and remediation journey had not yet taken its full course and as of today's date Dr Smith's fitness to practise remains impaired.

39. On behalf of Dr Smith, Mr Kennedy submitted that there was nothing for the Tribunal to consider in relation to the appointment of the educational supervisor and whether Dr Smith was usurping the function of the RO. He stated that this was correctly addressed by the AR in the letter dated 6 November 2020, which stated:

“It is possible that Dr Smith could’ve intended to approach his RO for formal approval of his workplace reporter and educational supervisor once he had obtained agreement in principle from the individuals he’d approached. Therefore, I don’t consider that this information has potential to raise a further allegation of impairment.”

40. With regards to the conversation Dr Smith had with a nurse, Mr Kennedy submitted that this was a specific comment relating to a specific patient and that Dr Smith’s comment was not a comment regarding women in general. He reminded the Tribunal that it was not required to go behind the decision made by the 2019 Tribunal, who determined that the communication issues not only did not reach the threshold of a finding of impairment, but they also did not reach the threshold of a finding of misconduct.
41. Mr Kennedy stated that at a review hearing this type of concern can inflate a non-misconduct finding into a finding of misconduct and a non-impairment finding into a finding of impairment. He submitted that a reviewing Tribunal does not have free rein to rove far and wide and consider matters unrelated to the original complaint and that it would be wrong for a reviewing Tribunal to do so. Mr Kennedy stated that this allegation cannot be used as the basis for a finding of continued impairment.
42. In relation to the question of Dr Smith’s probity, Mr Kennedy submitted that the basis for concern in this matter was weak. He stated that more than likely this was a case of confusion in that, in his email, Dr H had confused the names of two clinicians rather than it being an act of dishonesty on Dr Smith’s part. Mr Kennedy said that it would be a very strange course of action for Dr Smith to repeat something that was dishonest in a series of emails, into which Dr I was copied, as Dr I had the potential to “*blow the whistle*”. Mr Kennedy submitted that there was nothing of concern on the issue of probity.
43. Mr Kennedy reminded the Tribunal of the extent to which Dr Smith had remedied the finding of dishonesty by the 2019 Tribunal. He further reminded the Tribunal that Dr Smith’s dishonesty did not give rise to a risk to patients nor had it entitled Dr Smith to a qualification that he was otherwise not entitled to. He stated that the 2019 Tribunal was satisfied that Dr Smith had embarked upon a process of reflection and remediation but that it was not complete at that time.

44. Mr Kennedy submitted that the Chair of the RoP in May 2020 was satisfied that Dr Smith had continued the process of reflection and had provided further documents of reflection on communication and probity. He reminded the Tribunal that the Chair of the RoP had, by way of conditions, requested Dr Smith to provide a PDP primarily focused on communication and probity.
45. In terms of Dr Smith’s communication, Mr Kennedy reminded the Tribunal of the Patient and Colleague Feedback Reports. He stated that it was clear that patients regard Dr Smith as a good communicator and that Dr Smith’s colleagues speak highly of his abilities.
46. In assessing Dr Smith’s competence and whether he can return to unrestricted practice without placing patients at risk, Mr Kennedy invited the Tribunal to have regard to Dr Smith’s positive workplace report. He stated that Dr Smith was making good progress considering he has been out of medicine for six months and for whom the landscape had changed significantly due to Covid-19.
47. Mr Kennedy submitted that, given all of the circumstances, Dr Smith’s fitness to practise is no longer impaired.

The Relevant Legal Principles

48. The Tribunal reminded itself that, at this stage of proceedings, the decision on impairment is a matter for the Tribunal’s judgement alone.
49. The Tribunal must determine whether Dr Smith’s fitness to practise is impaired today, taking into account his 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.
50. The Tribunal reminded itself that, at a review hearing, there is a persuasive burden on the practitioner to show that his fitness to practise is no longer impaired.

The Tribunal’s Determination on Impairment

Matters arising from the Assistant Registrar’s letter

51. The Tribunal had regard to the AR's decision letter dated 6 November 2020, where two matters of concern were raised and referred to this Tribunal for consideration; that of Dr Smith's probity and his inappropriate remarks made to a nurse.
52. The Tribunal first considered the matter of Dr Smith's probity and the concerns raised regarding how Dr Smith had approached the appointment of his reporters and sought to arrange his workplace reporter and educational supervisor himself. The Tribunal noted the context in which these events occurred: at the time Dr Smith's suspension had been revoked and replaced with a period of conditional registration.
53. The Tribunal had regard to the oral evidence of Dr Smith where he explained that it was his practice to make recommendations to his Responsible Officer ('RO'), the RO would then contact the individuals and discuss the role they were to undertake. The RO would make the appointment based upon the individual's qualifications and experience. Dr Smith stated that if the RO did not agree with his recommendation, the RO would find a more suitable reporter and appoint the individual to the role, something Dr Smith stated had occurred.
54. Dr Smith also explained that when he was informed that he was allowed to return to conditional practice, he had emailed Dr I asking if she would be willing to be his educational supervisor. Dr Smith stated that he had sent a number of emails to his RO regarding workplace reporters and it was his habit to copy in his RO and the reporters so that his email communications were open and transparent.
55. The Tribunal determined that the process of recommendation adopted by Dr Smith was neither unusual nor unreasonable. It did not consider that Dr Smith was usurping the role of the RO by making recommendations himself. It accepted that it was for the RO to appoint these individuals and not Dr Smith.
56. The Tribunal noted that Dr Smith's recommendations to the RO were made in an attempt to expedite the process, to ensure that those responsible for commenting on his progress were in place so that he could return to practise as quickly as possible. The Tribunal noted that Dr Smith was eager to return to practise to help out with the Covid-19 pandemic. It did not consider that Dr Smith's actions were a cause for concern.
57. The Tribunal next considered Dr Smith's inappropriate remarks made to a nurse and noted the context in which his comments were made.

58. The Tribunal noted that Dr Smith’s comment was in response to a query regarding advice about women’s sexual health. It acknowledged that in his evidence Dr Smith stated that his response was regarding a specific patient and was borne out of frustration, and he had stated that it was not a generalised comment. The Tribunal considered that the patient concerned would be upset if she knew what Dr Smith had said. It also considered Dr Smith’s comment was judgemental and demonstrated a lack of respect to the patient and to the nurse.
59. The Tribunal noted that Dr Smith made the remark in the absence of the patient. The Tribunal considered that, more than likely, it was said in an off-hand manner, in a relaxed environment. Nevertheless, the Tribunal determined that Dr Smith should not have made the remark at all.
60. The Tribunal considered that the concerns in relation to Dr Smith’s comments raised by the AR, mirrored similar concerns of the 2019 Tribunal and that the concerns still remained at the May 2020 RoP. It reminded itself that although Dr Smith’s registration was made subject to conditional registration in May 2020, it was not until August 2020 that Dr Smith returned to work. At the time of this hearing, Dr Smith had only resumed his practice for a few months. The Tribunal was of the opinion that Dr Smith had not yet had time, whilst in practice, to fully develop his insight into his communications with others. Therefore, Tribunal determined that a risk of repetition still remained.

Current Impairment

61. The Tribunal had regard to the medical ethics course Dr Smith had attended and his reflective statement written following his attendance. Dr Smith stated that he had identified an aspect of his personality where he does not complain when he has grounds to and which ultimately led him to act dishonestly.
62. The Tribunal reminded itself that when Dr Smith returned to practice, his relationship with his workplace reporter Dr C had deteriorated. It noted that Dr Smith had expressed his concerns with Dr C directly and that when Dr C did not agree with Dr Smith’s concerns, Dr Smith took the matter to the GP Partners. The Tribunal considered that this showed a level of insight on Dr Smith’s part, in that he had handled the matter correctly and had not resorted to an act of dishonesty to remedy the problem.
63. The Tribunal acknowledged that it was difficult for a practitioner to remediate matters of dishonesty. It noted that Dr Smith had done what had been asked of him by the 2019

Tribunal with regards to his PDP, and the Chair of the RoP, by providing a PDP primarily focused on communication and probity. The Tribunal had regard to the evidence provided to it of Dr Smith's attendance on courses and his personal reflections following his attendance.

64. The Tribunal considered that Dr Smith had made progress on his journey to developing full insight since the May 2020 RoP. However, given the ongoing concerns raised by the AR, within a few months of Dr Smith's return to practice, it was of the view that there was still some way to go. The Tribunal determined that it could not be confident that there would be no repetition of similar behaviour.
65. In all the circumstances, the Tribunal determined that Dr Smith has not sufficiently developed full insight into his communications with others and that some concern remains. As such, it considered that Dr Smith is not yet in a position to return to unrestricted practice.
66. Taking Dr Smith's actions together, the Tribunal concluded that two limbs of the overarching objective were engaged in this case, and that a finding of continued impairment was necessary to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for the members of that profession.
67. The Tribunal has therefore determined that Dr Smith's fitness to practise remains impaired by reason of his misconduct.

Determination on Sanction - 23/12/2020

1. Having determined that Dr Smith's fitness to practise remains impaired, the Tribunal now has to decide in accordance with Rule 22(1)(h) 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 to reaching a decision on sanction.

Submissions

3. On behalf of the GMC, Mr Breen submitted that this is a case in which the Tribunal should take action and invited it to impose an order of conditions.
4. Mr Breen submitted an order of conditions is the proportionate response to the Tribunal's finding of current impairment. He added that it is proportionate in light of the Tribunal's ongoing concerns in relation to the evidence raised by the Assistant Registrar.
5. On behalf of Dr Smith, Mr Kennedy submitted that, in light of the Tribunal's ongoing concerns regarding Dr Smith's communication skills, it would be sensible to impose a further period of conditions. He stated that this would provide assurance at a future date that there has been no repetition and can be achieved within the boundaries of Dr Smith's existing conditions.
6. Mr Kennedy submitted that, in light of the Tribunal's conclusions and in order to advance matters, condition 5 of Dr Smith's current order of conditions should be removed. He stated that the requirement for Dr Smith to provide a PDP was historical and had been addressed appropriately with the RO. Mr Kennedy highlighted that the Tribunal had found that Dr Smith had acted appropriately when faced with a difficult relationship with this line manager, which he submitted was evidence of developing insight.
7. Mr Kennedy further submitted that there was no longer any requirement for condition 6 and that an educational supervisor was unnecessary. He stated that it was a time consuming and onerous task for the educational supervisor.
8. In terms of the length of time to impose the conditions, Mr Kennedy submitted that had these proceedings concluded in November 2020 as scheduled, he would have invited the Tribunal to impose a period of six months conditional registration. However, it was now some six weeks later, and he invited the Tribunal to take this into account when determining the length of time to impose an order of conditions.
9. Mr Kennedy submitted that a period of three to four months would be a sufficient period of time, otherwise there was a risk of a disproportionate result to Dr Smith. He reminded the Tribunal of the slightly unusual circumstances of this case where the Tribunal was extending a period of conditional registration on the basis of concerns which had not justified a sanction by the 2019 Tribunal i.e. the 2019 Tribunal did not make a finding of misconduct or impairment in relation to communication issues at that stage.

The Tribunal's Determination on Sanction

10. The Tribunal is aware that the decision as to the appropriate sanction, if any, to impose on Dr Smith's registration is a matter for this Tribunal exercising its independent judgement. In so doing, it has given consideration to the submissions made by Mr Breen, on behalf of the GMC, and by Mr Kennedy on behalf of Dr Smith.
11. 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 a sanction is not to be punitive, although a sanction may have a punitive effect.

No action

12. The Tribunal first considered whether to conclude Dr Smith's case by taking no action. The Tribunal noted that following a finding of impairment, taking no action is only considered appropriate where there are exceptional reasons for doing so. The Tribunal determined that there were no exceptional circumstances in this case and taking no action would therefore be inappropriate and would not address its finding of continued impairment.

Conditions

13. The Tribunal considered whether a period of conditional registration would be appropriate. In so doing, it bore in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.
14. In light of its concerns regarding Dr Smith's communication with others, the Tribunal considered that the comment made by Dr Smith to the nurse was an indication of ongoing behavioural and communication problems. It considered that Dr Smith required further time to develop his insight in order to reflect on his actions and how they impact on others.
15. The Tribunal noted that the Chair of the RoP imposed an order of conditions on Dr Smith's registration in May 2020. However, it was not until August 2020 that Dr Smith returned to practice, which the Tribunal concluded was a relatively short period of time in practise. It was mindful that even during this short period of time, concerns regarding Dr Smith's communications with others had been brought to the attention of the AR.

16. In all the circumstances the Tribunal determined that a further period of conditional registration was required in Dr Smith’s case. The Tribunal considered that this would provide Dr Smith time to work towards improving his communication abilities and to address the concerns the Tribunal had identified in relation to his insight and remediation. The Tribunal determined that a further order of conditions would be sufficient to protect public confidence in the profession and to maintain proper professional standards
17. The Tribunal was satisfied that the conditions as currently drafted strike the appropriate balance between fairness to Dr Smith and protection of the wider public interest. The only amendments required are to conditions 5 and 6:
- 5.a.ii removed;
 - 5.e to read ‘educational supervisor’ as opposed to ‘responsible officer’;
 - 6.a to read ‘His educational supervisor must be appointed by his responsible officer’.
18. The following conditions are not confidential and will be published:
1. He must personally ensure the GMC is notified of the following information within seven calendar days of the date these conditions become effective:
 - a. the details of his current post, including:
 - i. his job title
 - ii. his job location
 - iii. his responsible officer (or their nominated deputy).
 - b. the contact details of his employer and any contracting body, including his direct line manager
 - c. any organisation where he has practising privileges and/or admitting rights
 - d. any training programmes he is in
 - e. for GPs only: of the organisation on whose medical performers list he is included

- f. of the contact details of any locum agency or out of hours service he is registered with.
2. He must personally ensure the GMC is notified:
 - a. of any post he accepts, before starting it
 - b. that all relevant people have been notified of his conditions, in accordance with condition 11
 - 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:
 - i. Communicate effectively

- b. His PDP must be approved by his responsible officer (or their nominated deputy).
 - c. He must give the GMC a copy of his approved PDP 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 educational supervisor (or their nominated deputy), as required, to discuss his achievements against the aims of his PDP.
6. a. His educational supervisor must be 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 have a mentor who is approved by his responsible officer (or their nominated deputy).
8. He must get the approval of the GMC before working in a non-NHS post or setting.
9. He must not work in any locum post or fixed term contract of less than 1 months' duration.
10. To allow the GMC to disclose the above conditions to any person requesting information about his registration status.
11. He must personally ensure the following persons are notified of the conditions listed at 1 to 10:
- 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)
 - 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. for GPs only: the responsible officer for the medical performers list on which he is included or seeking inclusion (at the time of application)
- d. his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts).

- 19.** The Tribunal considered the appropriate length of time that conditions should be imposed. It had regard to the submissions of Mr Kennedy that a period of three to four months would be sufficient. However, the Tribunal did not consider this to be a realistic period of time to achieve full insight and remediation.
- 20.** The Tribunal was concerned that, despite Dr Smith’s fitness to practice being found to be impaired previously, he had repeated similar behaviour that raised concerns about his communication skills. The Tribunal considered that, in light of these concerns, Dr Smith required a longer period of time to reflect on his communication skills, to develop his insight, and ensure there was no repetition of his unacceptable behaviour. It determined that a period of twelve months would be appropriate. This would ensure that Dr Smith had the opportunity to embed his learning and allow time for it to be demonstrated in practise.

21. The Tribunal determined to direct a review of Dr Smith’s case. A review hearing will convene shortly before the end of the period of conditional registration, unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Smith to demonstrate how he has developed his insight. It therefore may assist the reviewing Tribunal if Dr Smith provides:
- A further reflective statement into his developing insight relating to communicating effectively;
 - Any other information the he considers will assist.
22. The effect of this direction is that, unless Dr Smith exercises his right of appeal, this decision will take effect 28 days from when written notice of this determination is deemed to have been served upon him. In the event Dr Smith does appeal, the current order of suspension will remain in place until that appeal is decided. A note explaining Dr Smith’s right of appeal will be provided to him.
23. Notification of this decision will be served on Dr Smith in accordance with the Medical Act 1983, as amended.

Confirmed

Date 23 December 2020

Mr Robert Ward, Chair

ANNEX A – 23/12/2020

Application to Admit Further Evidence

1. At the outset of the proceedings Mr Carlo Breen, Counsel, on behalf of the GMC, made an application to admit further evidence in the form of a variety of additional documents, including an Assistant Registrar’s (AR) decision letter, dated 6 November 2020. Mr Breen stated that the AR’s letter only became available late on the same day, and that the other documents comprised of correspondence from Dr Smith’s Responsible Officer and various representations from Dr Smith’s instructing Solicitor.
2. Mr Breen submitted that it was necessary for the Tribunal to read the documents as they were relevant to matters being reviewed today. Mr Breen stated that the AR’s letter raised issues with regards to Dr Smith’s probity and communication with others, the subject of the original MPTS hearing in December 2019, and to the potential likelihood of Dr Smith’s current impairment.
3. Mr Breen stated that the GMC was simply putting the documents before the Tribunal as potential evidence that went towards Dr Smith’s current impairment.
4. On behalf of Dr Smith, Mr Kennedy stated that amongst the documentation was an AR’s decision letter dated 13 October 2020. He stated that the letter detailed a series of issues relating to clinical concerns, probity, and an unprofessional comment made by Dr Smith.
5. Mr Kennedy submitted that when querying why these were to be placed before this Tribunal, he had been told by the GMC that the matters relating to clinical concerns were not for the reviewing Tribunal’s consideration and instead were being dealt with via the GMC’s triage arrangements. However, the remaining matters may be relevant to the reviewing Tribunal’s consideration of Dr Smith’s current impairment.
6. Mr Kennedy stated that Dr Smith had provided his responses to the three matters of concern and that late on 6 November 2020, a response was received from the decision-maker at the GMC by way of a letter dated the same day. He stated that the AR had decided that one of two matters relating to the issue of probity was not worthy of consideration and no further action was to be taken. However, the remaining matters were to be placed before this Tribunal for its consideration.

7. Mr Kennedy stated that that being the case, the Tribunal should see the underlying material and Dr Smith's response, but he questioned the basis upon which a Tribunal could consider an allegation of potential probity that was neither admitted nor adjudicated on.
8. In relation to the unprofessional comment, Mr Kennedy reminded the Tribunal that, when considering similar matters involving unprofessional comments, the 2019 Tribunal concluded that although the comments were unprofessional, thoughtless and on the cusp of misconduct, taken individually they did not cross the threshold of misconduct. Mr Kennedy stated that it was difficult for this Tribunal to consider as relevant any material that did not form the basis of a finding of impairment at the 2019 Tribunal.
9. Mr Kennedy submitted that he was not saying that it was not fair to adduce the additional documents but that some of the material may not be relevant to the Tribunal today, if it did not fall within the scope of its enquiries.
10. Mr Breen countered that it was relevant and fair for the additional documents to be admitted as much of the material emanated from Dr Smith himself, including various comments made to his instructing Solicitor. Mr Breen stated that it was relevant for the Tribunal to read the extra documentation, including the further decision of the AR, dated 6 November 2020. In these, the AR set out two issues which raised a potential likelihood of impairment on the basis of the conditions in place on Dr Smith's registration.
11. Mr Kennedy submitted that if the probity allegation has the potential to raise an issue of impairment and the Tribunal made a decision which was adverse to Dr Smith, it would have taken into account material that was not admitted and had not been adjudicated upon as the basis for its decision, which would be problematic.
12. Mr Kennedy stated that he was content to proceed on the basis that the Tribunal takes a holistic view, looking at all the matters before it, including the material that sets out Dr Smith's response to the issues raised by the AR.

The Tribunal's Decision

13. The Tribunal reminded itself of Rule 34(1) of the GMC (Fitness to Practise Rules) 2004 as amended ('the Rules'), which 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.'

14. The Tribunal noted that the evidence related to two matters concerning Dr Smith's behaviour since his last hearing in May 2020. The Tribunal considered that the additional documentary evidence would assist it when it came to an assessment of those matters and was therefore relevant to this case.
15. The Tribunal understood that the documents had been produced at a late stage, primarily due to one document only being provided to parties late on 6 November 2020. The Tribunal formed the view that allowing the evidence to be admitted would be fair because Dr Smith would have the opportunity to respond to it.
16. The Tribunal determined to admit the additional documents into evidence and will attach whatever weight is appropriate when this evidence is assessed.