

## PUBLIC RECORD

Dates: 11/03/2024 - 15/03/2024

Medical Practitioner's name: Dr Kesley SMITH

GMC reference number: 7528879

Primary medical qualification: MB BS 2016 University of London

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

**Summary of outcome**Conditions, 24 months.  
Immediate Order  
Review directed**Tribunal:**

Legally Qualified Chair	Ms Chitra Karve
Medical Tribunal Member:	Dr Anup Singh
Medical Tribunal Member:	Dr Ranjana Rani
Tribunal Clerk:	Mrs Jennifer Ireland

**Attendance and Representation:**

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Ms Yasmin Omotosho, Counsel
GMC Representative:	Ms Eleanor Fry, 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 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 - 14/03/2024

1. This determination will be handed down in private. However, as this case concerns a criminal conviction a redacted version will be published at the close of the hearing.

### Background

2. Dr Smith qualified in 2016 from University of London. He undertook Foundation Year 1 & 2 training at Queens Medical Centre, Nottingham and Chesterfield Royal Hospital, Derbyshire. At the time of the events in 2021, Dr Smith was working as a Trust Grade Doctor in Emergency Medicine at Queens Medical Centre, Nottingham University Hospitals NHS Trust ('the Trust'), where he had been employed since August 2019.

3. In summary, the allegation that has led to Dr Smith's hearing relates to a period between August and November 2021 whilst he was working at the Accident and Emergency department in Nottingham. Dr Smith wrote 11 prescriptions, all for XXX. Of those 11 prescriptions, nine were for patients he had treated and two were written for his friends. He took the prescriptions he had written to a pharmacy but was detected by pharmacy staff when discrepancies arose. On further investigation it transpired that a prescription had been written on 12 November 2021, delivered to a pharmacy and collected by Dr Smith ostensibly for a patient. The patient details on the prescription did not match up with the Emergency Department attendance and the patient was contacted and confirmed that they had not attended the Emergency Department. This prompted a review of outpatient prescriptions written by Dr Smith. On 19 November 2021, following further review of Dr Smith's prescribing, the Fraud team and Police were notified.

4. Dr Smith was arrested and, in February 2022, he was interviewed by the police where he admitted writing prescriptions for two of his friends, but denied writing another nine prescriptions. The police made further enquiries and Dr Smith was further interviewed by

the police in April 2022, when he exercised his right to remain silent. Dr Smith was charged with the offences as outlined below, and appeared at Court on 26 August 2022. He entered a guilty plea at the first opportunity and was sentenced on 21 October 2022 to imprisonment for ten months, suspended for two years, and ordered to perform 100 hours of unpaid work.

5. XXX

6. The initial concerns were raised with the GMC on 30 November 2021 by Dr C, Associate Medical Director for Professional Standards at Queens Medical Centre, the Trust.

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

7. The Tribunal granted the application made by Ms Yasmin Omotosho, Counsel, on behalf of Dr Smith, made pursuant to Rule 41 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that the entirety of the hearing be held in private session. The Tribunal's full decision on the application is included at Annex A.

### The Allegation and the Doctor's Response

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

1. On 26 August 2022, at Nottingham Magistrates' Court, you were convicted of:
  - a. between 18 August 2021 and 13 November 2021 at Nottingham having made false instruments, namely prescriptions for a scheduled drug, with the intention that you or another should use the same to induce others to accept it as genuine and by reason of so accepting it to do or not to do some act to his own or another person's prejudice, contrary to section 1 of the Forgery and Counterfeiting Act 1981; **Admitted and found proved**
  - b. between 18 August 2021 and 13 November 2021 at Nottingham having used instruments for a scheduled drug, namely prescriptions, which were and which you knew or believed to be false, with the intention of inducing NHS staff to accept them as genuine and by reason of so accepting it to do or not to do some act to their own or another person's prejudice, namely providing free and controlled drugs to you, contrary to sections 3 and 6 of the Forgery and Counterfeiting Act 1981. **Admitted and found proved**

2. On 21 October 2022 at Nottingham Crown Court, you were sentenced concurrently for the offences detailed in paragraphs 1a and 1b to:
  - a. imprisonment for ten months, suspended for two years; **Admitted and found proved**
  - b. perform 100 hours of unpaid work. **Admitted and found proved**
3. XXX
4. XXX

And that by reason of the matters set out above your fitness to practise is impaired because of your:

- a. conviction in respect of paragraphs 1 and 2;
- XXX

### **The Admitted Facts**

9. At the outset of these proceedings, through his counsel, Ms Omotosho, Dr Smith made admissions to all the paragraphs and sub-paragraphs of the Allegation, 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 these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

### **Determination on Impairment**

10. 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 Smith's fitness to practise is impaired by reason of a conviction for a criminal offence XXX.

### **The Evidence**

11. The Tribunal has taken into account all the evidence received during the hearing, both oral and documentary.

12. On behalf of the GMC the Tribunal received oral evidence from Dr A, XXX, via video link.

13. Dr Smith provided his own witness statements and also gave oral evidence at the hearing.

14. The Tribunal had regard to the documentary evidence provided. This included, but was not limited to:

- Certificate of conviction, dated 21 October 2022;
- Judge’s sentencing remarks, dated 21 October 2022;
- XXX;
- Referral from the Trust, dated 30 November 2021;
- Investigation report by the Trust, dated 14 October 2022;
- XXX;
- Schedule of Dr Smith’s previous undertakings, dated 8 May 2019;
- Letter from the GMC to Dr Smith revoking undertakings, dated 25 May 2021;
- Dr Smith’s witness statement, dated 27 February 2024;
- Dr Smith’s reflective statement, dated March 2024;
- Dr Smith’s Rule 7 comments, dated 16 May 2023;
- Testimonials;
- Documents provided to IOT hearings by Dr Smith including reflections, XXX and CPD material.

#### Dr Smith’s evidence

15. In his oral evidence, Dr Smith told the Tribunal about his current practise. He told the Tribunal that his employers were aware of XXX. He stated that he could not envisage a situation in which he would be required to prescribe XXX as they were not ordinarily dispensed in Psychiatry. If necessary, he stated that he would be able to ask another doctor to prescribe XXX.

16. XXX

17. Dr Smith told the Tribunal that he had paid for at XXX, and that as a result, his IOT restrictions had been relaxed. As a result, he had been permitted to prescribe Schedule 1 to 4 medications, and, since February 2024, he had been called on to dispense sedatives, benzodiazepines and on one occasion codeine to a patient on the ward. He stated that he had prescribed these medications via the electronic prescribing system and they were then delivered to the ward by the pharmacy. This meant he had no access to them.

18. In relation to his conviction, Dr Smith accepted that his offending was offences of dishonesty that occurred over a period of four months. He accepted that he had asked his friend to be dishonest with the police about the offending but stated that he was not in the right frame of mind at the time.

19. Dr Smith told the Tribunal that he was XXX, and that this had helped him to gain insight into his actions. He stated that he wanted to be completely honest going forward so he could be successful XXX.

20. Dr Smith explained his coping mechanisms for stress, which involved being open and XXX as well as his partner and friends about things that are happening. Further, he stated that being able to work and having support from his employers and colleagues was helpful. XXX.

## Submissions

### On behalf of the GMC

21. On behalf of the GMC, Ms Fry submitted that Dr Smith's fitness to practice was impaired by XXX his conviction.

22. Ms Fry submitted that the GMC was very pleased to see Dr Smith's developing insight, XXX. She submitted that the sentencing Judge had commented that this was a sophisticated dishonesty offence occurring over four months, involving significant planning and abuse of a doctor's position in order to carry out the offence. She stated that the Tribunal might consider that public confidence would be significantly impacted if impairment were not found in relation to a conviction of that nature. She submitted that the additional element of dishonesty, in asking his friend to lie to the police, goes beyond the bare minimum simply to obtain the drugs XXX.

23. Ms Fry submitted that Dr Smith had not used the opportunity when interviewed to explain his conduct in his interviews with the police, which was his right, but demonstrates that he was not ready to be open and honest at that time. She submitted that this calls into question the reliability of his reflective diary entry of 30 June 2022, which was written two months after the second interview. This entry could mislead readers into thinking he had been fully open during his second interview with the police. Ms Fry submitted that Dr Smith was defensive when challenged about this entry and unable to make concessions about the ambiguity. She stated that the Tribunal may question whether in fact he has developed full insight into both the conviction XXX.

24. Ms Fry submitted that XXX and that Dr Smith's fitness to practise should be found impaired by reason of XXX his conviction for criminal offences.

On behalf of Dr Smith

25. On behalf of Dr Smith, Ms Omotosho submitted that Dr Smith XXX.

26. Ms Omotosho submitted that Dr Smith has given information about his personal circumstances XXX. She submitted that Dr Smith has shown a significant amount of insight into the impact that XXX. Further, Dr Smith is acutely aware of the overall position that doctors hold in the eyes of the public, and he understands the weight of his actions. She submitted that Dr Smith has shown that he has a learned lessons from this entire process with the GMC XXX.

27. Ms Omotosho invited the Tribunal to XXX. She invited the Tribunal to consider the steps Dr Smith has taken to remediate, including XXX and his determination to use whatever resources are available to better himself and maintain the integrity of the profession. She submitted that Dr Smith has taken full responsibility for his actions and is remorseful.

28. Ms Omotosho submitted that Dr Smith has engaged with his IOT conditions fully which supports the notion that being able to continue with his training would support XXX. She invited the Tribunal to consider the recent feedback and testimonials as evidence of his positive contribution to his team and psychiatric care.

29. Ms Omotosho reminded the Tribunal that Dr Smith's suspended sentence has not yet expired. She stated that he has completed his community service hours. She submitted that the Tribunal should consider that the offences were undertaken XXX. She submitted that

during the second police interview, Dr Smith was acting on the advice of his legal representative to give no comment, and that there was no deliberate intention to not be open and honest. She invited the Tribunal to exercise its professional judgement with regards to impairment.

### The Relevant Legal Principles

30. 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.

31. 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.

32. Further, whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in *CHRE v NMC and Paula Grant* [2011] EWHC 297 Admin. Dame Janet Smith said that Tribunals should consider whether their findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

a. *'Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

b. *Has in the past and/or is liable in the future to bring the medical profession into disrepute; and/or*

c. *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d. ....

### The Tribunal's Determination on Impairment

33. The Tribunal, in making its decision on impairment, considered that Dr Smith's criminal actions arose from XXX. It therefore viewed the two issues as inextricably linked and



considered that it would be difficult to consider impairment in relation to one, without also considering the other. It therefore considered matters together.

34. The Tribunal considered that Dr Smith's conviction is serious. He knowingly forged 11 prescriptions over a period of four months for which he was given a suspended custodial sentence, which is not due to expire until October 2024. The Tribunal acknowledged that Dr Smith's criminal behaviour occurred XXX. It accepted that Dr Smith's thinking at the time was affected by XXX.

35. The Tribunal took note of the GMC's submissions around dishonesty and noted that there was not a specific allegation relating to dishonesty. The Tribunal accepted however, that this was an offence of fraud and falsification.

36. The Tribunal also had regard to the oral evidence of Dr A. It was Dr A's view that while Dr Smith had excellent insight into XXX Dr Smith would require both support and objective monitoring in order to keep him focused.

37. Following questions about likelihood of Dr Smith being open and honest in the future, Dr A replied that it *'was a fantasy to think that everyone would always be open'*, and reminded the Tribunal that people's own narratives can change over time. What was essential in Dr Smith's case was to see change in behaviour. Dr Smith has himself stated that he was *'in terror'* when asked by the police about his offences and it is acknowledged that when a person is terrified they may not be able to be open.

38. XXX.

39. The Tribunal accepted that Dr Smith is XXX. It was satisfied that he is engaging XXX.

40. The offending behaviour marked a serious departure from the principles outlined in Good Medical Practice (2013) ('GMP'), given that Dr Smith abused his position of trust in order to XXX.

41. The Tribunal concluded that a finding of impairment was required in order 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.

42. The Tribunal has therefore determined that Dr Smith’s fitness to practise is impaired by reason of XXX a conviction for a criminal offence.

#### **Determination on Sanction - 15/03/2024**

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

#### **The Evidence**

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

45. The Tribunal received further evidence on behalf of the GMC comprising an email between the GMC and Dr E, Regional Postgraduate Dean, for NHS England South West, dated 14 March 2024.

46. The Tribunal received further evidence on behalf of Dr Smith, comprising an email from Dr F, Associate Clinical Tutor for Cornwall Partnership NHS Foundation Trust, dated 11 March 2024.

#### **Submissions**

##### On behalf of the GMC

47. On behalf of the GMC, Ms Fry referred the Tribunal to the Sanctions Guidance (February 2024) (‘the SG’). She submitted that there were two potential options available to the Tribunal, which were dependent upon its assessment of Dr Smith’s actions. She referred the Tribunal to the case XXX:

XXX

48. Ms Fry submitted that to take no action in this case was unlikely to be justified, given that this is one involving XXX a conviction. She submitted that the evidence presented, XXX and the apparent backwards step that Dr Smith has taken in his discussions with XXX and in his evidence to the Tribunal, particularly in relation to his compliance with past undertakings,

may invite the Tribunal to consider that a sanction of suspension or conditions are most appropriate.

49. Ms Fry submitted that the Tribunal must consider whether the circumstances of Dr Smith's conviction and the breaches of GMP are such that they need to be marked with a period of suspension to fulfil the statutory overarching objective and in particular to maintain public confidence in the profession and proper professional standards. In reaching this decision, the Tribunal should consider the aggravating and mitigating factors in this case. She directed the Tribunal to the Judge's sentencing remarks that the offences were sophisticated dishonesty offences committed over a four-month period of time involving significant planning and abuse of Dr Smith's position as a doctor by writing prescriptions in the names of patients who he treated and of his friends.

50. Ms Fry submitted that if the Tribunal takes the view that Dr Smith was capable of assessing and appreciating that his conduct was wrong at the time, then the appropriate sanction in the public interest would be one of a short period of suspension. Alternatively, if the Tribunal takes the view XXX, then conditions would be the most appropriate sanction.

#### On behalf of Dr Smith

51. On behalf of Dr Smith, Ms Omotosho submitted that the appropriate sanction in this case would be one of conditions. She referred the Tribunal to relevant sections of the SG and to XXX.

52. Ms Omotosho submitted that Dr Smith agrees that the conditions set out by the XXX would be appropriate in addition to the standard conditions. XXX. She stated that a member of the public fully furnished with the facts of the case, in the knowledge of Dr Smith's history, and the fact he has been practising with conditions, would have confidence in the sanction of conditions.

53. XXX

54. Ms Omotosho submitted that conditions would be an entirely appropriate way of addressing XXX. She stated the Tribunal could be satisfied that Dr Smith would comply, given his compliance with his IOT conditions. She submitted that the overarching objective could be met by the imposition of conditions. She asked the Tribunal to consider the impact of a sanction on Dr Smith and his ongoing training. She stated that Dr Smith's training programme

were willing to support him should the Tribunal impose conditions, and reminded the Tribunal that Dr Smith would lose his training number should he be suspended.

### **The Relevant Legal Principles**

55. 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 alone, exercising its independent judgment. In reaching its decision, the Tribunal has taken account of the SG.

56. The Tribunal considered its decision on impairment, the submissions of both parties, and the documentary evidence adduced during the course of these proceedings.

57. The Tribunal recognised that the purpose of a sanction is not to be punitive, although it may have a punitive effect. The Tribunal must impose a sanction if it is required in order to protect patients, maintain public confidence in the profession, and/or meet the wider public interest. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Smith's interests with the public interest.

58. In deciding what sanction, if any, to impose, the Tribunal reminded itself that it must consider each of the sanctions available, starting with the least restrictive, to establish which sanction is appropriate and proportionate.

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

59. The Tribunal first identified what it considered to be the mitigating and aggravating factors in this case.

#### Aggravating Factors

60. The Tribunal first considered aggravating factors in this case.

61. The Tribunal could not ignore that this was a serious conviction which led to Dr Smith receiving a custodial sentence, albeit suspended. The criminal behaviour involved an abuse of Dr Smith's position of trust. Further, Dr Smith sought to get another person into trouble in the early stages of investigation. He also denied his involvement at the early stages.

62. The Tribunal also considered that this was persistent conduct, occurring on 11 occasions over a period of four months. The Tribunal noted that Dr Smith did not commit these actions for any financial gain, but XXX, and that this led to his conviction.

#### Mitigating Factors

63. The Tribunal then went on to consider mitigating factors in this case.

64. The Tribunal first took into account that Dr Smith pleaded guilty in court and was satisfied that this was an early enough admission to his wrongdoing. Further, he made full admissions to the Allegation before the Tribunal. The Tribunal was satisfied that Dr Smith has taken full responsibility for his actions. Dr Smith has shown remorse and regret, and demonstrated an awareness of the impact his conduct could have had on the reputation of the profession, as well as the real impact it had on his family and friends.

65. XXX

66. The Tribunal took into account that Dr Smith has been practising with restrictions since his conviction. The Tribunal has seen no evidence of any breaches of these conditions. Further, it noted that the IOT conditions have been relaxed since they were originally imposed.

67. The Tribunal considered that Dr Smith has continued to work during times of stress, particularly during the COVID-19 pandemic, and throughout the GMC investigation and MPTS proceedings. Despite these stressors, the Tribunal has seen no evidence of reoffending XXX in the 18 months since his conviction.

68. The Tribunal took into account the positive testimonials and appraisals received on Dr Smith's behalf. It was satisfied that his colleagues consider him to be a good, hardworking and conscientious doctor. The Tribunal was also satisfied that Dr Smith has been open with his colleagues and supervisors about his difficulties.

69. The Tribunal also took into account the early stage of Dr Smith's career, and the steep learning curve that is associated with that. It was satisfied that as he gains further experience, he will gain a better understanding of the expectations that come with being a doctor.

70. XXXX

71. Having considered the aggravating and mitigating factors, the Tribunal then went on to consider what sanction, if any, to impose, starting with the least restrictive.

No action

72. The Tribunal first considered whether to conclude the case by taking no action. It noted that to take no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

73. The Tribunal was satisfied that there were no exceptional circumstances in Dr Smith's case which could justify it taking no action. It determined that, given the Tribunal's findings in respect of impairment, to take no action, would not be sufficient, proportionate nor in the public interest.

Conditions

74. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Smith's registration. It had regard to paragraphs XXX 82, 84(a) XXX) of the SG, which state:

**XXX**

**82** *Conditions are likely to be workable where:*

*a the doctor has insight*

*b a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings*

*c the tribunal is satisfied the doctor will comply with them*

*d the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.*

...

**84** *Depending on the type of case (eg health, language, performance or misconduct), some or all of the following factors being present (this list is not exhaustive) would indicate that conditions may be appropriate:*

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

...

XXX

75. The Tribunal noted that this was a case where conditions were deemed appropriate previously, and there have been no intentional breaches or other issues identified. The Tribunal noted Dr Smith was keen to complete his training and was satisfied that he would comply with an order of conditions on his registration and that HE has been doing so over the last 18 months.

76. The Tribunal took into consideration the submissions of Ms Fry, regarding Dr Smith's early dishonesty. It noted that her submission was that if the Tribunal agreed that Dr Smith was aware that his actions at the time were wrong then it should impose a more serious sanction. It took into account the views of the sentencing Judge, who agreed that Dr Smith's criminal behaviour was serious but also acknowledged his difficult history and the positive steps he had taken to begin to remediate for his actions. XXX

'XXX'

77. The Tribunal was of the view that at the time of the offending behaviour, Dr Smith was in XXX, terrified of the consequences of his actions. At that time, he had no insight and was unable to be fully open and honest as a result.

78. The Tribunal was also of the view that Dr Smith requires a supportive environment to continue XXX. It was evident to the Tribunal that Dr Smith is a well-regarded and competent doctor who has the support of colleagues. It was clear to the Tribunal that Dr Smith was doing well in his training, while being appropriately supported XXX. Conditions would allow

him to continue to do this. The Tribunal was satisfied that it was able to formulate conditions which would allow Dr Smith to continue to practise, with the support that he needs.

79. In all the circumstances, the Tribunal considered that imposing conditions on Dr Smith's registration was the appropriate sanction required to protect 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 the profession. It considered that, at this stage, given Dr Smith's well-developed insight and his commitment XXX, it would be overly punitive to suspend his registration. The Tribunal was satisfied that a member of the public, in full knowledge of the circumstances of this case, would agree that the overarching objective was met by the imposition of conditions.

80. The Tribunal has carefully considered the range of conditions that are necessary in this case. A proportionate approach led the Tribunal to impose the least restrictive conditions it considered were appropriate. It noted the submissions made by both parties and the XXX.

81. The following conditions 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 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 get the approval of his GMC Adviser before accepting any post.
- b He must keep his professional commitments under review and limit his work if his GMC Adviser tells him to.
- c He must stop work immediately if his GMC Adviser tells him to and must get the approval of his GMC Adviser before returning to work.
- 6 a He must only prescribe, administer, and have primary responsibility for drugs under arrangements which have been agreed by his GMC adviser and approved by his responsible officer (or their nominated deputy)
- b He must not work until:
- i his GMC adviser has agreed these arrangements
- ii His responsible officer (or their nominated deputy) has approved these arrangements
- iii He has personally ensured that the GMC has been notified of these arrangements.
- 7 He must not administer, dispense or collect on behalf of others drugs listed in schedules 1–4 of the *Misuse of Drugs Regulations 2001* and schedule 5 of the *Misuse of Drugs Regulations 2001*.
- 8 He must not prescribe any drugs for himself, or anyone with whom he has a close personal relationship
- 9 He must get the approval of the GMC before working in a non-NHS post or setting.
- 10 a He must be supervised in all of his posts by a clinical supervisor, as defined in the *Glossary for undertakings and conditions*. His clinical supervisor must be approved by his responsible officer (or their nominated deputy).

- b He must not work until:
  - i his responsible officer (or their nominated deputy) has appointed his clinical supervisor and approved his supervision arrangements
  - ii he has personally ensured that the GMC has been notified of the name and contact details of his clinical supervisor and his supervision arrangements.
  
- 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 the approval lead of his regional Section 12 approval tribunal (if applicable) - or Scottish equivalent

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).

82. XXX

### Length of order

83. Having determined to impose a further order of conditions, the Tribunal considered the length of the order of conditional registration. The Tribunal determined to impose conditions for a period of two years. It was satisfied that this period of time was required to help Dr Smith complete his training and commence the next stage of his career with supportive measures in place.

### Review

84. 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. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Smith to demonstrate XXX It therefore may assist the reviewing Tribunal if Dr Smith provides:

- XXX;
- XXX;
- Evidence of ongoing CPD, appraisals, and testimonials; and
- Anything else Dr Smith believes will assist.

### Determination on Immediate Order - 15/03/2024

85. Having determined that Dr Smith's registration should be subject to an order of conditions for a period of two years, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

### Submissions

86. On behalf of the GMC, Ms Fry submitted that an immediate order was necessary to protect members of the public, is otherwise in the public interest and is in Dr Smith’s best interest. She submitted that Dr Smith should not be permitted to work without these supportive measures in place. She submitted that the IOT currently in place should be revoked in any event.

87. On behalf of Dr Smith, Ms Omotosho did not oppose the GMC’s application.

### The Tribunal’s Determination

88. In reaching its decision, the Tribunal considered the relevant paragraphs of the SG and exercised its own independent judgement. In particular, it took account of paragraphs 172, 173 and 178:

*‘172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. ...*

*173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor’s special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*

*...*

*178 Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.’*

89. The Tribunal determined that an immediate order was necessary to protect members of the public and is otherwise in the public interest. It also took the view that it was in the best interests of Dr Smith to impose an immediate order in order to give him the support he needs  
XXX.

90. This means that Dr Smith’s registration will be made subject to immediate conditions from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

91. The interim order is hereby revoked.

92. That concludes this case.

ANNEX A – 14/03/2024

**Application for the entirety of the hearing to be heard in private session**

93. At the outset of the hearing, Ms Yasmin Omotosho, Counsel, on behalf of Dr Smith, made an application pursuant to Rule 41 of the General Medical Council (Fitness to Practise) Rules (as amended) ('the Rules') for the entirety of this hearing to be heard in private.

**Submissions**

On behalf of Dr Smith

94. Ms Omotosho provided a summary of the background to the case and invited the Tribunal to depart from the '*default position*' – i.e. that the hearing is to be held in public – and hear the whole of the hearing in private since the particular circumstances of Dr Smith's case outweigh the public interest in holding the hearing in public.

95. Ms Omotosho submitted that the following aspects of the GMC's *Guidance to the GMC's Fitness to Practise Rules 2004 (as amended)* were relevant to Dr Smith's application:

*'Attendance of the public (rule 41)*

*138. There is a presumption all Investigation Committee and MPT hearings will be held in public\*; however the MPT may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the particular circumstances of the individual case outweigh the public interest in holding the hearing in public.*

XXX

96. Ms Omotosho also submitted that the following aspects of the MPTS's *Managing medical practitioners tribunal hearings Guidance for tribunal chairs* were relevant to Dr Smith's application:

*'Public/private hearings*

XXX

XXX

*68. If a submission is made to hear the whole of the hearing in private eg because it is submitted that the issues are inextricably linked, the tribunal should:*

*a. consider the arguments advanced and any challenges to it;*

*b. have regard to the wording of Rule 41 which starts with the premise that hearings shall be held in public except in certain limited circumstances. This ensures openness and transparency and that the process is accountable;*

*c. consider how much of the information is already in the public domain eg in cases involving a conviction for drink driving the court hearing and all the evidence relating to it will have been heard in public;*

*d. bear in mind that, under the GMC's publication policy, the tribunal's decisions will be published, with the exception of confidential issues relating to the doctor's physical or mental health. Difficulties can arise if tribunals decide to hold the whole or part of hearings in private when issues other than the doctor's health are being considered.*

*69. Rule 41(2) gives the tribunal discretion to exclude the public from the whole or part of proceedings, where it considers it appropriate to do so. Such circumstances are rare but have occurred where it is necessary to protect the rights of third parties. For example:*

*a. a tribunal sat in private in order to protect the identity of an abused wife whose identity had been protected in the court proceedings that resulted in her husband's appearance before the tribunal;*

*b. another tribunal sat in private to ensure that the identity of a doctor's children was protected; the doctor was alleged to be abusing his children.'*

97. Ms Omotosho referred to the case of *Miller v General Medical Council [2013] EWHC 1934 (Admin)*. She submitted that *Miller v GMC* can be factually distinguished from Dr Smith's case as it concerned the application by the GMC, not the registrant, for a hearing to be held in private. Furthermore, the application was made to accommodate a reluctant witness.



98. Ms Omotosho submitted that, under Rule 41(2) XXX the whole of the hearing should be heard in private as all particulars of the Allegation are inextricably linked to XXX. She highlighted the closing remarks of the judge who sentenced Dr Smith at Nottingham Crown Court on 21 October 2022: 'XXX'.

99. Ms Omotosho submitted that Dr Smith's convictions cannot be discussed and considered without also discussing and considering XXX, and this will be an unavoidable central evidential thread throughout all stages of the hearing. She submitted that '*but for*' Dr Smith's XXX at the time of the commission of the offences that lead to his convictions, he would not have been engaged in criminal activity.

100. Ms Omotosho submitted that it would be impracticable for the hearing to continually go in and out of private as it progresses, and that this would be the inevitable consequence of the hearing only partially being held in private. She submitted that it is reasonable and proportionate for the hearing to be heard entirely in private. Furthermore, she submitted that, although not a reason in itself under Rule 41 for the hearing to be heard in private in its entirety, constant disruption to the hearing could ultimately impact the fairness of the hearing, and as stated in Article 6 of the European Convention of Human Rights, incorporated in Schedule 1 of the Human Rights Act 1998: '*Doctors have the right to a fair hearing if a public authority is making a decision that has a decisive impact on their civil rights or obligations.*'

On behalf of the GMC

101. Ms Eleanor Fry, Counsel, on behalf of the GMC, opposed the application for the entirety of the hearing to be heard in private. She proposed that the hearing be dealt with partly in private session and partly in public session.

102. Ms Fry acknowledged that, XXX. However, she highlighted that, pursuant to XXX, hold a hearing in public where they consider that to do so would be appropriate, having regard to, *inter alia*, '*all the circumstances, including the public interest*'.

103. Ms Fry submitted that, as per HHJ Pelling QC in *R (Miller) v General Medical Council [2023] EWHC 1934 (Admin)*:

*'it is common ground that the discretion under rule 41 of the General Medical Council Rules is to be read subject to Article 6 of the ECHR. Even where one of the Article 6 exceptions to a public hearing can, in principle, be relied upon, the derogation from the general principle ought not to be more than is proportionate – that is, the minimum derogation from the general principle necessary for the purpose of protecting the interest that has been identified as coming within the scope of the relevant exception.'*

104. Ms Fry submitted that, whilst it is conceded that the application under Rule 41 in *Miller* arose in different circumstances to the present case, the principles expounded therein are of general application and were clearly intended to be so, given that the court referred specifically to “*the discretion under Rule 41*” and “*the Article 6 exceptions*”, rather than confining the court’s decision solely to the facts of that particular case.

105. Ms Fry highlighted that Article 6(1) of the European Convention on Human Rights (ECHR) provides:

*'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.'*

106. Ms Fry also highlighted that the Court of Appeal set out at paragraphs 4 and 5 of its judgment in *R v Legal Aid Board ex parte Kaim Todner [1988] EWCA Civ 958* that:

*'[4] It is so important not to forget why proceedings are required to be subjected to the full glare of a public hearing. It is necessary because the public nature of proceedings deters inappropriate behaviour on the part of the court. It also maintains the public’s confidence in the administration of justice. It enables the public to know that justice is being administered impartially. It can result in evidence becoming available which would not become available if the proceedings were conducted behind closed doors or with one or more of the parties’ or witnesses’ identity concealed. It*

*makes uninformed and inaccurate comment about the proceedings less likely. If secrecy is restricted to those situations where justice would be frustrated if the cloak of anonymity is not provided, this reduces the risk of the sanction of contempt having to be invoked, with the expense and the interference with the administration of justice which this can involve.*

*[5] Any interference with the public nature of court proceedings is therefore to be avoided unless justice requires it.'*

107. Ms Fry submitted that, in the present case, the Tribunal will be considering allegations relating both to conviction and XXX. The doctor's conviction is something about which the public would ordinarily be entitled to know. She submitted that the circumstances do not justify a derogation from that in this case.

108. Ms Fry submitted that, whilst it is acknowledged that the motivation for the offending was linked to XXX, the Tribunal can and should draw a distinction between a) XXX at the time of the offence insofar as it relates to the offences of which he was convicted, which for the reasons she has set out ought to be aired in public and XXX.

109. Ms Fry submitted that, when considering all of the circumstances, including the public interest, the Tribunal may be assisted by knowing that the fact of the doctor's conviction and the fact that it relates to false prescriptions for the doctor's own use XXX is already within the public domain, having been aired publicly in the Crown Court and reported in the media, including on the BBC news website and, more locally, on "Nottinghamshire Live", the Nottingham Post's website.

### **The Tribunal's decision**

110. The Tribunal had regard to the submissions of both parties and considered carefully the matters before it.

111. The Tribunal considered that it might be impossible for it to proceed to hear the Allegation as it related to Dr Smith's convictions without XXX. Further, there would be significant practical issues to accommodate such a separation. The Tribunal also considered that there may be issues with the quality of the evidence as Dr Smith may find it difficult to be fully open with the Tribunal if the hearing was to be heard partly in public.

112. The Tribunal formed the view that the conviction and the XXX were intertwined to such an extent that it would be difficult to separate the two and that they were inextricably linked.

113. The Tribunal determined on that basis to grant Ms Omotosho's application for the hearing to be heard in private.