

PUBLIC RECORD

Dates: 15/05/2023 - 18/05/2023

Medical Practitioner's name: Dr Mahweer MAHESHWARI

GMC reference number: 7590413

Primary medical qualification: MB BS 2013 Liaquat University of Medical & Health Sciences

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Not Impaired
New - Conviction / Caution	Facts relevant to impairment found proved	Not Impaired

Summary of outcome

Warning

Tribunal:

Legally Qualified Chair	Mr Nicholas Flanagan
Lay Tribunal Member:	Mrs Valerie Blessington
Medical Tribunal Member:	Mr Gurpreet Singh
Tribunal Clerk:	Ms Ciara Fogarty

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Robert Dacre, Counsel, instructed by Medical Protection Society
GMC Representative:	Ms Harriet Tighe, Counsel

Attendance of Press / Public

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

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Facts and Impairment - 16/05/2023

STAGE 1: The Facts

1. This determination will be handed down in private. However, as this case concerns Dr Maheshwari's misconduct and conviction, a redacted version will be published at the close of the Hearing.

Background

2. Dr Maheshwari qualified in 2013 from Liaquat University of Medical & Health Sciences. Prior to the events which are the subject of the Hearing, Dr Maheshwari was employed as a GP Trainee at Shropshire General Practitioner Vocational Training Scheme (GPVTS). Dr Maheshwari is currently in his final year of training and is working as a GP Trainee at Albrighton Medical Practice, Wolverhampton. At the time of the events, Dr Maheshwari was practising as a Specialty Registrar at the Midlands Partnership NHS Foundation Trust (MPFT) with St Helens and Knowsley Teaching Hospitals NHS Trust (the Trust) as the lead employer.
3. The allegation that has led to Dr Maheshwari's Hearing concerns events between 27 and 28 October 2021, when Dr Maheshwari consumed alcohol whilst on night duty and was unfit to work.
4. It is further alleged that on 1 December 2021, at Telford Magistrate's Court, Dr Maheshwari was convicted of drink driving (arising from the 28 October 2021) and was sentenced to a £300 fine, a Community Order and disqualified from driving for a period of 2 years.

5. On 14 December 2021 Dr Maheshwari self-reported his conviction and sentence to the GMC.
6. Concerns had already been raised to the GMC via an online referral dated 30 November 2021 from Mrs A of Health Education in the West Midlands. Mrs A stated that Dr Maheshwari was undertaking a trainee placement in Psychiatry at Midlands Partnership NHS Foundation Trust (MPFT) with St Helens and Knowsley Teaching Hospitals NHS Trust (the Trust) as his lead employer. She stated that on 28 October 2021, it had been reported that whilst on night shift Dr Maheshwari had not been responding to the on-call bleep and that a staff member had stated that he had been *“difficult to awake and a bottle of alcohol was found by the bed”*. Mrs A stated that Dr Maheshwari had left work on 28 October 2021 at 09:30am heading toward the car park. The organisation was not able to contact Dr Maheshwari and the car was later found to have been discovered at his home address. She stated that the police had been called and Dr Maheshwari was breathalysed, when he was found to be over the legal alcohol limit for driving.

The Allegation and the Doctor’s Response

7. The Allegation made against Dr Maheshwari is as follows:

That being registered under the Medical Act 1983 (as amended):

1. Between 27 October 2021 and 28 October 2021, whilst working as the duty doctor at The Redwoods Centre, Midlands Partnership NHS Foundation Trust, you:
 - a. consumed alcohol; **Admitted and found proved**
 - b. were unfit to work due to being under the influence of alcohol. **Admitted and found proved**
2. On 1 December 2021, at Telford Magistrates’ Court, you were:
 - a. convicted of driving a motor vehicle on a road after consuming so much alcohol that the proportion of it in your breath, namely 110 micrograms of alcohol in 100 millilitres of breath, exceeded the prescribed limit contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988; **Admitted and found proved**
 - b. sentenced to a:
 - i. £300.00 fine; **Admitted and found proved**
 - ii. 13-month community order with a condition of 12 rehabilitation activity requirements (RAR) days; **Admitted and found proved**
 - iii. disqualification from holding or obtaining a driving license for 24 months; **Admitted and found proved**

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

- a. misconduct in respect of paragraph 1; **To be determined**
- b. conviction in respect of paragraph 2. **To be determined**

The Admitted Facts

8. At the outset of these proceedings, through his counsel, Mr Dacre, Dr Maheshwari admitted the Allegation in its entirety, as set out above. In accordance with Rule 17(2)(e) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'), the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

STAGE 2: Impairment

9. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Maheshwari's fitness to practise is impaired by reason of misconduct and/or a conviction.

The Evidence

10. Dr Maheshwari provided a witness statement and gave oral evidence at the hearing. Dr Maheshwari's evidence contained details of the events subject to the Hearing; as well as the efforts he had made to gain insight and remediate his behaviour. He was cross-examined by the GMC counsel as well as answering questions from the Tribunal.
11. Dr Maheshwari's evidence covered several matters, but the Tribunal considered the following to be notable:
 - He was extremely ashamed about being in this situation and referred to the offence as 'the biggest mistake of his life';
 - He accepted full personal responsibility for his actions accepting that this had the potential to harm patients and created a risk to himself and other road users while driving.
 - He expressed relief that nobody else was injured because of his drink driving
 - He referred to a number of events in the preceding year, XXX;
 - He stated that he drank alcohol very rarely and has remained abstinent from alcohol for over a year;
 - He now appreciated the need to be more open about his XXX and uses support he did not use previously;
 - He cooperated fully with the police, pleaded guilty at the first opportunity in Court and fully complied with all his sentencing requirements;
 - He was sorry and remorseful for what happened.
12. The Tribunal had regard to the documentary evidence provided by both the GMC and the Defence. This evidence included, but was not limited to:

- Witness Statement of Ms B dated 10 November 2022;
- Witness Statement of Mr C dated 27 October 2022;
- Hospital Coordinator Log completed by Mr C dated 26 October 2021;
- Incident Log completed by Mr C dated 27 October 2021;
- Certificate of Conviction dated 1 December 2021;
- Police Report dated 28 October 2021;
- Email from Telford Magistrates' Court to GMC confirming the duration of the Community Order and lack of a written Pre-Sentence Report dated 16 November 2022;
- Colleague feedback various dates between December 2020 to March 2023;
- Patient feedback dated March to April 2023;
- Report of Dr D of various dates between 10 April 2022 to 23 March 2023;
- Report of Dr E dated 29 May 2022 and 18 March 2023;
- Various course completions by Dr Maheshwari between dates between December 2021 to March 2023;
- Phased Return to Work Form, dated 13 July 2022;
- Reflection in the Incident in Psychiatry Report post Investigations dated 18 July 2022;
- Incident in Psychiatry Rotation and Outcome of MHPS and Disciplinary Hearing dated 6 May 2022;
- XXX ;
- XXX
- XXX
- XXX
- XXX.

Submissions

On behalf of the GMC

13. Ms Tighe submitted that Dr Maheshwari's fitness to practise is currently impaired by reason of both misconduct and the conviction.
14. Ms Tighe first addressed the Tribunal regarding misconduct matters and brought the Tribunal's attention to the case of *Roylance v. The General Medical Council [2000] 1 A.C. 311*, which states,

'Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word "professional" which links the misconduct to the profession of medicine. Secondly, the misconduct is qualified by the

word "serious". It is not any professional misconduct which will qualify. The professional misconduct must be serious.'

15. Ms Tighe submitted that Dr Maheshwari's misconduct marks a significant departure from Good Medical Practice (2013) ('GMP'), namely paragraph 1 and 65, which state:
 - 1 *Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.*
 - 65 *You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*
16. Ms Tighe asked the Tribunal to consider that Dr Maheshwari was at work when he consumed alcohol and he was the on duty doctor for a number of wards and a number of colleagues had paged the doctor for his assistance during this incident. Ms Tighe reminded the Tribunal that Dr Maheshwari did not inform any of his colleagues that he was unfit to work the shift.
17. Ms Tighe then highlighted Dr Maheshwari's conviction to the Tribunal, describing it as a '*deliberate act*'. She submitted that Dr Maheshwari did not need to get into his vehicle and drive home while he was intoxicated. Secondly, members of staff requested that he take a taxi home instead and he ignored those requests. Ms Tighe reminded the Tribunal of evidence that he narrowly missed colliding with another vehicle when leaving the hospital car park. Ms Tighe submitted Dr Maheshwari provided a sample of breath, which was three times over the legal limit of 35 micrograms, and the sample provided was taken at the police station approximately one and a half hours after he had left the hospital.
18. Ms Tighe asked the Tribunal to consider the question of impairment and drew their attention to the report of Dame Janet Smith's test in *The Fifth Shipman Report, cited in CHRE v NMC and Grant [2011] EWHC 927 (Admin)*, which states,
 - a) *Whether the registrant 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;*
 - b) *Whether the registrant has in the past brought and/or is liable in the future to bring the profession into disrepute;*
 - c) *Whether the registrant has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession.*
 - d) *Whether the registrant has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

19. Ms Tighe submitted that it is a matter for the Tribunal to assess what efforts Dr Maheshwari has made to remediate and asked that regard be had for the overarching objective, namely the protection of the public.
20. Ms Tighe concluded her submissions by asking the Tribunal to find Dr Maheshwari impaired by reason of misconduct and his conviction. She submitted that the Tribunal may find that Dr Maheshwari has developed considerable insight but that confidence in the medical profession and the overarching objective would be undermined if a finding of impairment were not made in this circumstance.

On behalf of Dr Maheshwari

21. Mr Dacre submitted that all the allegations brought by the General Medical Council had been admitted. He submitted that the issue is whether Dr Maheshwari's fitness to practise is currently impaired. Mr Dacre asked the Tribunal to find that Dr Maheshwari's fitness to practise is no longer impaired.
22. Mr Dacre reminded the Tribunal that there is no statutory definition of impairment. Mr Dacre asked the Tribunal to consider *The Fifth Shipman Report* and the overarching objective of the Medical Act 1983, which details the following:

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

23. Mr Dacre drew the Tribunal's attention to the case of *General Medical Council v Meadow [2006] EWCA Civ 1390* in which Sir Anthony Clarke MR emphasised that a consideration of impairment was essentially 'forward looking', albeit informed by past conduct:

'In short, the purpose of [fitness to practise] proceedings is not to punish the practitioner for past misdoing but to protect the public against the facts and omissions of those who are not fit to practice. The FPP thus looks forward not back. However, in order to form a view as to the fitness of a person to practise today, it is evidence that it will have to take account of the way in which the person concerned has acted or failed to act in the past'.

24. Mr Dacre urged the Tribunal to consider the case of *Cohen v GMC [2008] EWHC 581* when considering the question of impairment and whether the misconduct is remediable or has been remedied,

'It must be highly relevant in determining if a doctor's fitness to practice is impaired that

first his or her conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated.'

25. Mr Dacre also provided the Tribunal with the case of *Cheadle vs the GMC (2009) (EWHC 645)*, where Mr Justice Cranston stated;

'...[T]he doctors misconduct may be such that seen within the context of an otherwise unblemished record, a Fitness to Practise panel could conclude that, looking forward, his or her fitness to practise is not impaired, despite the misconduct.'

26. Mr Dacre drew the Tribunal's attention to the XXX context of Dr Maheshwari's misconduct. XXX. Mr Dacre emphasised to the Tribunal that there were various factors that contributed to Dr Maheshwari's XXX in October 2021. These included his adjustment to having started work in the UK, his sense of stress and isolation during the COVID period, the ill-health of his XXX as well as the death of his XXX – at a time when he was unable to visit his family or attend his XXX funeral because of travel restrictions. XXX
27. Mr Dacre asked the Tribunal to consider Dr Maheshwari's XXX. XXX
28. Mr Dacre submitted that Dr Maheshwari's insight is complete after he was quick to develop remorse about his conduct in October 2021. Mr Dacre reminded the Tribunal of Dr Maheshwari's reflection statement which states, *'I have never in my life (been) so irresponsible to using any drug/ alcohol at work which I really am sorry about as how it could have made things worse due to risk of patients at being harm and I am at risk of hurting myself, hurting others, irrational behaviour'*. Mr Dacre submitted that Dr Maheshwari's reflections deal with seriousness of the conduct itself but also the impact on patient safety and public trust. Mr Dacre highlighted that there have been no concerns about Dr Maheshwari's professional conduct or performance either before the incident or since.
29. Mr Dacre asked the Tribunal to note the efforts Dr Maheshwari has made to remediate and the XXX and the creation of a robust support network if things go wrong in the future. Mr Dacre submitted that a fully informed member of the public would conclude that the misconduct was very serious but completely remediated. Mr Dacre submitted that Dr Maheshwari has learnt the *'lesson of his life'* and is now ready to practice without restrictions. Mr Dacre invited the Tribunal to find Dr Maheshwari's fitness to practise not impaired.

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 exercising its own independent judgment.

31. The Tribunal is required to determine whether Dr Maheshwari's fitness to practise is currently impaired by reason of his conviction and misconduct.
32. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct and that misconduct was serious; and then whether the finding of that misconduct which was serious could lead to a finding of impairment.
33. The Tribunal must determine whether Dr Maheshwari's fitness to practise is impaired today, taking into account Dr Maheshwari's 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.

The Tribunal's Determination on Impairment

Misconduct

34. The Tribunal first considered if Dr Maheshwari's admitted misconduct amounted to serious misconduct. The Tribunal was deeply troubled by Dr Maheshwari consuming alcohol whilst responsible for patients and driving under the influence of alcohol.
35. The Tribunal noted that Dr Maheshwari's misconduct contained elements of premeditation, as the alcohol was present in his car and he made the decision to return to his car during his shift before consuming alcohol in the on-call room. Dr Maheshwari admitted to drinking alcohol throughout the night, failing to answer his bleep on several occasions. As Dr Maheshwari admitted in evidence, due to his intoxication, he was unable to undertake any assessments of patients and could have caused serious harm by prescribing inappropriate medication or doses in his intoxicated state. Dr Maheshwari's actions led the unit he was supposed to be supervising to have no medical cover for the night in question, with other staff members attempting to rouse him and being concerned about his welfare.
36. The Tribunal was satisfied that Dr Maheshwari's behaviour put patients, the public and himself at risk of serious harm. The Tribunal were under no doubt that the misconduct amounted to serious misconduct.

Conviction

37. The Tribunal assessed the seriousness of Dr Maheshwari's actions that led to his conviction. Dr Maheshwari drove a significant distance, at a busy time of day when he was substantially over the drink driving limit. Moreover, Dr Maheshwari made the decision to drive home intoxicated, despite colleagues trying to stop him and suggesting he take a taxi home. He almost collided with a staff member's vehicle when leaving the car park. His actions put other road users potentially at risk of serious harm, putting his own life – and the lives of others – in danger.

38. The Tribunal reminded itself that Dr Maheshwari had been found with over 3 times the legal limit of alcohol in his breath, a significantly high reading justifying the imposition of a Community Order and a long period of disqualification from driving. The Tribunal was satisfied that the circumstances of his offending and the subsequent conviction were serious.

Impairment

39. The Tribunal, having found that the facts found proved amounted to serious misconduct, went on to consider whether Dr Maheshwari's fitness to practise is currently impaired by reason of misconduct and conviction.
40. The Tribunal first considered Dr Maheshwari's insight into his actions. It was satisfied that Dr Maheshwari was remorseful and demonstrated acceptance that his actions were truly appalling. The Tribunal also noted that Dr Maheshwari had quickly begun a process of self-reflection, including seeking support from the peer support group provided by the BMA, his trainers and XXX. He has also prepared numerous reflective entries, engaged with others about his feelings and been open whenever he experienced stress or anxiety.
41. The Tribunal noted that the misconduct and offending behaviour occurred over a 12-hour period, effectively a single incident and was wholly out of character. Dr Maheshwari had worked several night shifts in a psychiatric ward and the Tribunal was satisfied that the events occurred in a particularly stressful period in his professional and personal life. Having considered the XXX evidence provided, the Tribunal was satisfied that Dr Maheshwari was suffering from XXX at the time of the incident.
42. The Tribunal observed that Dr Maheshwari's conduct represented a potential risk to patient and public safety. Nevertheless, the Tribunal was impressed by Dr Maheshwari's oral evidence, in which he spoke with candour of his concern for the patients and the potential risk he could have caused them. He also acknowledged the impact his actions would have on the public confidence on the profession. He also described how he has now altered his approach to his XXX. The Tribunal determined that Dr Maheshwari presented genuine remorse.
43. The Tribunal considered the detailed XXX reflection completed by Dr Maheshwari, which underlined the positive changes he had made in his life. XXX. XXX. The Tribunal considered the risk of Dr Maheshwari repeating the behaviour to be low, as he had gained insight into his actions and had an excellent support system in place to cope with any potential XXX.
44. The Tribunal took into account Dr Maheshwari's self-report of the conviction to the GMC, as well as his early admissions to the criminality and misconduct. The Tribunal noted Dr Maheshwari's outstanding compliance with the Community Order and satisfactory completion of his sentence.

45. After Dr Maheshwari took a period of sick leave, he paused his medical training in order to focus on XXX. He used all the support structures in place effectively. The Tribunal was greatly impressed by the remediation steps Dr Maheshwari had undertaken, both in terms of the structure he has developed to deal with any stressful triggers, as well as the targetted courses and training. The Tribunal analysed Dr Maheshwari's careful and considered reflective accounts and could not identify any aspect of remediative or reflective work that required additional attention. The Tribunal therefore concluded that Dr Maheshwari had taken all the appropriate steps in respect of remediation that could be expected.
46. The Tribunal noted that Dr Maheshwari returned to clinical practice initially on a phased basis, but this was shortened by his supervisors due to the extent of his progress. The Tribunal was impressed by the numerous colleague and patient feedback reports, which were an unanimously positive testament to his clinical abilities.
47. The Tribunal determined that Dr Maheshwari's misconduct and conviction is serious, potentially causing serious harm to himself, patients and the public. However, the Tribunal was satisfied that the risk of repetition in this case is low and there is no risk to patient safety. The Tribunal had careful regard to the need to uphold proper professional standards and the public trust in the profession, but was satisfied that due to the depth and extent of Dr Maheshwari's insight and remediation, it was not necessary for a finding of impairment to be made.
48. The Tribunal therefore concluded that Dr Maheshwari's fitness to practise is not currently impaired.

Determination on Warning - 18/05/2023

49. As the Tribunal has determined that Dr Maheshwari's fitness to practise was not impaired, it considered whether in accordance with s35D(3) of the 1983 Act, a warning was required.

Submissions

On behalf of the GMC

50. Ms Tighe submitted that issuing a warning would be appropriate in this case, referring the Tribunal to paragraphs 10, 11, 20 and 26 of the Guidance on Warnings (March 2021) ('the Guidance').
51. Ms Tighe submitted that the Tribunal had found serious misconduct in this case and that the concerns raised by the Tribunal require a formal response. She submitted that the

Tribunal may be assisted by paragraph 10 of the Guidance, which sets out the power to issue a warning:

10 *The power to issue warnings, together with other powers available to the GMC and to MPTS tribunals, is central to their role of protecting the public which includes protecting patients, maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour.*

52. Ms Tighe asked the Tribunal to consider paragraph 11 of the Guidance, which sets out the purpose of a warning:

11 *Warnings allow the GMC and MPTS tribunals to indicate to a doctor that any given conduct, practice or behaviour represents a departure from the standards expected of members of the profession and should not be repeated. They are a formal response from the GMC and MPTS tribunals in the interests of maintaining good professional standards and public confidence in doctors. The recording of warnings allows the GMC to identify any repetition of the particular conduct, practice or behaviour and to take appropriate action in that event. Breach of a warning may be taken into account by a tribunal in relation to a future case against a doctor, or may itself comprise misconduct serious enough to lead to a finding of impaired fitness to practise.*

5. Ms Tighe then drew the Tribunal's attention to paragraph 20 of the Guidance. This paragraph indicates factors that should be considered:

20 *The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.*

a *There has been a clear and specific breach of Good medical practice or our supplementary guidance.*

b *The particular conduct, behaviour or performance approaches, but falls short of, the threshold for the realistic prospect test or in a case before a tribunal, that the doctor's fitness to practise has not been found to be impaired.*

c *A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise. Warnings may be an appropriate response to any type of allegation (subject to the comments in paragraph 7 regarding cases solely relating to a doctor's health); the decision makers will need to consider the degree to which the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear*

the potential impact of the conduct, behaviour or performance in question, accordingly.

d There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).

6. Ms Tighe submitted that it is appropriate to impose a warning in this case. She reminded the Tribunal that Dr Maheshwari's conduct fell seriously short of the standard expected. She referred the Tribunal to paragraph 34 to 38 of the Facts and Impairment determination, which highlighted why the Tribunal found the matters amounted to serious misconduct and emphasised the seriousness of Dr Maheshwari's conviction. Ms Tighe submitted that a warning sends a message to the doctor and the wider profession that the conduct in relation to the case is unacceptable. She determined that imposing a warning is necessary as it would demonstrate that any repetition of the conduct would likely result in a finding of impaired fitness to practise.

7. Ms Tighe reminded the Tribunal of the importance of protecting public confidence in the profession and maintaining and upholding proper professional standards within the profession. She referred the Tribunal to paragraph 26 of the Guidance:

26 *In deciding whether to issue a warning the decision maker should apply the principle of proportionality, weighing the interests of the public with those of the practitioner. It is important to bear in mind, of course, that warnings do not restrict the practitioner's practice and should only be considered once the decision maker is satisfied that the doctor's fitness to practise is not impaired.*

8. Ms Tighe concluded her submissions by submitting that issuing a warning is proportionate to the facts of this case and necessary to uphold standards.

On behalf of Dr Maheshwari

9. Mr Dacre submitted that given the circumstances of this case a warning is not necessary in order to uphold the overarching objective. He referred the Tribunal to paragraphs 11, 14 and 32 of the Guidance.

53. In his submissions, Mr Dacre first reminded the Tribunal of paragraph 32 of the guidance which sets out a threshold for a discretionary approach to the issuing of warnings. Mr Dacre asked the Tribunal to consider this paragraph and assess the mitigating factors in this case. He submitted that the threshold itself is only concerned with the nature and the seriousness of the breach of Good Medical Practice (2013 edition) ('GMP'). Mr Dacre submitted the Guidance encourages the Tribunal to consider that once the threshold is passed whether it is appropriate to issue a warning. He asked the Tribunal to take a proportionate approach weighing up the interests of Dr Maheshwari and the public interest. He reminded the Tribunal of Paragraph 32 of the Guidance, which states:

32 *If the decision makers are satisfied that the doctor's fitness to practise is not impaired or that the realistic prospect test is not met, they can take account of a range of factors to determine whether a warning is appropriate. These might include:*

a the level of insight into the failings

b a genuine expression of regret/apology

c previous good history

d whether the incident was isolated or whether there has been any repetition

e any indicators as to the likelihood of the concerns being repeated

f any rehabilitative/corrective steps taken

g relevant and appropriate references and testimonials.

11. Mr Dacre submitted that there is no doubt in this case that the threshold is passed. He accepted that Dr Maheshwari's conduct was a clear and specific breach of Good Medical Practice. However, he stated the risk of repetition is low. Mr Dacre reminded the Tribunal that the misconduct must be considered in its context. He reminded the Tribunal that in its determination on Impairment, it recognised that Dr Maheshwari was suffering from XXX at the time of the incident.

54. Mr Dacre submitted that in its Impairment determination, the Tribunal recognised Dr Maheshwari's high level of insight, genuine remorse, and previous good history. He averred that all of the factors in paragraph 32 were engaged. He reminded the Tribunal that this was an isolated incident and he has taken all the appropriate steps in respect of remediation.

55. Mr Dacre submitted that the primary focus of warnings is to remind practitioners that their conduct has fallen significantly below the standard expected of them. He submitted that there is an ancillary point which is that a warning will highlight to the wider profession that certain conduct is unacceptable. He asked the Tribunal to take the view that Dr Maheshwari does not need a further reminder that his conduct fell below of what was expected of him. He submitted that as a reminder is not required, it is not necessary to impose a warning.

The Tribunal's Determination on Warning

56. In reaching its determination, the Tribunal took account of its previous determinations and all the facts of this case. The Tribunal considered the submissions of both Ms Tighe

and Mr Dacre, as well as the Guidance. The Tribunal had regard to the statutory overarching objective and that its power to issue a formal warning was important to its role in protecting the public, including maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour.

57. The Tribunal was mindful of Dr Maheshwari's XXX providing context to the misconduct in this case, but considered that this was not an incident related solely to XXX. This was a multifactorial case and that a warning may still be appropriate, as detailed in paragraph XXX:

XXX.

58. The Tribunal had regard to the significance of warnings, reminding itself of paragraphs 10 and 11 of the Guidance, as recounted above. The Tribunal was satisfied that Dr Maheshwari's conduct represented a serious departure from Good Medical Practice and that his conduct in October 2021 fell short of what is expected of medical professionals. The Tribunal was mindful that a warning represents a formal response. The Tribunal considered that the purpose behind imposing a warning applied in this case; namely to send a message to the doctor, the wider profession and the public that this conduct is not acceptable.
17. The Tribunal was satisfied that all of the factors contained within paragraph 20 of the Guidance applied in Dr Maheshwari's case and that the threshold for applying a warning had been passed. Significantly, the Tribunal considered the need for the misconduct and conviction to be formally recorded, as action would be required if there were any repetition.
59. The Tribunal considered paragraph 32 of the Guidance and acknowledged that there are significant mitigating features for Dr Maheshwari. The Tribunal was satisfied that Dr Maheshwari has gained good insight into his misconduct, has remediated his misconduct and that this was an isolated event in an otherwise unblemished career. However, the Tribunal was mindful of the seriousness of the misconduct and conviction and that the purpose of imposing a warning is to uphold proper professional standards and uphold public confidence in the profession.
60. The Tribunal reminded itself of the contents of paragraph 14 of the Guidance, which stipulated that warnings have an important deterrent effect on the doctor and the wider profession:

14 *Warnings should be viewed as a deterrent. They are intended to remind the doctor that their conduct or behaviour fell significantly below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise. Warnings may also have the effect of highlighting to the wider profession that certain conduct or behaviour is unacceptable.*

61. The Tribunal formed the clear view that Dr Maheshwari's conduct and conviction amounted to serious misconduct and must not be repeated. This behaviour does not meet the standards required of a doctor and has the potential to bring the profession into disrepute. Notwithstanding the significant mitigation present, the misconduct was so serious that the Tribunal was satisfied that it was necessary to impose a warning. In reaching its decision, the Tribunal carefully balanced the interests of Dr Maheshwari with the public interest – in particular, public confidence in the profession. The Tribunal therefore concluded that whilst a finding of impairment had not been made, it was proportionate and necessary to impose a warning on Dr Maheshwari.

62. The warning will state as follows:

Between the 27 October 2021 and 28 October 2021, whilst working as the duty doctor at The Redwoods Centre, Midlands Partnership NHS Foundation Trust, you consumed alcohol and were unfit to work due to being under the influence of alcohol. On the 28 October 2021 you drove whilst under the influence of alcohol, subsequently acquiring a conviction for driving with excess alcohol, which resulted in you being sentenced to a fine, community order and period of disqualification on the 1 December 2021.

This conduct and behaviour does not meet with the standards required of a doctor. It risks bringing the profession into disrepute and it must not be repeated. The required standards are set out in *Good medical practice* and associated guidance. The Tribunal draws your attention to paragraph 65 GMP, which states:

You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.

Whilst this failing in itself is not so serious as to require any restriction on your registration, it is necessary in response to issue this formal warning.

63. This warning will be published on the medical register in line with our publication and disclosure policy, which can be found at www.gmc-uk.org/disclosurepolicy

Interim Order

64. The Interim Order of conditions is hereby revoked.

65. This concludes this case.