

PUBLIC RECORD

Dates: 21/09/2020 - 24/09/2020

Medical Practitioner's name: Dr Mohamad KHAN

GMC reference number: 3266265

Primary medical qualification: MB BS 1988 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

Suspension, 12 months.
Review hearing directed
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mr Jetinder Shergill
Medical Tribunal Member:	Dr Nagarajah Thevamanoharan
Medical Tribunal Member:	Dr Tushar Vince
Tribunal Clerk:	Mr Sewa Singh

Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	
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 - 23/09/2020

1. At the outset, the Tribunal acceded to a request made by the GMC, that the public be excluded from parts of the proceedings in accordance with Rule 41XXX of the General Medical Council (GMC) (Fitness to Practise Rules) 2004 as amended ('the Rules'). Therefore, the hearing shall be held in private where the matters under consideration are confidential, XXX.
2. This determination will be read in private. However, in relation to Dr Khan's convictions, a redacted version of this determination will be published following the conclusion of this hearing XXX.

Background

3. Dr Khan qualified in 1988 from the University of London and completed his junior house jobs in Essex before training as a general practitioner (GP) for three years. Dr Khan initially began working as a GP in Cumbria before moving to work in Glasgow, where he remained until 2000 when he moved back to Essex. In 2003 Dr Khan returned to Scotland initially working as a locum GP until 2009 when he began his own practice in Renfrew. Dr Khan has not been working since 2014.
4. The matters that have given rise to Dr Khan's hearing are allegations in relation to criminal convictions XXX.

Convictions

5. On 10 August 2018, Officers from Police Scotland attended to a road traffic collision at approximately 19:30 hours, where a small two-seater dark green motor vehicle, the driver being Dr Khan, had driven into another vehicle on a busy road with excess speed; no lasting injuries were caused. Dr Khan was charged with an offence contrary to the Road Traffic Act 1988, Section 2, as amended (dangerous driving).
6. On 9 April 2019, Officers from Police Scotland attended to a stationery vehicle parked within a bus layby on a dual carriageway. It was observed that Dr Khan smelled of alcohol,

was slow to respond when being questioned, his speech was slurred and when exiting his vehicle, he was unsteady on his feet. He was requested to provide a specimen of breath for analysis, the result of which showed '108' micrograms of alcohol in 100 millilitres of breath. Dr Khan was taken to Govan Police Office where he provided a further sample of breath for analysis. He was subsequently charged with a drink driving offence contrary to the Road Traffic Act 1988, Section 5(1)(b) due to being in charge of a vehicle with 114 micrograms of alcohol in 100 millilitres of breath.

7. In relation to both charges, Dr Khan's attended at Paisley Sheriff's Court on 18 June 2019 where he pleaded guilty to both offences. In relation to charge 1, Dr Khan received a custodial sentence of 135 days and in relation to charge 2, a custodial sentence of 40 days, to run consecutively. The Court also disqualified Dr Khan from holding and obtaining a driving licence for a period totalling 54 months and ordered endorsement of his driving record.
8. Dr Khan self-referred to the GMC via an email on 3 July 2019.
9. XXX

The Outcome of Applications Made during the Facts Stage

10. The Tribunal granted the GMC's application, made pursuant to Rule 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that the hearing should proceed in Dr Khan's absence. The Tribunal's full reasoning on the application is included at Annex A.
11. Of its own volition, the Tribunal determined to amend Paragraph 2 of the Allegation, as the computation of the disqualification period was clearly an error in the original version, to read:
 - a. 175 days of imprisonment;
 - b. ~~74~~ 54 months of disqualification from holding and obtaining a driving licence.

12. XXX

The Allegation and the Doctor's Response

13. The Allegation made against Dr Khan is as follows:

1. On 18 June 2019 at Paisley Sheriff Court you were convicted of:
 - a. one count of dangerous driving, contrary to section 2 of the Road Traffic Act 1988; **To be determined**
 - b. one count of driving under the influence of alcohol, contrary to section 5(1)(b) of the Road Traffic Act 1988. **To be determined**

2. On 16 July 2019 you were sentenced in relation to the offences set out in paragraph 1 to a total of:

- a. 175 days of imprisonment; **To be determined**
- b. ~~74~~ 54 months of disqualification from holding and obtaining a driving licence.
To be determined

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; **To be determined**
- b. XXX

The Facts to be Determined

14. In the absence of any admissions by Dr Khan, the Tribunal is required to determine the facts as alleged.

Documentary Evidence

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

- Self-referral email from Dr Khan to the GMC, dated 3 July 2020;
- Documentation provided by Paisley Sheriff Court, dated 18 June to 16 July 2019;
- Criminal Justice Social Work Report, dated 16 July 2019;
- Extract of Conviction from Paisley Sheriff Court, dated 22 July 2019;
- Letter enclosing description of events and disposal from Police Scotland, dated 20 February 2020;
- XXX
- Correspondence from Dr Khan himself.

The Tribunal's Approach

16. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Khan does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

17. In addition, the documentary evidence submitted by both parties, the Tribunal also had regard to Rules 34(3) and 34(7) of the Rules, which state:

‘(3) Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, shall be conclusive evidence of the offence committed.’

‘(7) A copy of a document of which the original is admissible may be received by the Committee or a Tribunal without strict proof.’

18. The Tribunal was aware that it must not seek to go behind the conviction; however, it must satisfy itself that the person named on the Certificate of Conviction is the doctor who is the subject of this hearing. The Tribunal has placed reliance on the Certificate of Conviction produced.

The Tribunal’s Analysis of the Evidence and Findings

19. The Tribunal has considered each paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

Paragraph 1

1. On 18 June 2019 at Paisley Sheriff Court you were convicted of:

a. one count of dangerous driving, contrary to section 2 of the Road Traffic Act 1988;
Found Proved

b. one count of driving under the influence of alcohol, contrary to section 5(1)(b) of the Road Traffic Act 1988. **Found Proved**

20. The Tribunal considered Paragraphs 1a and 1b together. It had regard to the Extract of Conviction, dated 22 July 2019, which stated that on 18 June 2019, Dr Khan was convicted of the offence set out in paragraph 1a above. It also stated that Dr Khan was convicted of the offence set out in paragraph 1b above. The Tribunal therefore found Paragraphs 1a and 1b of the Allegation proved.

Paragraph 2

2. On 16 July 2019 you were sentenced in relation to the offences set out in paragraph 1 to a total of:

a. 175 days of imprisonment; **Found Proved**

b. ~~74~~ 54 months of disqualification from holding and obtaining a driving licence.
Found Proved

21. The Tribunal considered Paragraphs 2a and 2b together. It had regard to the Extract of Conviction, dated 22 July 2019, which stated that on 16 July 2019, Dr Khan was sentenced to 175 days of imprisonment, as set out in paragraph 2a above. It also stated that Dr Khan was disqualified from holding and obtaining a driving licence, as set out in paragraph 2b above. The Tribunal therefore found Paragraphs 2a and 2b of the Allegation proved.

Paragraph 3

3. XXX

Paragraph 4

4. XXX

The Tribunal's Overall Determination on the Facts

22. The Tribunal has determined the facts as follows:

1. On 18 June 2019 at Paisley Sheriff Court you were convicted of:
 - a. one count of dangerous driving, contrary to section 2 of the Road Traffic Act 1988;
Found proved
 - b. one count of driving under the influence of alcohol, contrary to section 5(1)(b) of the Road Traffic Act 1988. **Found proved**
2. On 16 July 2019 you were sentenced in relation to the offences set out in paragraph 1 to a total of:
 - a. 175 days of imprisonment; **Found proved**
 - b. ~~74~~ 54 months of disqualification from holding and obtaining a driving licence.
Found proved (As amended)

3. 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; **To be determined**
- b. XXX

Determination on Impairment - 23/09/2020

1. 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 Khan's fitness to practise is impaired by reason of conviction XXX.

The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing. Of particular relevance from Dr Khan's statement/letter dated 21 September 2020 is his commentary:

'I think anybody reading the hearing bundle will in my opinion feel a number of different emotions. My emotions revolve around guilt, remorse, shame, loss and the list goes on. Prior to my downward trajectory those emotions were much more positive. This is of course usually the case XXX so I am not unusual in that respect.'

3. Dr Khan stated that people would find his convictions puzzling and would be 'horrified' by them. He said that he would 'forever feel deeply sorry for my actions. Fortunately, I XXX stopped working in 2014 and I am unaware of ever harming any of my patients.'
4. Dr Khan then responded to queries raised with him by the Tribunal XXX
5. Dr Khan said in his letter that he read various medical topics but this was not structured nor recorded. He said that he would need to start on an intensive period of study XXX. He added that he would like to return to work at some point in the future and had not expected that he would be off for this length of time. He said he missed working and aimed to return to work. He spoke of his financial and personal family circumstances. Dr Khan stated that should the Tribunal allow him to return to work at some point in the future, he would wish to be given a possible start date as this would give him a deadline to work towards. He added that his biggest difficulty would be with the GP Returners Scheme in Scotland as this is the only pathway available for him to get on the performers list. He added that he would be unable to do this if he were under conditions or undertakings, but that the umbrella scheme would be a controlled, monitored and supportive environment.

Submissions

6. On behalf of the GMC, Ms Tighe submitted that Dr Khan's fitness to practise is impaired. She referred the Tribunal to paragraphs 1 and 65 of Good Medical Practice ('GMP') which she said are engaged in this case. Ms Tighe said that Dr Khan's actions were a serious and significant departure from GMP as a result of his convictions. She added that Dr Khan

broke the law on two separate occasions, one of which resulted in a collision with another vehicle. She reminded the Tribunal that Dr Khan's actions were so serious that he received a custodial sentence. Ms Tighe said that a well-informed member of the public would find Dr Khan's actions concerning.

7. Ms Tighe referred the Tribunal to Dame Janet Smith's Fifth Shipman Report and submitted that Dr Khan's actions had brought the medical profession into disrepute. She told the Tribunal that as Dr Khan had acted in this way in the past, his actions breached fundamental tenets of the medical profession. Ms Tighe referred the Tribunal to the Criminal Justice Social Report, dated 16 July 2019, and said that whilst there was some evidence of remorse and insight, it is clear that there is a risk of Dr Khan repeating his behaviour. XXX. Ms Tighe told the Tribunal that Dr Khan had been convicted previously, on four separate occasions in 1998, 2006, 2007 and 2015, for driving whilst being under the influence of alcohol, and all of these convictions resulted in periods of disqualification. There was an additional offence of driving whilst disqualified. Ms Tighe submitted that this was relevant in assessing the risk of repetition in the future. Ms Tighe reminded the Tribunal of the Overarching Objective and submitted that Khan's convictions undermined those principles.
8. XXX
9. Ms Tighe submitted that XXX Dr Khan's fitness to practise is impaired by reason of his convictions XXX.

The Tribunal's approach

10. 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.
11. The Tribunal first considered whether the facts found proved are a sufficiently serious departure from the standards of conduct reasonably expected of Dr Khan as a registered medical practitioner to amount to misconduct. In its deliberations, the Tribunal had regard to the current version of GMP (March 2013). It also noted that misconduct is not defined by statute but it has been said to be serious professional misconduct or conduct which a fellow professional would regard as deplorable.
12. The Tribunal must determine whether Dr Khan'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.

The Tribunal's determination on Impairment

13. The Tribunal had regard to paragraphs 1 and 65 of GMP. These 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.'

14. The Tribunal had regard to paragraph 76 of the judgment in the case of CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin), in which Mrs Justice Cox quoted from Dame Janet Smith's Fifth Shipman Report:

'Do our findings of fact in respect of the doctor's misconduct...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 brought 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. has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

15. The Tribunal considered (b) and (c) applied to the facts found proved. The Tribunal decided that the two convictions whilst dealt with on the same date were actually some months apart. The Tribunal took into account that doctors occupy a position of privilege and trust. Whilst there is some evidence of remorse and insight, as demonstrated in the Criminal Justice Social Work Report and in Dr Khan's statement of 21 September 2020, this is not sufficient to satisfy the Tribunal that Dr Khan would not repeat his behaviour XXX.

16. Breaking the law in this manner is a serious matter, and sufficiently serious to call into question a doctor's fitness to practise. In this case the two convictions have breached a

fundamental tenet of the profession to observe the law; and brought the medical profession into disrepute. Whilst there is a long-standing background to Dr Khan's personal circumstances, these do not sufficiently detract from the requirement to make a finding of impairment to mark the wider public interest. Making a finding of current impairment on the grounds of conviction properly marks such departure from professional standards.

17. XXX

18. In any event, the significant period he has been away from work means that the Tribunal cannot be satisfied that his medical knowledge is up to date to be able to resume unrestricted practice XXX.

19. XXX

20. Based on the information before it, and in all the circumstances, the Tribunal has therefore determined that Dr Khan's fitness to practise is currently impaired by reason of both his convictions XXX.

Determination on Sanction - 24/09/2020

1. Having determined that Dr Khan's fitness to practise is impaired by reason of his convictions XXX, 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

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

3. The Tribunal received a further bundle from the GMC which included Extracts of Convictions and associated information in respect of Dr Khan's previous driving offences dating back to 1998.

4. The Tribunal again had regard to Dr Khan's statement of 21 September 2020; and took into account his personal and financial circumstances.

Submissions

5. On behalf of the GMC, Ms Tighe submitted the appropriate sanction in this case was one of suspension. She reminded the Tribunal that in exercising its judgment on the appropriate sanction, it should start with the least restrictive.
6. Ms Tighe provided the Tribunal a chronology of Dr Khan's previous history with the GMC. She referred the Tribunal to its determinations on the facts and impairment and highlighted those sections which she said indicated why it was not appropriate to take no action, because there were no exceptional circumstances in this case. She took the Tribunal through the Sanctions Guidance (SG) and highlighted paragraphs which she submitted were engaged in this case. Ms Tighe referred the Tribunal to paragraphs 55g, 56e XXX of SG.
7. Ms Tighe outlined the mitigating factors which included that Dr Khan pleaded guilty to the offences giving rise to these proceedings, and that he self-referred to the GMC and had already served a custodial sentence. She then outlined the aggravating factors which included that Dr Khan failed to comply previously with conditions imposed by a GMC fitness to practise panel in 2009 and more recently with undertakings agreed with the GMC XXX. She also detailed his history of driving offences prior to the two forming part of the current allegation. Ms Tighe stated that the aggravating factors in this case outweighed the mitigating factors. She submitted that in view of Dr Khan's history of non-compliance, conditions would not be appropriate or workable. She added that conditions would not be sufficient to maintain public confidence in the medical profession or to uphold and maintain standards in the profession.
8. Ms Tighe then referred the Tribunal to paragraph 97 and 97(a) of the SG which she submitted were engaged in this case. She said that Dr Khan has persistently failed to act within the law, and as a consequence, breached GMP, with the most recent incidents resulting in a custodial sentence. Ms Tighe submitted that a period of suspension was the only appropriate and proportionate sanction and was justified in Dr Khan's case.

The Tribunal's Determination on Sanction

9. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgment. In reaching its decision, the Tribunal has taken the SG into account and borne in mind the overarching objective.
10. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish or discipline doctors, even though they may have a punitive effect. Throughout its

deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Khan's interests with the public interest.

11. The Tribunal has already set out its decision on the facts and impairment which it took into account during its deliberations on sanction. Before considering what action, if any, to take in respect of Dr Khan's registration, the Tribunal considered the mitigating and aggravating factors in this case.
12. The Tribunal identified the following mitigating and aggravating factors:

Mitigating

- Dr Khan pleaded guilty to the offences and they were now completed;
- Dr Khan self-referred to the GMC in respect of the recent convictions;
- Dr Khan had managed to comply with a 2 year period of conditions imposed at a review hearing in February 2010, and practised without restrictions from 2012; and
- XXX

Aggravating

- The events which led to his convictions occurred at a time when Dr Khan was subject to conditions and/or undertakings;
- Dr Khan has previously failed to comply with his conditions and/or undertakings;
- He has a protracted fitness to practise history with the GMC;
- The drink driving offence in 2018 was his fourth (previously convicted in 1998, 2007 and 2015); he had driven whilst disqualified in 2007 and had two offences arising from that court appearance; and his dangerous driving offence in 2019 led to a not insignificant period of custody;
- His actions put members of the public at risk of harm.

13. The Tribunal considered each sanction in ascending order of severity, starting with the least restrictive.

No Action

14. The Tribunal first considered whether to conclude Dr Khan's case by taking no action. It noted that taking no action may be appropriate where there are exceptional circumstances. However, there are no exceptional circumstances in this case. The Tribunal considers that, given the gravity of Dr Khan's conduct, taking no action would not mark the seriousness with which the Tribunal viewed Dr Khan's conduct, or properly protect patients as Dr Khan would be able to resume unrestricted practise. Therefore, the

Tribunal does not consider that it would be sufficient, proportionate, or in the public interest to conclude this case by taking no action.

Conditions

15. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Khan's registration. The Tribunal took account of the SG, in particular, paragraphs 82(a), (b), (c) and (d), and 84(a) XXX. These state:

'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.'

16. It also had regard to paragraph 85 of the SG, which states:

'85 Conditions should be appropriate, proportionate, workable and measurable.'

17. The Tribunal considers that Dr Khan's insight is limited. There has been a 'stop-start' history of progress XXX leading to criminal offences being committed. Those offences have been dealt with in an increasingly significant way by the courts leading most recently to nearly 6 months imprisonment last year. XXX

18. The Tribunal had regard to paragraphs 160 XXX of the SG. These state:

'160 Doctors are expected to act with honesty and integrity and uphold the law – this includes their use of drugs and alcohol. Any serious or persistent failure in this regard that puts patients at risk or undermines public confidence in doctors will put their registration at risk.

XXX.’

19. XXX The Tribunal took account of Dr Khan’s previous history of criminal offending, XXX. It was concerned that there was a pattern of behaviour, dating back to 2007, and by his own admission as set out in exhibit C6, as far back as 1998. The offences which took place in 2015, for which he was charged and convicted, occurred when he was under GMC conditions and/or undertakings. XXX.
20. Dr Khan’s recent offences put members of the public at risk of serious harm and undermined public confidence in doctors and the medical profession. The Tribunal was of the view that whilst Dr Khan has displayed some degree of insight XXX, it is not satisfied that he has put in place adequate strategies or taken sufficient steps XXX. There is a real risk conditions would be breached which in turn may further bring the profession into disrepute. Given the Tribunal’s concern about Dr Khan’s limited insight, and the real risk of repetition, it was not persuaded that conditions would be workable, appropriate, proportionate or properly satisfy the overarching objective. Furthermore, the Tribunal determined that conditions would not properly mark the seriousness of Dr Khan’s actions in breaching fundamental tenets of the profession.

Suspension

21. The Tribunal then considered whether a period of suspension would be an appropriate and proportionate sanction to impose on Dr Khan. The Tribunal took into account paragraphs 91, 92, 93, and 97(a) and (f) of the SG, which state:

‘91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. ...

92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration...

93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions (see paragraphs 24–49).

97. Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.

a. A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.'

...

f. No evidence of repetition of similar behaviour since incident."

22. The Tribunal also took into account its earlier finding that Dr Khan's actions represented a serious breach of paragraphs 1 and 65 of GMP 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.'

23. Dr Khan's two offences, which have led to these proceedings, are serious and took place within a short period of each other. They indicate a pattern of behaviour XXX. Dr Khan received a custodial sentence for these, showing an increased gravity of the view taken by the courts of his offending. Although Dr Khan, in his statement of 21 September 2020, spoke of his remorse, guilt and shame for his actions, there is an history of offending, XXX with little in the way of explaining how the Tribunal can be reassured there will be no reoccurrence. Dr Khan also spoke of steps he is taking to address his XXX issues. However, the Tribunal has not been provided with sufficient objective evidence of this, such that it could be satisfied that he has sufficient coping strategies and insight into the concerns identified. The Tribunal considered that Dr Khan's insight needs to be developed further and he needs to be able to demonstrate to the Tribunal that he: XXX; has put in place strategies to help him to cope with and address any stresses and/or stressful situations. He also needs to further reflect on his behaviour in relation to XXX how his actions undermined public confidence in the profession and brought the medical profession into disrepute. In the absence of this evidence, the Tribunal considered that Dr Khan presents an ongoing risk of repeating his behaviour.

24. The Tribunal therefore determined, taking into account all of the evidence before it, and the seriousness with which it viewed Dr Khan's conduct, that the appropriate and proportionate sanction in this case is a period of suspension for twelve months.

25. In determining the length of the suspension, the Tribunal took account of the need to mark the seriousness of Dr Khan’s conduct, to maintain public confidence in the profession and also to declare and uphold proper standards of behaviour. The Tribunal also had in mind that it was necessary, in view of its findings as to Dr Khan’s level of insight and remediation, to allow the maximum period of time for him to reflect on his conduct and engage in a period of remediation, XXX. The Tribunal concluded that a suspension of twelve months was the appropriate period of suspension. The Tribunal was also satisfied that a period of twelve months would send out a strong message to the profession that this type of conduct was unacceptable.

Erasure

26. The matters before the Tribunal are very serious and therefore, it gave careful consideration as to whether Dr Khan’s name should be erased from the medical register. It had regard to the relevant paragraphs of the SG which deal with when erasure might be the appropriate sanction.

27. The long history of drink driving and other driving offences does put his case within the ambit as to whether erasure “is necessary to maintain public confidence in the profession” (paragraph 108 of SG). The increasing gravity of sentence imposed on him XXX whilst under conditions did have the hallmarks of being a “particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor” (paragraph 109a of SG). Dr Khan should understand that he has been perilously close to being erased from the medical register by this Tribunal. The factors which led the Tribunal to step back from that order was: a) the GMC made no such submission; b) XXX; and c) he has previously managed to persuade a Tribunal of his compliance. This Tribunal hopes that he is able to reflect on his conduct and take the 12 months suspension to undertake activities XXX and demonstrate he is moving towards being compliant with the proper standards to be expected of a medical professional.

28. Accordingly, on a very finely balanced decision, the Tribunal determined that erasure was not the appropriate or proportionate sanction at this stage.

Review

29. The Tribunal determined to direct a review of Dr Khan’s case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that at the review hearing the onus will be on Dr Khan to demonstrate that he has

developed an appropriate level of insight into his conduct and has remediated it. The Tribunal therefore considered that those reviewing Dr Khan's case would be assisted by receiving the following:

- Dr Khan's personal reflections XXX, and the impact his disciplinary history has had on the reputation of the medical profession;
- XXX
- Evidence that he has kept his medical knowledge and skills up to date, together with a record of CPD he has undertaken; and
- Any other information that he considers would assist the Tribunal.

Determination on Immediate Order - 24/09/2020

1. Having determined that Dr Khan's registration should be suspended, the Tribunal has now considered, in accordance with Rule 17(2)(o) of the Rules, whether to impose an immediate order to suspend his registration.
2. The Tribunal has borne in mind the test to be applied with regard to imposing an immediate order; it 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.

Submissions

3. On behalf of the GMC, Ms Tighe submitted that an immediate order was necessary to protect the public confidence in the medical profession. She told the Tribunal that Dr Khan has not worked in clinical practice since 2014 and that he relinquished his licence to practise in 2017. Ms Tighe also submitted that it is necessary to revoke the current interim order upon Dr Khan's registration.

The Tribunal's Decision

4. The Tribunal has taken account of the relevant paragraphs of the SG, in particular paragraphs 172 and 178 which state:

'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...

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.'

5. The Tribunal has determined that, given the seriousness with which it viewed Dr Khan's conduct, and given its determination on impairment and on the appropriate sanction, it is necessary to protect the public confidence in the medical profession and to protect the public. It therefore determined to make an order suspending Dr Khan's registration immediately.
6. The substantive decision of suspension, as already announced, will take effect 28 days from when notice is deemed to have been served upon Dr Khan, unless he lodges an appeal in the interim. If Dr Khan lodges an appeal, the immediate order for suspension will remain in force until such time as the outcome of any appeal is determined.
7. The interim order of suspension currently in place upon Dr Khan's registration is revoked with immediate effect.
8. That concludes the case.

Confirmed

Date 24 September 2020

Mr Jetinder Shergill, Chair

ANNEX A – 22/09/2020

Service and proceeding in absence

Service

1. Dr Khan is neither present nor represented today. The Tribunal has considered whether notice of this hearing has been properly served upon Dr Khan in accordance with Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) (the Rules), and Schedule 4, Paragraph 8 of the Medical Act 1983 (as amended). In so doing, the Tribunal has taken into account all the information placed before it, together with Ms Tighe's submissions on behalf of the General Medical Council (GMC).
2. The Tribunal has been provided with a service bundle, containing a number of documents including a screen shot of Dr Khan's registered address and contact details together with a copy of the Notice of Hearing letter, dated 18 August 2020, sent to Dr Khan's email address.
3. Ms Harriet Tighe, Counsel for the GMC, drew the Tribunal's attention to:
 - (i) a screen shot of Dr Khan's registered address and contact details;
 - (ii) a copy of the Notice of Hearing (NOH), dated 18 August 2020, sent to Dr Khan at his registered email address;
 - (iii) an email from Dr Khan, dated 18 August 2020, stating '*I acknowledge receipt of your email informing me of the hearing.*';
4. Having considered the evidence, the Tribunal is satisfied that the NOH was drafted in proper form and served upon Dr Khan no later than 28 days before today's date. Accordingly, the Tribunal is satisfied that Notice of this hearing has been properly served upon Dr Khan in accordance with Rules 15 and 40 of the Rules.

Proceeding in Absence

5. The Tribunal went on to consider whether to proceed in Dr Khan's absence in accordance with Rule 31. It bore in mind that the Tribunal's discretion to proceed in the practitioner's absence must be exercised with the utmost care and caution and with regard to the overall fairness of the proceedings. The Tribunal has balanced the interests of the practitioner, including fairness to him, against the public interest, including the need to protect patients.
6. Ms Tighe referred the Tribunal to the email from Dr Khan, dated 1 September 2020, in which he stated:

'I confirm I will not be attending. I will not be calling any witnesses and I am not legally represented. I aim to provide a statement for the panel which I hope to have to you by Friday.'

7. The Tribunal considered the background to the case and therefore invited Dr Khan to submit any further information he wished to provide. He was given until the start of day 2 and responded with a detailed letter. That suggests to the Tribunal that he has sufficient understanding to engage and make decisions about this process. The Tribunal noted that Dr Khan has not requested an adjournment, and there is nothing to suggest that the Tribunal should adjourn the case of its own volition. On the basis of the information provided, the Tribunal is satisfied that Dr Khan has voluntarily waived his right to be present and represented at this hearing and that he is aware that the hearing can proceed in his absence. The Tribunal considers that were it to adjourn today, it is very unlikely that Dr Khan would attend a future hearing in any event. The Tribunal considered that there is a public interest that the hearing takes place within a reasonable time, and as this case relates to two convictions, the overarching objective has more significance in terms of proceeding in a timely manner. The Tribunal has therefore determined that it is in the public interest, and likely to be in Dr Khan's own interests, to exercise its discretion and proceed with the case in his absence.

ANNEX B – 22/09/2020

Rule 17(6) Application AND Rule 34 Application (PRIVATE)

1. On 21 September 2020, Ms Tighe addressed the Tribunal in relation to preliminary matters. XXX.

13. In addition, of its own volition, the Tribunal has determined to amend Paragraph 2 of the Allegation. This was clearly an error and has accordingly been amended to read:

- a. 175 days of imprisonment;
- b. 54 months of disqualification from holding and obtaining a driving licence.