

PUBLIC RECORD

Dates: 18/03/2024 - 21/03/2024

Medical Practitioner's name: Dr Muhammad MALIK

GMC reference number: 7496711

Primary medical qualification: MB ChB 2015 University of Bristol

| Type of case | Outcome on facts | Outcome on impairment |
|------------------|---|-----------------------|
| New - Misconduct | Facts relevant to impairment found proved | Impaired |

Summary of outcome
Conditions, 12 months.

Tribunal:

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|--------------------------|-------------------------|
| Legally Qualified Chair: | Mrs Aaminah Khan |
| Lay Tribunal Member: | Mr Colin Sturgeon |
| Medical Tribunal Member: | Dr Srinivasarao Babarao |
| | |
| Tribunal Clerk: | Ms Jemine Pemu |

Attendance and Representation:

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| Medical Practitioner: | Present, represented |
| Medical Practitioner's Representative: | Mr Tom Day, Counsel, instructed by the Medical Protection Society |
| GMC Representative: | Mr Robin Kitching, 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 public.

Overarching Objective

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

Determination on Facts and Impairment - 20/03/2024

Background

1. Dr Malik qualified with MB ChB from the University of Bristol in 2015. He is currently in his fourth year as a Specialty Trainee Registrar (ST4) in General Surgery employed by St Helens' and Knowsley Teaching Hospitals NHS Trust and undertaking a Colorectal Surgery rotation which began on 7 February 2024 and will come to an end on 6 August 2024.
2. The matters which have led to the Allegation relate to Dr Malik's revalidation in 2022 whilst employed by Stockport NHS Foundation Trust ('the Trust'). As part of that revalidation process Dr Malik needed to provide 17 Patient Feedback Forms and a signed declaration to Edgumbe, the company which manages 360 feedback forms. Dr Malik did this on 23 April 2022.
3. Following the submission of the forms, Ms A, Appraisal and Revalidation Coordinator at the Trust, was informed by an Assessment Services Coordinator at Edgumbe that some of the scores in Dr Malik's 360 feedback forms looked similar in the way they were written, which had raised suspicion. She referred the matter to Dr B, Executive Medical Director and Responsible Officer of Stockport NHS Foundation Trust. Dr B had a meeting with Dr Malik on 30 May 2022 to discuss the concerns which had been raised and during the meeting Dr Malik admitted that he had completed several of the forms himself.
4. As Dr Malik admitted to completing several of the forms himself, a formal investigation did not take place and the Trust undertook a fast-track disciplinary process which was agreed to by Dr Malik and he was provided a formal written warning that was placed on his file for a period of 12 months.
5. The concerns came to the attention of the GMC, following a referral from Dr B on 18 July 2022 after HR advice.

The Allegation and the Doctor's Response

6. The Allegation made against Dr Malik is as follows:

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

1. As part of your revalidation process, on 23 April 2022 you submitted 18 Patient Feedback Questionnaires ('the Questionnaires') to Edgecumbe Health, and one or more of the Forms had been falsified. **Admitted and found proved**
2. You knew that one or more of the Questionnaires had been falsified, in that you had filled them out yourself. **Admitted and found proved**
3. Your actions as described at paragraph 1 were dishonest by reason of paragraph 2. **Admitted and found proved**

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. **To be determined**

The Admitted Facts

7. At the outset of these proceedings, Dr Malik, through his Counsel, Mr Tom Day, made admissions to the entirety of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs of the Allegation as admitted and found proved.

Determination on Impairment

8. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts admitted and found proved as set out above, Dr Malik's fitness to practise is impaired by reason of misconduct.

Witness Evidence

9. The Tribunal received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Dr B, Executive Medical Director and Responsible Officer of Stockport NHS Foundation Trust, witness statement 29 December 2022;

- Ms A, Medical HR Officer for Surgery and Women’s and Children’s Services at Stockport NHS Foundation Trust and Appraisal and Revalidation Coordinator at the Trust, witness statement dated 10 August 2023.

10. Dr Malik provided a witness statement dated 7 March 2023. He also provided oral evidence at the hearing.

11. The Tribunal also heard oral evidence, on behalf of Dr Malik, from Ms C, Consultant Colorectal and General Surgeon and Specialty Lead for General Surgery, Manchester University NHS Foundation Trust.

Documentary Evidence

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

- Referral from Stockport NHS Foundation Trust, dated 18 July 2022;
- Timeline of Dr Malik’s appraisal and revalidation process and request from the Trust to submit Patient Feedback Forms, various;
- Email exchanges with Dr Malik regarding reminders to submit Patient Feedback Questionnaires, 21 October 2021 to 7 April 2022;
- Patient Feedback Declaration Form and Questionnaires, undated;
- Email from Edgecumbe raising concerns surrounding similarities in the Patient Feedback Questionnaires submitted by Dr Malik, dated 25 April 2022;
- Email exchange between Dr Malik and Dr B following the meeting on 30 May 2022, of the same date;
- Dr Malik’s CV;
- Email correspondence between Dr Malik and the Trust, various;
- Annual appraisal from the Trust, dated 22 August 2021;
- Various feedback forms including colleague and patient feedback, multi-source feedback and multi-Consultant Reports;
- CPD course certificates and various reflective pieces;
- Various testimonials provided in Dr Malik’s support.

Submissions on behalf of the GMC

13. On behalf of the GMC, Mr Kitching submitted that Dr Malik’s fitness to practise is currently impaired.

14. Mr Kitching reminded the Tribunal that it must first consider whether the facts found proved amount to misconduct which was serious, before considering whether Dr Malik's fitness to practise is impaired.

15. Mr Kitching submitted that the Tribunal must have regard to the three strands of the public interest which are (1) to protect and promote the health, safety and wellbeing of the public, (2) promote and maintain public confidence in the medical profession, and (3) promote and maintain proper professional standards and conduct for the members of the profession. He submitted that the second two strands were engaged by the facts in Dr Malik's case.

16. Mr Kitching submitted that there can be little doubt that the conduct in this case is sufficiently serious to justify a finding of misconduct. He submitted that dishonesty was inherently serious and is towards the upper end of the scale of seriousness. He submitted that dishonesty breaches one of the fundamental tenets of the profession and brings the profession into disrepute.

17. Mr Kitching referred the Tribunal to the following paragraphs of Good medical practice (2013 edition) ('GMP') which he submitted were relevant in Dr Malik's case:

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.

68 You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.

71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.

a You must take reasonable steps to check the information is correct.

b You must not deliberately leave out relevant information.

36 You must treat colleagues fairly and with respect

18. Mr Kitching accepted that not all acts of dishonesty are equally serious and characterised Dr Malik's dishonesty as '*moderately serious*'. He acknowledged that this was not persistent dishonesty, but submitted that this was not a case where there has been '*a harmless lie on the spur of the moment and quickly corrected*' by Dr Malik afterwards.

19. Mr Kitching submitted that the dishonesty arose from Dr Malik's own failures to respond to warnings from the Trust about the need to get the Patient Feedback forms and submit them by the deadline. He accepted that there were work pressures prior to the deadline but emphasised that Dr Malik had at least six months notice and that only seventeen forms were needed. Further, Dr Malik did not need to complete the process himself, but ought to have asked a colleague to do so.

20. Mr Kitching stressed that the patient feedback forms themselves are important documents serving a useful purpose rather than a tiresome administrative or bureaucratic burden placed on doctors. He submitted that the forms are a useful learning tool which is why they are part of the revalidation process.

21. Mr Kitching submitted that Dr Malik's dishonest conduct included the deception of a colleague whom Dr Malik also risked getting into serious trouble with either the Trust and / or the GMC.

22. Mr Kitching acknowledged Dr Malik's early admission and apology but submitted that this is tempered by the fact that Dr Malik had no real option but to admit what he had done when confronted by Dr B.

23. Mr Kitching submitted that Dr Malik has demonstrated a good degree of insight and has worked hard to remedy the deficiencies demonstrated by the facts in this case. However, he reminded the Tribunal that dishonesty is inherently more difficult to remedy than other forms of misconduct.

24. Mr Kitching submitted that while Dr Malik has good insight, it is not complete. He observed that there were some remaining concerns relating to the time that it took for insight to develop into the impact upon his colleague and even now that did not appear fully developed. He acknowledged the positive testimonials provided in Dr Malik's support and that there was no prior fitness to practise history, but submitted that these matters should not be afforded undue weight in the context of this case.

25. In conclusion, Mr Kitching submitted that given the misconduct in Dr Malik's case, a finding of impairment is necessary to promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for the members of the profession.

Submission on behalf of Dr Malik

26. On behalf of Dr Malik, Mr Day submitted that Dr Malik accepts that the proven facts amount to misconduct but that a finding of impairment was not necessary in this case.
27. Mr Day disagreed that Dr Malik had no option but to admit what he had done to Dr B. He submitted that it was always Dr Malik's intention to come clean because deep down he is a man and a doctor of integrity and honesty.
28. Mr Day reiterated the context in which Dr Malik's actions occurred. He submitted that Dr Malik was at a junior stage in his career and under immense stress.
29. Mr Day submitted that Dr Malik accepts that he failed to give the appropriate attention to the patient feedback forms until it was far too late and believed that his place on a surgical training scheme was at risk, which he had sought for three years. Dr Malik acknowledges that he made a terrible decision which he regrets and has apologised for repeatedly.
30. Mr Day submitted that whilst the misconduct is serious, given the circumstances of the case, Dr Malik's level of insight and remediation and the fact that some two years have passed since, a finding of impairment is not necessary.
31. Mr Day submitted that serious misconduct, including dishonesty, does not always mean a finding of impairment is necessary. The public interest could be met in other ways and proportionality was the watchword in this case.
32. Mr Day submitted that the Tribunal was entitled and should be driven to conclude that the risk of repetition in this case was extremely low. Dr Malik has thrown himself into learning and remediation and has done so continuously since April 2022. He submitted that Dr Malik was not a doctor who just before the hearing has suddenly decided to attend some CPD courses, rather he has undertaken targeted courses and provided reflections on them. He submitted that Dr Malik has not only identified where he went wrong but has learned why, and put measures in place to ensure it does not happen again, such as in terms of organisation and prioritising deadlines. Furthermore, he submitted that Dr Malik recognises when he needs to ask for help if he finds himself in a similar situation.
33. Mr Day submitted that Dr Malik recognises his dishonesty and has gained a complete understanding of these matters such that he is a better doctor now than he would have been if he had not committed these errors.
34. Mr Day referred the Tribunal to a number of the testimonials provided in Dr Malik's support, for example, that of Ms D who stated that Dr Malik's *'mistake and subsequent GMC*

investigation will make him a more considered and reflective surgeon. I think it will benefit both him and his patients in the longer term...'

35. In his submissions, Mr Day addressed the Tribunal in relation to various caselaw including the cases of *Cheatle v. General Medical Council* [2009] EWHC 645 (Admin), *Uppal* [2015] EWHC 1304 (Admin), *PSA v NMC 2017* [2017] S.L.T. 625, *GMC v Aly Rezk* [2023] EWHC 3228 (Admin), *RCVS v Samuel* [2024] UKPC 13.

36. Regarding how long Dr Malik's insight took to develop in relation to his colleague, Mr Day submitted that insight cannot be gained with a '*snap of the fingers*' but takes work and time and involves a depth of thinking. He submitted that Dr Malik has been on a journey and that it was perfectly natural for Dr Malik's insight to have been first focused on the patient feedback forms before broadening to include the impact on his colleague.

37. Mr Day submitted that a case where dishonesty has been found does not require exceptional circumstances for a finding of impairment not to be made, rather, exceptionality was a requirement if taking no further action at the sanction stage.

38. Mr Day invited the Tribunal to consider how the public would react if a finding of impairment were not made. He submitted that a member of the public familiar with all of the factors in Dr Malik's case and of his efforts to remedy his conduct, gain insight and develop his practice, would not have their confidence in the profession rocked if no finding of impairment was made.

39. Mr Day also highlighted that the local response was to fast track a written warning to Dr Malik, which he submitted was a reflection of how a member of the public would view the case.

40. Mr Day submitted that professional standards can be upheld by the fact that Dr Malik has undergone a rigorous disciplinary assessment of his fitness to practice, resulting in a finding of misconduct on his record with the option of a warning. He submitted that a finding of misconduct and, in due course, a formal warning, would be the proportionate, just and compassionate response, and would not diminish public confidence.

41. Mr Day submitted that the public would recognise that an independent tribunal has applied its judgement and experience to make a decision not based on a headline but upon the details of the case, recognising Dr Malik's hard work, reflection, remediation and insight.

42. Accordingly, Mr Day invited the Tribunal to find that Dr Malik's fitness to practise is not impaired.

The Tribunal's Approach

43. 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.

44. 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 the misconduct was serious and then whether the finding of that misconduct which was serious could lead to a finding of impairment.

45. The Tribunal must determine whether Dr Malik'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.

46. The LQC summarised the legal principles from a number of authorities, including the case of the *GMC v Armstrong [2021] EWHC 1658 (Admin)*. She advised that dishonesty arises in a variety of contexts and engages public interest factors which tend towards a finding of impairment. Nevertheless, it does not automatically follow that there has to be a finding of impairment, and each case has to be considered on its own facts.

47. The Tribunal was also mindful of 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... show that the doctor's 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. *has in the past acted dishonestly and/or is liable to act dishonestly in the future."*

48. The LQC referred the Tribunal to the following passage in the case of *Grant*:

‘74 In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.’

49. The Tribunal had at the forefront of its mind all three limbs of the overarching objective of the GMC set out in section 1 of the Medical Act 1983 (as amended) to:

- a. *Protect, promote and maintain the health, safety and well-being of the public,*
- b. *Promote and maintain public confidence in the medical profession, and*
- c. *Promote and maintain proper professional standards and conduct for members of that profession.*

The Tribunal's Determination on Impairment

Misconduct

50. The Tribunal then went on to consider whether, in light of all the evidence and background, Dr Malik's conduct amounted to misconduct.

51. The Tribunal considered that paragraphs 1, 65, 68 and 71 of GMP (as set out above) were engaged in Dr Malik's case and had been departed from by him in acting dishonestly in submitting false patient feedback forms as part of the revalidation process. The Tribunal next considered whether the departures from the GMP were serious.

52. The Tribunal, noting that there is a range of dishonest conduct, carried out an assessment of the nature and extent of the dishonesty in this case. Dr Malik falsified a number, estimated to be in the region of 10, of Patient Feedback Questionnaire forms in which he gave himself high ratings. He did this with the intention of subverting the revalidation process as he had left himself with insufficient time to complete the process properly and felt under pressure to return them, given that the process had been deferred once before in July 2021. The Tribunal considered that his actions undermined the revalidation process and the public's trust in him as a doctor. It was an act of dishonesty that also undermined the trust placed in doctors by the Trust to complete the process accurately and honestly. Further, by involving a colleague in the countersigning of the forms, Dr Malik

placed that colleague in a difficult position. The process of seeking genuine patient feedback is designed to protect patients and Dr Malik dishonestly undermined it for his own personal career motives.

53. The Tribunal noted Dr Malik's circumstances in the weeks prior to the deadline and accepted that he was under immense stress at that time, however, it also bore in mind that this was not his first revalidation and it was previously deferred on account of not having submitted 360 reflections and patient feedback reports and reflections. He had a number of months to obtain the patient feedback forms properly and was reminded on a number of occasions. He also had opportunities to clarify the process if he was unsure about it. The Tribunal considered these personal circumstances to be little mitigation to dishonesty, particularly as the stressful situation appeared to be largely of Dr Malik's own making. It considered that there are many occasions where doctors will be under stressful situations and the public expect them to act honestly and with integrity.

54. The Tribunal considering all of the above, concluded that Dr Malik's dishonest actions amounted to a significant falling short of the standards expected of a doctor and would be considered deplorable by fellow practitioners and members of the public.

55. The Tribunal was therefore satisfied that the facts proved in this case do amount to serious misconduct.

Impairment

56. The Tribunal considered whether Dr Malik's fitness to practise is currently impaired by reason of misconduct.

57. In determining whether a finding of current impairment of fitness to practise was necessary, the Tribunal looked for evidence of insight, remediation, and considered the likelihood of repetition.

58. The Tribunal reminded itself that dishonesty is difficult to remediate, more so than other types of misconduct such as clinical concerns, but it was not impossible to remediate.

59. In terms of remediation, the Tribunal considered that Dr Malik has taken significant steps to reflect, gain insight and remediate his misconduct. It noted that he has completed a number of relevant courses, consisting of several days of targeted CPD learning, reading, a one to one session on ethics and has been XXX. Dr Malik has provided detailed reflections on his learning acquired and the measures he has put in place to prevent a recurrence. It accepted that he has developed in the areas of time management, prioritisation, delegation

and organisation, such that he is unlikely to find himself in similar circumstances again in respect of missing deadlines. The Tribunal considered that Dr Malik had undertaken a significant amount of reflection and remediation since the misconduct occurred and has developed a good level of insight.

60. The Tribunal was of the view that whilst there were some areas where Dr Malik's insight could perhaps be developed further, the steps taken to address the concerns in this case were sufficient in its view for the risk of repetition to be assessed as low. However, the Tribunal was mindful that the impact on public confidence in cases involving dishonesty is not diminished because the practitioner in question is unlikely to repeat their dishonesty.

61. Furthermore, Dr Malik has made admissions at an early stage, has shown remorse, and apologised repeatedly for his actions. The Tribunal had regard to the positive testimonials provided in his support, including the oral testimonial evidence heard from Ms C, Dr Malik's former clinical supervisor. The Tribunal concluded that Dr Malik is a competent and dedicated doctor who has a lot to offer to patients and who is held in high regard by colleagues. However, the Tribunal found that it could only give limited weight to testimonial evidence because of the dishonest nature of Dr Malik's misconduct.

62. The Tribunal was also mindful of the potential significant impact upon Dr Malik of a finding of impairment and considered carefully the submissions of Mr Day on his behalf regarding the case law of *Uppal* and other cases relied upon, in support of his submission that a finding of impairment was not necessary in the particular circumstances of this case, particularly when bearing in mind the principle of proportionality.

63. The Tribunal bore in mind that proven dishonesty and a finding of misconduct does not inevitably lead to finding of impairment and each case needs to be considered on its own facts. Furthermore, there is a need for the Tribunal to assess the nature and extent of a practitioner's dishonesty and engage with the weight of the public interest factors in such cases.

64. The Tribunal referred back to its findings in respect of misconduct. It agreed with Mr Kitching's submissions categorising it as moderately serious dishonesty. It also agreed with the acknowledgment of Mr Kitching that the dishonesty was not persistent, however considered that it was more than a momentary lapse. The Tribunal noted that Dr Malik made the decision to print and falsely complete the patient feedback forms on a Friday afternoon and submitted them the next day. Furthermore, until the matter came to light, Dr Malik was seeking to arrange a meeting with his appraiser that week to discuss and reflect upon the falsely completed forms, which only did not go ahead as the appraiser was unavailable. The

Tribunal also was mindful that whilst Dr Malik was under particular pressure when he undertook his dishonest actions, it was also a pressurised situation of his own making, given that he had been given months of notice for the feedback forms to be completed, with regular reminders. This pressure included the fact that he had applied for three separate specialities.

65. The Tribunal considered that there were many positive factors in this case in support of Dr Malik, including the development of insight, significant reflection and remediation, apologies, testimonials and personal mitigation. However, the Tribunal was mindful of the principles emphasised in the case of *The General Medical Council v Armstrong* [2021] EWHC 1658 (Admin), that such matters inevitably have limited weight in cases involving significant dishonesty, which the Tribunal considered was the case here.

66. Having regard to its findings in respect of misconduct, set out above and the significance of the dishonesty in this case, the Tribunal, whilst considering that there were some factors of the case in favour of Dr Malik supporting a finding of no impairment, these were not sufficiently strong, given the consequences of a finding of dishonesty in the professional regulatory context on the overarching objective, to justify a finding of no impairment.

67. The Tribunal considered, that notwithstanding Dr Malik's insight and remediation and that the risk of repetition is low, the nature of the misconduct is such that public confidence in the profession would be undermined if a finding of impairment was not made.

68. The Tribunal also considered the *Grant* test and considered that there were no public safety concerns in this case. However, limbs two, three and four were all engaged as it considered that Dr Malik had brought the profession into disrepute, had breached a fundamental tenet of the profession and had acted dishonestly.

69. The Tribunal therefore determined that Dr Malik's fitness to practise is impaired by reason of his misconduct. It considered that a finding of impairment is necessary to promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for the members of the profession.

Determination on Sanction - 21/03/2024

70. Having determined that Dr Malik's fitness to practise is impaired by reason of misconduct, 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

71. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction. It also received further documentation at this stage, which comprised of two emails between the GMC and the Lead Employer (St. Helens and Knowsley NHS Trust) on 19 and 20 March 2024 regarding the potential impact of a suspension on Dr Malik’s training and rotation, as well as a copy of the Gold Guide 2022, ‘A Reference Guide for Postgraduate Foundation and Specialty Training in the UK’ (‘the Gold Guide’).

Submissions on behalf of the GMC

72. On behalf of the GMC, Mr Kitching submitted that the appropriate sanction in this case was one of suspension.

73. Mr Kitching reminded the Tribunal of the approach to take at this stage and referred it to various paragraphs of the Sanctions Guidance (February 2024 edition) (SG). He submitted that the Tribunal must have regard to the question of proportionality and weigh the interests of the public against those of the doctor in determining what order to impose. He reminded the Tribunal that it must impose the sanction necessary to protect the public even where this may lead to difficulties for the doctor.

74. Mr Kitching submitted that the Tribunal should have regard to the mitigating and aggravating factors when deciding which sanction to impose. He stated that the aggravating features relate to the circumstances of Dr Malik’s conduct rather than personal to Dr Malik and, in terms of mitigation, he highlighted the presence of insight and remediation.

75. Mr Kitching addressed the Tribunal in relation to the email exchanges between the GMC and the Lead Employer provided at this stage of the hearing. He submitted that the impact of a suspension on Dr Malik’s training position was unclear but that the mere fact of a suspension will not necessarily lead to a termination of Dr Malik’s training. He submitted that only those responsible at the Lead Employer for making that decision can know the impact of a suspension, but they would take into account the high regard that Dr Malik is currently held in. Mr Kitching submitted that there is a good chance that a period of suspension will not lead to termination of Dr Malik’s training post, and it may well depend on the period of suspension imposed.

76. Mr Kitching reminded the Tribunal that to take no action would only be justified in exceptional circumstances. He submitted that there were no exceptional circumstances in this case and therefore to take no action would be inappropriate.

77. Mr Kitching submitted that conditions would not be appropriate given the seriousness of the misconduct. He added that given the Tribunal’s findings in relation to insight,

remediation and the risk of repetition, there would be no verifiable aim which could be achieved by the imposition of conditions.

78. In relation to suspension Mr Kitching highlighted, amongst others, the following paragraphs of the SG:

'91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.

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 (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).

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...

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

a A serious departure from Good medical practice, but where the misconduct is not so difficult to remediate that complete removal from the register is in the public interest. However, the departure is serious enough that a sanction lower than a suspension would not be sufficient to protect the public.

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

f No evidence of repetition of similar behaviour since incident.

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour

79. Mr Kitching submitted that suspension was therefore the appropriate sanction in this case. He also referred the Tribunal to paragraphs of the SG which provide advice in determining the length of a suspension, as well as paragraphs of the SG in relation to

considering dishonesty. Mr Kitching acknowledged that the dishonesty in this case was neither persistent nor covered up.

80. Mr Kitching submitted that if the Tribunal was to determine that a period of suspension was the appropriate sanction, a review hearing would not be necessary in this case.

Submissions on behalf of Dr Malik

81. On behalf of Dr Malik, Mr Day submitted that an order of suspension is not necessary and would be disproportionate in the circumstances of the case as it would result in the removal of Dr Malik's training number and, in all likelihood, his prospects of becoming a consultant surgeon.

82. Mr Day submitted that the appropriate and proportionate sanction was an order of conditions for a period of twelve months with a review.

83. Mr Day agreed that this was not a case where taking no action would be appropriate. He accepted that there were no exceptional circumstances and that insight, remediation and a low risk of repetition are not exceptional factors to justify taking no action.

84. In his submissions Mr Day referred the Tribunal to the case of *GMC v Aly Rezk [2023] EWHC 3228 (Admin)* and the relevant sections of the Gold Guide.

85. Mr Day submitted that it was abundantly clear from the Gold Guide that the inevitable impact of a suspension would be withdrawal of Dr Malik's national training number. This consequence, Mr Day submitted, was explicit and mandatory. Whilst the emails from HR when asked about the impact were 'somewhat woolly', the Gold Guide was clear.

86. Mr Day submitted that there would be a right to appeal, however, there would be no realistic grounds for an appeal where the removal of the national training number or contract is mandatory upon a suspension.

87. Mr Day submitted that if removed from training because of a suspension, a trainee cannot ordinarily go back into that same speciality. Whilst they could reapply at a later date, they would need the support of the Postgraduate Dean and it would be a competitive process with other applications. In summary, he submitted that in all likelihood Dr Malik would be unable to successfully re-enter the training programme if suspended.

88. Mr Day submitted that suspension would be disproportionate in this case and would have devastating effects. He submitted that it makes no difference whether the suspension would be for a week or a year given the impact it would have as per the Gold Guide. He submitted that the impact on Dr Malik of a suspension would be far beyond the impact a suspension would have on a consultant colleague.

89. Mr Day submitted that there was a significant public interest in retaining doctors who are competent and would provide excellent care to patients going forward. Mr Day stated that it was clear from the case of *GMC v Aly Rezk [2023] EWHC 3228 (Admin)* at paragraph 142 that the wider public interest and the Doctor's interests can align.

90. Mr Day submitted that conditions were appropriate, proportionate, workable and measurable in this case.

91. Mr Day submitted that during a period of conditional registration Dr Malik would be able to continue to develop his insight further, such as in relation to the impact his misconduct could have had on his colleague. He would be able to reflect and take advice upon whether to contact his colleague directly to apologise, which he was willing to do. He submitted that Dr Malik can place himself in the shoes of his more junior colleague and undertake reflection on the '*power differential*'.

92. Mr Day proposed various conditions including a condition that Dr Malik designs a personal development plan tailored to address the deficiencies found in this case in relation to interactions with colleagues and treating them with respect. Mr Day referred the Tribunal in particular to paragraphs 48, 52, 53, 88 and 89 of Good medical practice (2024 version) ('GMP 2024'). He added that there was nothing in GMP 2024 which deals with power differentials though this could be included in the PDP.

93. Mr Day submitted that that Dr Malik should have an educational supervisor, workplace reporter and a mentor.

94. Mr Day submitted that Dr Malik is likely to go through a stressful time and noted that the birth of his first child is due next month. He submitted that Dr Malik will have to manage his work life balance and may feel under increased pressure. He submitted that having a mentor would be beneficial and that it was clear from the testimonials that there are many who would be willing to hold that position to help him in the next twelve months.

95. Mr Day submitted that a period of conditions for twelve months would be appropriate to allow time for Dr Malik to develop full insight.

96. Mr Day submitted that whilst the SG advises conditions may be appropriate in cases regarding a doctor's professional performance, health, or deficiencies in their knowledge of English, this is not to the exclusion of other cases. He accepted that it was not a classic conditions case, but submitted they were appropriate in the circumstances of this case.

97. Mr Day submitted that Dr Malik would respond positively to conditions, and it would be a constructive process and allow him to develop insight whilst continuing to work and support his family.

98. Mr Day reminded the Tribunal of the comments of Justice Lang in the case of *Ali Rezk* in which she commented that conditions carry burdens and can meet the public interest by retaining and training a good doctor. He noted her specific comments:

'In my judgment, the sanction of conditions would be seen by the public and the profession as an ongoing marker of disapproval of Dr Rezk's misconduct (taking into account the mitigating and aggravating factors), whilst providing a constructive response to his shortcomings. The decision in this case, and the conditions imposed, will remain on Dr Rezk's record, and be publicly available on the GMC website for ten years from the date when the sanction expires. Therefore, I consider that the conditions meet the overarching objective of protection of the public, in that they promote and maintain public confidence in the medical profession and proper professional standards and conduct for members of the profession. In my view, conditions are a proportionate sanction which strike an appropriate balance between the interests of Dr Rezk and the public interest...'

99. Mr Day submitted that in all the circumstances of Dr Malik's case, conditions were an appropriate and proportionate sanction, which would strike the right balance between the public interest and the Doctor's interests.

100. Mr Day submitted that if the Tribunal does not impose conditions then any period of suspension should be as short as possible. However, the length of suspension would be less significant than the very fact of a suspension in terms of its significant impact of Dr Malik.

The Relevant Legal Principles

101. The Tribunal is aware that the decision as to the appropriate sanction, if any, to impose on Dr Malik'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 2024.

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

103. 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 Malik's interests with the public interest.

104. 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

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

Aggravating and Mitigating factors

106. In terms of aggravating factors, the Tribunal noted that Dr Malik put a junior colleague in a difficult and compromising position by asking them to sign a declaration form approving the falsified patient feedback forms. In addition, he made plans to meet his appraiser to discuss reflections on the fabricated patient feedback but fortunately the meeting did not go ahead because the appraiser was busy.

107. In terms of mitigating factors, the Tribunal was mindful of Dr Malik's good level of insight and remediation. He has apologised for his actions and expressed remorse, albeit he has not yet apologised to the junior colleague. He made early admissions and there is no previous fitness to practise history. The misconduct occurred approximately two years ago and there has not been a recurrence. Dr Malik has also produced a wide range of positive testimonials. The Tribunal also noted the stressful circumstances in which Dr Malik's dishonesty took place, though it considered this to be little mitigation as much of the stress he was under was of his own making.

No action

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

109. The Tribunal determined there were no exceptional circumstances in this case which would justify taking no action and given the serious nature of the misconduct it determined that it would be neither sufficient, proportionate, nor in the public interest to conclude this case by taking no action.

Conditions

110. The Tribunal next considered whether it would be sufficient and appropriate to impose conditions on Dr Malik's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. The Tribunal had regard to the SG and paragraphs 80, 81, 82 and 84 in particular. The Tribunal considered that this was not a typical case for conditions, in that it did not neatly fit into the list of cases where conditions '*might be most appropriate*' in paragraph 81. However, the Tribunal was of the view that the wording of the SG was not exhaustive and conditions were not limited to those types of cases mentioned. The Tribunal also considered that some of the factors in paragraph

84, which indicate that conditions may be appropriate, were present in this case, for example no evidence to demonstrate remediation is unlikely to be successful and willing to respond positively to retraining.

111. Furthermore, the Tribunal considered that Dr Malik, whilst he had demonstrated a good level of insight, could develop this further, particularly in relation to the impact that his actions had on his junior colleague, and the potential implications for them in signing a form that was not accurate. The Tribunal was of the view that conditions would enable Dr Malik the opportunity to reflect further and complete further remediation in relation to treating colleagues with respect and his organisational skills. In addition, the Tribunal noted that an order of conditions would provide Dr Malik with supervision, and the support of a mentor, whereas an order of suspension would not. Conditions would be more beneficial and appropriate for the level of training of Dr Malik.

112. The Tribunal considered that given the considerable mitigating factors in this case, conditions would be appropriate and proportionate. It also considered that the impact of suspension in the particular facts of this case, given that there was a real risk that Dr Malik could have his training number removed, would be overly punitive and disproportionate. The Tribunal had regard to the overarching objective and determined that an order of conditions was sufficient to promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for the members of the profession. The Tribunal was not satisfied that an order of suspension was necessary in the public interest. As part of its considerations of the public interest, the Tribunal bore in mind that it was in the public interest that able doctors are retained in the profession.

113. The Tribunal considered that carefully formulated conditions would address the concerns in this case and sufficiently mark the seriousness of the misconduct found, whilst acknowledging the efforts made by Dr Malik to gain insight and remediate, and both his and the public interest in him continuing in his specialty training.

114. 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 9
 - c if any formal disciplinary proceedings against him are started by his employer and/or contracting body, within seven calendar days of being formally notified of such proceedings
 - d if any of his posts, practising privileges or admitting rights have been suspended or terminated by his employer before the agreed date within seven calendar days of being notified of the termination
 - e if he applies for a post outside the UK
- 3 He must allow the GMC to exchange information with any person involved in monitoring his compliance with his conditions.
- 4
 - a He must have a workplace reporter appointed by his responsible officer (or their nominated deputy).
 - b He must not work until:
 - i his responsible officer (or their nominated deputy) has appointed his workplace reporter
 - ii he has personally ensured that the GMC has been notified of the name and contact details of his workplace reporter.
- 5
 - a He must design a personal development plan (PDP), with specific aims to address the deficiencies in the following areas of his practice.
 - Paragraphs 48, 52, 53, 88, 89 of GMP(2024 edition)
 - GMC Professional Standards on Leadership and Management (2012), relating to organisational skills and working with colleagues.
 - b His PDP must be approved by his responsible officer (or their nominated deputy)

- c He must give the GMC a copy of his approved PDP within three months of these substantive conditions becoming effective.
 - d He must give the GMC a copy of his approved PDP on request.
 - e He must meet with his responsible officer (or their nominated deputy), as required, to discuss his achievements against the aims of his PDP.
- 6
- a He must have an educational supervisor appointed by his responsible officer (or their nominated deputy)
 - b He must not work until:
 - i his responsible officer (or their nominated deputy) has appointed his educational supervisor
 - ii he has personally ensured that the GMC has been notified of the name and contact details of his educational supervisor.
- 7
- a He must get the approval of his responsible officer (or their nominated deputy), before working as a locum in his usual workplace and / or another hospital trust.
 - b He must not work until:
 - i his responsible officer (or their nominated deputy) has confirmed approval
 - ii he has personally ensured that the GMC has been notified of the approval of his responsible officer (or their nominated deputy),
- 8 He must have a mentor who is approved by his responsible officer (or their nominated deputy).
- 9 He must personally ensure the following persons are notified of the conditions listed at 1 to 8:
- 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).

Length of order

115. Having determined to impose a sanction of conditions, the Tribunal considered the length of the order of conditional registration. It was satisfied that a period of twelve months would sufficiently mark the seriousness of the misconduct and provide Dr Malik with sufficient time to develop further insight whilst continuing in his training with supportive measures in place.

Review

116. The Tribunal determined to direct a review of Dr Malik'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 Malik to demonstrate his continued compliance. It therefore may assist the reviewing Tribunal if Dr Malik provides:

- A copy of his PDP.
- Evidence of any further reflections or remediation.
- Case based discussions on ethical challenges encountered.
- A report from his mentor and/or an update from XXX.
- Recent patient feedback forms.
- Most recent ARCP.
- Anything else Dr Malik believes will assist.

Determination on Immediate Order - 21/03/2024

117. Having determined to impose a sanction of conditions on Dr Malik's registration for period of twelve months, 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

118. On behalf of the GMC, Mr Kitching submitted that an immediate order was not necessary in the circumstances of this case.

119. On behalf of Dr Malik, Mr Day agreed that an immediate order was not required.

The Tribunal's Determination

120. The Tribunal had regard to paragraph 173 of the SG which advised that:

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

121. The Tribunal noted that there is no risk to patient safety in Dr Malik's case. It considered that an immediate order was not necessary to protect patients. It further considered that an immediate order was not necessary to protect public confidence in the profession which it considered is upheld by the Tribunal's finding of impairment and substantive sanction of conditions imposed. The Tribunal also determined that an immediate order was not in Dr Malik's interest.

122. Accordingly, the Tribunal determined not to impose an immediate order.

123. This means that Dr Malik's registration will be made subject to conditions 28 days from the date on which written notification of this decision is deemed to have been served, unless he lodges an appeal. If Dr Malik does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

124. There is no interim order to revoke.

125. That concludes this case.