

PUBLIC RECORD

Dates: 04/01/2021 - 08/01/2021

Medical Practitioner's name: Dr Neil SHAH

GMC reference number: 7088426

Primary medical qualification: MB BS 2010 Imperial College London

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

Summary of outcome

Suspension, 3 months.

Tribunal:

| | |
|--------------------------|-----------------------------|
| Legally Qualified Chair | Mr Julian Weinberg |
| Lay Tribunal Member: | Mr Peter Scofield |
| Medical Tribunal Member: | Dr Nagarajah Thevamanoharan |
| | |
| Tribunal Clerk: | Mr John Poole |

Attendance and Representation:

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| Medical Practitioner: | Present and represented |
| Medical Practitioner's Representative: | Mr Stephen Brassington, Counsel, instructed by MDDUS |
| GMC Representative: | Ms Chloe Fordham, 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 - 06/01/2021

Background

1. Dr Shah qualified in 2010 from Imperial College, London and undertook GP vocational training through the East of England Deanery between 2015 and 2019. He obtained his MRCGP in August 2019 and has since then been working as a salaried GP at Lincoln Road Medical Practice in Middlesex.
2. At the time of the events which are the subject of this hearing, Dr Shah was a trainee GP on the GP Speciality Training Programme ('GPTS'). The allegation that has led to Dr Shah's hearing relates to three separate probity concerns.
3. The first concern relates to an allegation that in February 2018 Dr Shah falsified a holiday form by entering two periods of requested annual leave when he was not authorised to make these entries. The second concern relates to an allegation that, on 3 July 2019, Dr Shah signed a register confirming his attendance at a teaching session which he then did not attend in full. It is then alleged that he knew thereafter that the register was incorrect, and that he failed to take steps to correct it. The third concern relates to an allegation that Dr Shah submitted expenses claims to the Maples Health Centre in respect of journeys that he had not undertaken in the course of his employment when he knew he was not entitled to claim those expenses. In addition, he later provided untruthful information about his expense claims. It is the GMC's case that Dr Shah's actions/omissions were dishonest.

The Outcome of Applications Made during the Facts Stage

4. The Tribunal refused a GMC application made pursuant to Rule 41 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules') for the entirety of the hearing to be heard in private. However, it determined that part of the hearing should be heard in private. The Tribunal's determination on the application is included at Annex A.

5. The Tribunal granted a GMC application to amend various paragraphs of the Allegation, in accordance with Rule 17(6) of the Rules. The Tribunal's determination on that application is included in Annex B.

The Allegation and the Doctor's Response

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

1. In or around February 2018 you falsified a holiday form (the 'Holiday Form') by entering two ~~dates~~ periods of annual leave for yourself, as set out at Schedule 1.

To be determined

Amended under Rule 17(6)

2. You knew you were not authorised to make these entries onto the Holiday Form.

To be determined

3. On 3 July 2018 you signed a register (the 'Register') confirming your attendance at a teaching session (the 'Session') which you ~~had~~ then failed to attend in full.

Admitted and found proved

Amended under Rule 17(6)

~~4. You knew:~~

~~a. you had not attended the full Session;~~

~~b. the Register held an inaccurate record of your attendance.~~

4. Having left the Session, you:

a) knew thereafter that the Register held an inaccurate record of your attendance;

Admitted and found proved

b) failed to take steps to correct the record of your attendance

Admitted and found proved

Amended under Rule 17(6)

5. On the dates set out in Schedule 2 you:

a. failed to attend the teaching sessions required as part of your GP Specialist Training Programme; **Admitted and found proved**

b. failed to notify your supervisors you would not be in attendance.
Admitted and found proved

6. When asked by Ms A about your attendance at your teaching sessions, you told her you had been attending the sessions, which was untrue. **Admitted and found proved**

7. You knew the information provided to Ms A at paragraph 6 was untrue.
Admitted and found proved

8. On the dates set out in Schedule 3 you submitted expenses claims to Maples Health Centre in respect of journeys that were not undertaken in the course of employment.
Admitted and found proved

9. You knew you were not entitled to claim expenses in respect of those journeys.
Admitted and found proved

10. On 12 August 2018 you told Ms B that you had only submitted inappropriate claims for expenses on 14 September 2017 and 13 October 2017 which was untrue.
Admitted and found proved

Amended under Rule 17 (6)

11. You knew the information you provided to Ms B at paragraph 10 was untrue.
Admitted and found proved

12. Your actions/omissions as described in paragraphs 1, ~~3~~, 4b, 6, 8 and 10 ~~and~~ were dishonest by reason of paragraphs 2, 4a, 7, 9 and 11, respectively.

Admitted and found proved in respect of paragraphs 4b, 6, 8 and 10

To be determined in respect of paragraph 1

Amended under Rule 17(6)

~~13. Your actions as described in paragraphs 12 are dishonest by reason of paragraphs 2, 4, 7, 9 and 11 respectively.~~

Withdrawn under Rule 17(6)

The Admitted Facts

7. At the outset of these proceedings, through his counsel, Dr Shah admitted various paragraphs of the Allegation as outlined above in accordance with Rule 17(2)(d) of the Rules 2004. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

8. In light of Dr Shah's response to the Allegation made against him, the Tribunal is required to determine the outstanding paragraphs of the Allegation.

Factual 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:
 - Ms A, Human Resources Business Partner for St Helens and Knowsley Teaching Hospitals NHS Trust Lead Employer. Ms A was appointed as Case Investigator to undertake the investigation into the concerns raised about Dr Shah and provides details about the investigation in her witness statement, dated 5 March 2020.
 - Ms B, GP Specialist Training Administrator for the West Essex (Harlow) GP Speciality Training Programme, which is part of the Heath Education England, East of England Deanery. As part of the local investigation, Ms B was asked to collate an attendance log confirming Dr Shah's attendance at Teaching Sessions between August 2017 and August 2018. Her witness statement is dated 9 June 2020.
 - Dr C, Consultant in Renal Medicine at Lister Hospital. At the time of the events in question, he was employed as a Senior Teaching Clinical Fellow at Princess Alexandra Hospital NHS trust and provided teaching for undergraduate students, core medical trainees and trainees on the GP Speciality Training Programme ('GPTS'). Dr Shah was a trainee GP on the GPST during this period. In his witness statement dated 27 July 2020, Dr C stated that on 3 July 2019, he spoke to the GP tutors and told them he believed Dr Shah had not attended the teaching session.
 - Dr D, General Practitioner and GP Trainer. Dr D was Dr Shah's GP Trainer from August 2017 until approximately September 2018. In her witness statement, dated 24 September 2020, she outlined the processes for claiming travel expenses and annual leave at the GP practice. She also explained that it was mandatory for trainees to attend the weekly training sessions set up by the GP training scheme.
10. Dr Shah provided his own witness statement dated 4 December 2020 and also gave oral evidence to the Tribunal.

11. The Tribunal also received oral evidence on behalf of Dr Shah from the following witnesses who also provided written testimonials:

- Dr E, GP partner and trainer at Forest Road Group Practice;
- Dr F, GP Partner at Medicus Health Partners, Lincoln Road Medical Practice.

12. The Tribunal was also provided with further testimonials in support of Dr Shah.

Documentary Evidence

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

- The Trust Investigation report undertaken by Ms A, dated 31 August 2018;
- The various investigation notes from interviews with Dr Shah and Dr D;
- The email correspondence between Ms A and others in relation to the concerns;
- The Attendance record at teaching sessions prepared by Ms B;
- NHS Terms and conditions of Employment;
- Travel expenses claimed by Dr Shah;
- The Holiday Form for Dr Shah at the Maples Health Centre;
- Dr Shah's curriculum vitae;
- XXX

The Tribunal's Approach

14. 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 Shah 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.

15. When considering the issue of dishonesty, the Tribunal took account of the principles set out in the case of *Ivey v Genting Casinos UK Ltd (t/a Crockfords Club) [2017] UKSC 67*, first ascertaining the actual state of Dr Shah's knowledge or belief, and then going on to consider whether his actions were dishonest by the standards of ordinary decent people.

16. The Legally Qualified Chair also advised the Tribunal that in relation to paragraph 1 of the Allegation, which alleges that Dr Shah falsified a holiday form, the Tribunal should apply the ordinary dictionary meaning of falsify, namely to alter (information or a document or evidence) so as to mislead.

The Tribunal's Analysis of the Evidence and Findings

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

18. The Tribunal first considered paragraph 1 of the Allegation which alleges that, in or around February 2018, Dr Shah falsified the Holiday Form by entering two periods of annual leave for himself.
19. In Dr Shah's witness statement, he stated that he was in a rush to get the two periods of annual leave on the Holiday Form so he could attend a training course. He stated that this course only became available at short notice and that he therefore wanted to enter the dates in the diary as soon as possible, as ordinarily 4-6 weeks' notice of leave was required. As neither the Practice Manager nor Dr D were working on the day, he entered the two periods of annual leave by himself on the Holiday Form in the absence of the Practice Manager and Dr D and without their knowledge.
20. The Tribunal considered that the information entered on the Holiday Form was not false. It concluded that Dr Shah's actions did not falsify the entries in the ordinary sense of the word. The Tribunal considered Dr Shah's actions amounted to nothing more than a request for annual leave, albeit that the correct procedure was not followed. The periods of leave he entered would still have required approval by the Practice Manager once she was back at work. It was therefore satisfied that the entries could not have misled the Practice Manager. The Tribunal therefore found paragraph 1 of the Allegation not proved.
21. Having found paragraph 1 of the Allegation not proved, it therefore follows that Dr Shah's actions as alleged at paragraph 12 of the Allegation, so far as it relates to paragraph 1, cannot be found to have been dishonest. The Tribunal therefore found paragraph 12 not proved in respect of paragraph 1.
22. The Tribunal then considered paragraph 2 of the Allegation which alleges that Dr Shah knew he was not authorised to make the entries on the Holiday Form.
23. The Tribunal noted the following correspondence between Ms A and Dr Shah (NS) as recorded in the Investigation Meeting Notes:

'Ms A... It is alleged that you falsified annual leave documentation within your hosting practice and that should have only been accessed by authorised members of staff?

NS. All this happened because of my desire to succeed and to ensure I was making progress. I just wasn't thinking right so I went into the practice manager's office and filled out the forms. I told the secretary what I did. In hindsight, I should have waited until the practice manager was back in the office.

Ms A. What is the process in the practice for annual leave approval?

NS. I have to give 4-6 weeks' notice, inform the practice manager and she approves it.'

24. Further, in Dr Shah’s witness statement he stated:

‘I readily acknowledge that I should have waited until Ms A and the Practice Manager were back at work before making the entries... I was aware of the correct process for requesting annual leave, having done so in the past. I accept that I should have followed the correct process for submitting a holiday request and I am truly sorry that I did not do so on this occasion; but I did not falsify a holiday form.’

25. Whilst Dr Shah was authorised to make a request for annual leave, he accepted in evidence that in the absence of the Practice Manager he was not authorised to enter two periods of annual leave for himself. He further accepted that he knew at the time that he was not authorised to make the relevant entries.

26. The Tribunal therefore found paragraph 2 of the Allegation proved.

The Tribunal’s Overall Determination on the Facts

27. The Tribunal has determined the facts as follows:

1. In or around February 2018 you falsified a holiday form (the ‘Holiday Form’) by entering two ~~dates~~ periods of annual leave for yourself, as set out at Schedule 1.

Found not proved

Amended under Rule 17(6)

2. You knew you were not authorised to make these entries onto the Holiday Form.

Determined and found proved

3. On 3 July 2018 you signed a register (the ‘Register’) confirming your attendance at a teaching session (the ‘Session’) which you ~~had~~ then failed to attend in full.

Admitted and found proved

Amended under Rule 17(6)

4. You knew:

~~a. you had not attended the full Session;~~

~~b. the Register held an inaccurate record of your attendance.~~

4. Having left the Session, you:

a) knew thereafter that the Register held an inaccurate record of your attendance;
Admitted and found proved

b) failed to take steps to correct the record of your attendance
Admitted and found proved

Amended under Rule 17(6)

5. On the dates set out in Schedule 2 you:

a. failed to attend the teaching sessions required as part of your GP Specialist Training Programme; **Admitted and found proved**

b. failed to notify your supervisors you would not be in attendance.
Admitted and found proved

6. When asked by Ms A about your attendance at your teaching sessions, you told her you had been attending the sessions, which was untrue. **Admitted and found proved**

7. You knew the information provided to Ms A at paragraph 6 was untrue.
Admitted and found proved

8. On the dates set out in Schedule 3 you submitted expenses claims to Maples Health Centre in respect of journeys that were not undertaken in the course of employment.
Admitted and found proved

9. You knew you were not entitled to claim expenses in respect of those journeys.
Admitted and found proved

10. On 12 August 2018 you told Ms B that you had only submitted inappropriate claims for expenses on 14 September 2017 and 13 October 2017 which was untrue.
Admitted and found proved

Amended under Rule 17 (6)

11. You knew the information you provided to Ms B at paragraph 10 was untrue.
Admitted and found proved

12. Your actions/omissions as described in paragraphs 1, ~~3~~, 4b, 6, 8 and 10 ~~and~~ were dishonest by reason of paragraphs 2, 4a, 7, 9 and 11, respectively.

Admitted and found proved in respect of paragraphs 4b, 6, 8 and 10

Determined and found not proved in respect of paragraph 1

Amended under Rule 17(6)

~~13. Your actions as described in paragraphs 12 are dishonest by reason of paragraphs 2, 4, 7, 9 and 11 respectively.~~

Withdrawn under Rule 17(6)

Determination on Impairment - 07/01/2021

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 Shah's fitness to practise is impaired by reason of misconduct.

The Evidence

2. The Tribunal has taken into account all the evidence, both oral and documentary, received during the facts stage of the hearing. In addition, it received further documentary evidence on behalf of Dr Shah at this stage. This included but was not limited to:
 - Dr Shah's reflections on GMC duties of a doctor, professional boundaries course, fitness to practise, Nolan principles and honesty and probity;
 - A certificate of attendance at a Maintaining Professional Ethics course from 10 - 12 June 2019;
 - A certificate of completion of a medical record-keeping module on 13 June 2019;
 - Details of Dr Shah's Annual Review Competence Progression (ARCP), including ARCP Trainee E-Portfolio and completion of GP training;
 - Multi source feedback and patient feedback forms.

Submissions

GMC submissions

3. On behalf of the GMC, Ms Fordham submitted that Dr Shah's fitness to practise is currently impaired by reason of his misconduct.
4. Ms Fordham invited the Tribunal to consider Good Medical Practice ('GMP') 2013. She submitted that honesty and integrity are at the heart of what it is to be a doctor and that

doctors must make sure that their conduct justifies the trust patients put in them and the public's trust in the profession. She submitted that Dr Shah had breached this fundamental tenet of the profession.

5. In her submissions, Ms Fordham also invited the Tribunal to consider various paragraphs of the Sanctions Guidance ('SG') (November 2020 edition), in particular those paragraphs relating to dishonesty and financial dealings. Those paragraphs, she submitted, recognise that dishonesty was a serious matter that justified a finding of misconduct.
6. Ms Fordham submitted that the Allegation relates to a period of over 10 months in which Dr Shah, whether by act or omission, misled others or acted contrary to the rules. To compound this, even under formal NHS investigation, Dr Shah deliberately misled Ms A to minimise the extent of the false claims he made.
7. Ms Fordham submitted that Dr Shah has shown that he is willing to compromise his integrity where it covers his failure or smooths over a problem. She submitted that there is a significant risk that if Dr Shah finds himself in a similar situation, he will resort to dishonesty rather than face up to the problem. XXX She submitted that Dr Shah's evidence that he felt he could not approach colleagues for advice was, perhaps, indicative of him not taking responsibility.
8. In regard to Dr Shah's failure to attend teaching sessions, Ms Fordham submitted that this could have led to gaps in his knowledge which could have put patients at risk of harm. She also submitted that his inappropriate claims for expenses were detrimental to the GP practice and his colleagues. In relation to Dr Shah's entries on the Holiday Form, she submitted that his actions constituted a breach of paragraphs 35 and 36 of GMP which state:

35 You must work collaboratively with colleagues, respecting their skills and contributions.

36 You must treat colleagues fairly and with respect.

Submissions on behalf of Dr Shah

9. Mr Brassington submitted that Dr Shah accepts that what he did amounts to misconduct. He also stated that if impairment was capable of admission, it would be admitted. He stated, however, that he disagreed with the GMC's route to impairment. Mr Brassington

reminded the Tribunal that it must consider if the misconduct is remediable and if it has been remediated. It must also consider the public interest element. He accepted that impairment can be found even if there has been remediation and that it was on this public interest ground that impairment is conceded.

10. Mr Brassington submitted that Dr Shah was undergoing significant personal and professional stresses at the time of the events in question. He submitted that, since then, there has been a 'sea change' in Dr Shah's personal and professional circumstances. He noted that Dr Shah now considers himself to be well supported in a collegiate environment. Dr Shah has completed his GP training and is thriving and providing excellent care to patients.
11. Mr Brassington submitted that there has been no repetition of the concerns that have brought Dr Shah before this Tribunal and invited it to consider the positive patient and colleague feedback provided. He submitted that Dr Shah has employed techniques to cope with stressful situations should they arise.
12. With regard to the entries on the Holiday Forms, Mr Brassington submitted that whatever the breaches of GMP might be, it would not amount to serious misconduct.
13. Mr Brassington acknowledged that remediation of dishonesty is a difficult task. He submitted, however, that the Tribunal should conclude that the idea Dr Shah would repeat his dishonesty for the sake of expediency and put himself in this situation again, is a vanishing one.
14. Mr Brassington submitted that it was conceded that Dr Shah's misconduct must be marked and that the public interest requires there to be finding of impairment.

The Relevant Legal Principles

15. The Tribunal and parties accepted the advice of the Legally Qualified Chair. 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.
16. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts found proved amounted to misconduct, and then whether that misconduct could lead to a finding of impairment.

17. The Tribunal must determine whether Dr Shah’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 the level of Dr Shah’s insight and whether the matters are remediable, have been remedied and any likelihood of repetition.

The Tribunal’s Determination on Impairment

Misconduct

18. The Tribunal first considered whether the facts found proved amounted to misconduct.
19. In regard to paragraph 2 of the Allegation, the Tribunal considered that Dr Shah’s conduct did amount to a breach of paragraph 36 of GMP. It considered that entering the Practice Manager’s office when she was not there and then making the entries on the Holiday Form, contrary to the proper procedure for requesting annual leave, demonstrated a lack of respect for her. Whilst disrespectful, the Tribunal considered whether in all the circumstances as set out earlier in this determination, Dr Shah’s conduct fell so far short of the standard expected of him that it would be considered deplorable by fellow practitioners. Having done so, it concluded that it would not. Accordingly, the Tribunal determined that Dr Shah’s conduct in respect of paragraph 2 of the Allegation did not amount to misconduct.
20. The Tribunal went on to consider Dr Shah’s dishonesty which was repeated, and which spanned a period of 10 months. It considered that Dr Shah’s conduct breached the following paragraphs of GMP:

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.

21. In respect of paragraphs 8, 9 and 10 of the Allegation, the Tribunal also considered that Dr Shah’s conduct breached paragraph 77 of GMP which states:

77. You must be honest in financial and commercial dealings with patients, employers, insurers and other organisations or individuals.

22. The Tribunal determined that Dr Shah's dishonesty breached a fundamental tenet of, and undermined confidence in, the profession. His failings in respect of paragraph 4 of the Allegation had the potential to put patients at risk of harm, as he had not corrected the false impression that he had undertaken all necessary training. The Tribunal concluded that fellow practitioners would consider his conduct to be deplorable and therefore found that Dr Shah's dishonest behaviour amounted to misconduct.

Impairment

23. The Tribunal then went on to consider whether Dr Shah's fitness to practise is impaired by reason of his misconduct.
24. The Tribunal considered whether Dr Shah's misconduct is remediable. It acknowledged that dishonesty is difficult but not impossible to remediate. In determining whether Dr Shah remediated his dishonest behaviour, the Tribunal carefully considered the evidence of remediation. It bore in mind that in order to remediate, a doctor must have insight.
25. The Tribunal had regard to Dr Shah's witness statement and his reflective statements provided at this stage of the hearing. In particular, it noted the following extracts from his witness statement:

'...I have reflected deeply and at length on my actions and realise how unprofessional and unethical they were. I believe that when submitting the inappropriate claims and in my subsequent denials of dishonesty I sought to minimise my actions; it has been a journey of self critical reflection and remediation for me to fully acknowledge that what I did was dishonest. I am mortified that I conducted myself in that way and want to reassure the MPTS and the GMC that I will never repeat my mistakes. I am passionate about being a doctor and I am thrilled I am now qualified as a GP, which is what I have been working diligently toward for a long time.

...I recognise that my actions will have damaged the trust and confidence that my employers place in me as a doctor. I also recognise that my actions are likely to have diminished the wider public trust and confidence in the medical profession and I wholeheartedly regret causing such damage to a profession to which I have committed my working life and in which I have been proud to play a part...'

26. The Tribunal considered that Dr Shah has demonstrated significant insight into his misconduct and the effect that dishonesty has on public confidence in the medical profession. It considered that he has expressed genuine remorse and regret for his actions.
27. The Tribunal noted that there has been no repetition of his misconduct. Dr Shah is currently performing well in his current role, as reflected in the multi-source feedback and patient feedback forms. The Tribunal was also assured by the evidence of Dr F who spoke of the supportive collegiate environment in which Dr Shah currently works. Dr F confirmed that Dr Shah had been candid in his interview about the dishonesty allegations he was facing. He also confirmed that he had no concerns about his honesty and integrity. Dr E also stated in her oral evidence that she was aware of the full extent of the allegations against Dr Shah and confirmed that in her dealings with him she had no reason to doubt his honesty.
28. The Tribunal noted that Dr Shah is now working in a materially different environment to that in which he found himself in at the time of his misconduct. It was also satisfied that he has taken appropriate steps to help manage similar situations should they arise in the future; for example, he is practising mindfulness and meditation and XXX. Importantly, he has not acted dishonestly since the incidents in question. Taking everything into consideration, the Tribunal was satisfied that Dr Shah has remediated his failings to the extent that it concluded that it was highly unlikely that his misconduct would be repeated.
29. However, the Tribunal considered that whilst Dr Shah has remediated his misconduct, the nature of the misconduct is so serious that public confidence in the profession would be undermined if a finding of impairment were not made given the nature and extent of his dishonesty. The Tribunal therefore determined that Dr Shah's fitness to practise is impaired by reason of misconduct. Such a finding is necessary in order 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 - 08/01/2021

1. Having determined that Dr Shah'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

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

Submissions

GMC submissions

3. On behalf of the GMC, Ms Fordham submitted that the appropriate and proportionate sanction in Dr Shah's case was one of suspension.
4. Ms Fordham reminded the Tribunal of the reasons for imposing sanctions and submitted that the second two limbs of the overarching objective are relevant to Dr Shah's case, namely, the need to promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for the member of the profession.
5. Ms Fordham submitted that, ordinarily, cases involving persistent dishonesty, where there have been attempts to cover up the dishonesty, lead to the sanction of erasure. However, she submitted that applying the principle of proportionality, suspension is the appropriate sanction to impose.
6. Throughout her submissions, Ms Fordham referred the Tribunal to various paragraphs of the Sanctions Guidance (November 2020 edition) (SG). She submitted that, with reference to the SG, this was not a case in which conditions would be appropriate. She submitted that Dr Shah's misconduct did not occur in a clinical setting and therefore could not be addressed by conditions. Moreover, it would not be sufficient to uphold public confidence in the profession, given Dr Shah's dishonesty.
7. Ms Fordham drew the Tribunal's attention to paragraphs 91 and 92 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 unbecoming 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).

8. Ms Fordham submitted that paragraph 92 of the SG neatly encapsulates Dr Shah’s case. In submitting that suspension was the appropriate sanction to impose, Ms Fordham stated that the GMC had taken into account the mitigating factors in this case. She submitted that Dr Shah has shown significant insight and remorse for his conduct. She also noted the positive testimonials and the Tribunal’s finding that he had remediated his misconduct.
9. Ms Fordham XXX that little weight should be given to his personal circumstances at the material time.
10. Ms Fordham identified the serious breaches of GMP as aggravating factors in this case. However, given the mitigating factors and the early stage of Dr Shah’s career, she submitted that complete removal from the medical register would not be in the public interest. Nevertheless, any sanction less than suspension would be insufficient to protect public confidence in the profession.

Submissions on behalf of Dr Shah

11. On behalf of Dr Shah, Mr Brassington accepted that it is appropriate and proportionate for Dr Shah’s registration to be suspended.
12. Mr Brassington reminded the Tribunal that sanctions are imposed not to punish or discipline a registrant, but to uphold the overarching objective. Further, he submitted that the Tribunal is required to act proportionately, balancing the public interest with Dr Shah’s interests.
13. Mr Brassington submitted that the public interest is a ‘two-way street’. He acknowledged that a sanction is required to mark the seriousness of Dr Shah’s misconduct. However, he submitted that the public interest also requires that the public is not deprived

unnecessarily of the skills of a useful and otherwise competent doctor. This was more so given the current pandemic and the fact that the NHS now needs every single competent clinician to deal with the overwhelming problems and vaccination programme resulting from the current pandemic.

14. Mr Brassington submitted that nearly all the mitigating factors as listed in the SG are present in Dr Shah's case. He submitted that Dr Shah clearly has insight, has admitted all the relevant charges, and has apologised and remediated his failings. Mr Brassington noted the GMC's submission that less weight in terms of mitigation should be attached to Dr Shah's personal and professional circumstances at the time. He submitted that this background was provided to give context to his current and more stable circumstances. He submitted that there has been no repeat of the misconduct and that Dr Shah has flourished in his new environment, to the benefit of patients.
15. Mr Brassington submitted that Dr Shah's dishonesty was serious, but not the most grave acts of dishonesty. He submitted that Dr Shah was a young doctor at the start of his career and made terrible errors of judgement which he will regret for the remainder of his career. He invited the Tribunal, for the benefit of the public, to impose the minimum period of suspension possible.

The Tribunal's approach

16. The decision as to the appropriate sanction to impose, if any, is a matter for the Tribunal exercising its own judgement.
17. In reaching its decision, the Tribunal has taken account of the SG and the overarching objective. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Shah's interests with the public interest. The Tribunal also bore in mind that the purpose of sanctions is not to punish a doctor but to protect patients and the wider public interest, although the sanction may have a punitive effect.
18. The Tribunal has already given detailed determinations on facts and impairment and has taken those matters into account during its deliberations on sanction.

The Tribunal's Determination on Sanction

Aggravating and Mitigating Factors

19. The Tribunal first considered the aggravating and mitigating factors in Dr Shah’s case.

20. The Tribunal considered the nature and extent of Dr Shah’s dishonesty to be an aggravating factor. It was repeated over a period of 10 months and he dishonestly attempted to conceal it.

21. The Tribunal identified the following mitigating factors:

- the early stage of Dr Shah’s career;
- his significant insight into his misconduct;
- his expression of regret and remorse;
- the full admissions he made to all the matters relevant to the sanction stage;
- Dr Shah has fully remediated his misconduct;
- the lapse of time since the conduct occurred;
- there has been no repetition of the misconduct;
- the positive testimonials in support of Dr Shah;
- Dr Shah’s personal circumstances at the time of the event XXX

22. In considering the testimonials in support of Dr Shah, the Tribunal noted, in particular the following supporting comments:

‘I can say from direct personal experience that Dr Shah is an extremely dedicated and hardworking GP. When he locumed for my practice, he displayed good medical knowledge and good teamworking. I never had occasion to doubt his honesty and integrity...

He has learnt from his error and is now a different doctor...’ - Dr G, GP Partner and locum GP

‘...The medical profession is a better place for having Dr Shah and I have no concern with his character; his practice clinically or his behaviour professionally as he is an exemplary example of a GP who I am grateful for having worked alongside these past 18 months.’ - Ms H, Care Homes Assessment Team Operational and Clinical Lead

No action

23. In coming to its decision as to the appropriate sanction, the Tribunal first considered whether to conclude the case by taking no action. The Tribunal reminded itself that there

should be exceptional circumstances to justify taking no action where a finding of impairment has been made.

24. The Tribunal considered that there were no exceptional circumstances to justify taking no action in this case. It determined that, given the serious nature of the Tribunal’s findings on impairment, it would neither be sufficient, proportionate nor in the public interest, to conclude this case by taking no action.

Conditions

25. The Tribunal then considered whether it would be sufficient to impose conditions on Dr Shah’s registration. The Tribunal had regard to paragraphs 80 and 81 of the SG, noting the circumstances when conditions might appropriately be imposed. The Tribunal has reminded itself that Dr Shah’s fitness to practise was found to be impaired on public interest grounds alone and that it had concluded that he was highly unlikely to repeat his misconduct. The Tribunal therefore considered that imposing conditions was neither a relevant nor appropriate sanction to impose in the circumstances.

Suspension

26. The Tribunal then went on to consider whether imposing a period of suspension on Dr Shah’s registration would be appropriate and proportionate.
27. The Tribunal accepted the submission by Ms Fordham that paragraphs 91 and 92 of the SG are engaged in this case. It also considered the following paragraphs of the SG to be relevant:

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 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.

...

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.

28. The Tribunal was satisfied that a period of suspension was the appropriate and proportionate sanction and would sufficiently mark Dr Shah's misconduct. Given the mitigating factors already identified and the factors listed at 97a,e,f and g of the SG, erasure would be disproportionate and deprive the public of an otherwise useful and competent doctor.

29. The Tribunal then considered the appropriate period of suspension. In so doing, it took account of the nature of Dr Shah's dishonesty and the need to demonstrate clearly to him, the profession and the public that such behaviour is unacceptable. The Tribunal also had regard to the 'Guidance for decision makers on requests to relax or revoke sanctions or IOT orders in response to Covid-19.' In particular, it noted paragraph 14 iv of this guidance which states:

14. When a request is received from a doctor to relax or revoke a sanction or an interim order on their registration as a result of Covid-19, decisions makers will weigh the following factors when considering the request:

iv. Sanctions or interim orders that relate to solely to public confidence concerns compared to patient safety concerns.

30. Taking all matters into consideration, the Tribunal determined that a period of three months suspension was appropriate and proportionate.

31. The Tribunal considered whether to direct a review in this case. It had regard to the significant remediation already completed by Dr Shah and his high level of insight. There are no patient safety concerns and his skills and knowledge will not deteriorate in such a period. The Tribunal considered, therefore, that a review hearing would serve no useful purpose.
32. The Tribunal determined that a period of three months suspension would be sufficient to promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for the member of the profession.

The effect of this direction is that, unless Dr Shah exercises his right of appeal, his name will be suspended from the Medical Register for a period of three months with effect from 28 days from when written notice of this determination has been served upon him.

Determination on Immediate Order - 08/01/2021

1. Having determined to impose a period of suspension on Dr Shah's registration, the Tribunal has now considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Shah's registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Ms Fordham submitted that given there are no clinical concerns in this case, the GMC does not seek an immediate order of suspension. Mr Brassington made no submissions.

The Tribunal's Determination

3. The Tribunal had regard to the SG. It considered that given there are no clinical concerns in this case, an immediate order of suspension is neither necessary to protect the public nor is it necessary to protect the public interest nor in Dr Shah's interests.
4. This means that Dr Shah's registration will be suspended 28 days from today unless he lodges an appeal. If Dr Shah does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

5. That concludes the case.

Confirmed

Date 08 January 2021

Mr Julian Weinberg, Chair

ANNEX A – 04/01/2021

Application for the entirety of the hearing to be held in private

1. At the outset of the hearing, Ms Fordham made an application in accordance with Rule 41 of the Rules, for the hearing to be held entirely in private. XXX
2. Mr Brassington agreed with Ms Fordham’s submission. XXX

The Tribunal’s decision

3. The Tribunal carefully considered the application and determined that it was neither necessary nor appropriate for the entirety of the hearing to be held in private.
4. The Tribunal bore in mind the nature of the Allegation which pertains to misconduct and includes allegations of dishonesty. It considered that there was a public interest in holding the hearing in public and although it is unlikely for a member of the public to attend the hearing given the current circumstances relating to the ongoing pandemic, the principle that the hearing is held in public, where possible, remains valid and should be upheld.
5. The Tribunal determined, however, that given XXX, it was appropriate for those parts of the hearing to be held in private. It also determined that the entirety of Dr Shah’s evidence be held in private session as it was likely to refer to XXX throughout. The Tribunal was satisfied the hearing could be managed appropriately in that way and that it was not necessary for the entirety of the hearing to be held in private.

ANNEX B – 04/01/2021

Application to amend the Allegation

1. Ms Fordham made an application to amend various paragraphs to the Allegation in accordance with Rule 17(6) of the Rules.
2. Ms Fordham submitted that the dates outlined in Schedule 1 of the Allegation should be amended to reflect the dates given on the Holiday Form in the documentary evidence.

She later added that the term ‘dates’ in paragraph 1 of the Allegation, should be amended to ‘periods’.

3. In regard to paragraph 3 of the Allegation, Ms Fordham submitted that the word ‘had’ should be replaced with ‘then’ and, in regard to paragraph 4, she submitted that it should be amended to read that:

‘Having left the Session, you:

a) knew thereafter that the Register held an inaccurate record of your attendance;

b) failed to take steps to correct the record of your attendance’

4. Ms Fordham also submitted that paragraph 10 of the Allegation should be amended, specifically that the word ‘inappropriate’ should be inserted before ‘claims for expenses’.
5. Ms Fordham submitted that the proposed amendments were simple clarifications which would better reflect the evidence and cause no injustice to Dr Shah.
6. Mr Brassington did not oppose the proposed amendments made by Ms Fordham and agreed that they could be made without injustice to Dr Shah.
7. The Tribunal also invited parties to consider the wording of paragraph 12 and 13 of the Allegation. After taking instructions, Ms Fordham submitted that paragraph 13 of the Allegation should be withdrawn and paragraph 12 amended to:

‘Your actions/omissions as described in paragraphs 1, ~~3~~, 4b, 6, 8 and 10 ~~and~~ were dishonest by reason of paragraphs 2, 4a, 7, 9 and 11, respectively.

8. Mr Brassington did not oppose this further proposed amendment.

The Tribunal’s decision

9. The Tribunal had regard to Rule 17(6) which states:

“17(6) Where, at any time, it appears to the Medical Practitioners Tribunal that—

(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and

(b) the amendment can be made without injustice, it may, after hearing the parties, amend the allegation in appropriate terms.”

10. The Tribunal accepted the submissions made by Ms Fordham and noted that Mr Brassington did not oppose the application.

11. The Tribunal was satisfied that the amendments could be made without injustice and determined to accede to the application and amend the Allegation as proposed by Ms Fordham.

Schedule 1

~~Monday 12 February 2018~~

~~Wednesday 14 February 2018~~

Mon, Tues 1/2 day, Wed-Fri 19/2/18

Mon, Tues 1/2 day, Wed-Fri 12/2/18

Amended under Rule 17(6)

Schedule 2

21 November 2017

23 January 2018

30 January 2018

6 February 2018

6 March 2018

3 July 2018

Schedule 3

14 September 2017

Return Journey from:

Maples Health Centre to Barnet General Hospital

Barnet General Hospital to Maples Health Centre

5 October 2017

Return Journey from:

Maples Health Centre to XXX

XXX to Maples Health Centre

12 October 2017

Return Journey from:

Maples Health Centre to XXX

XXX to Maples Health Centre

13 October 2017

Return Journey from:

Maples Health Centre to Barnet General Hospital
Barnet General Hospital to Maples Health Centre