

Dates: 06/12/2018 - 07/12/2018
& 21/12/2018

Dr Sajid PERVEZ

Medical Practitioner's name:

GMC reference number:

6035980

Primary medical qualification:

MB BS 1992 Bhagalpur University

Type of case

Review - Misconduct

Outcome on impairment

Impaired

Summary of outcome

Conditions, 24 months.
Review hearing directed

Legally Qualified Chair	Mr Stephen Mooney
Lay Tribunal Member:	Mrs Lucy Reid
Medical Tribunal Member:	Dr Vivek Sen

Tribunal Clerk:	Miss Jan Smith
-----------------	----------------

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Simon Cridland, Counsel, instructed by Ryan Solicitors.
GMC Representative:	Mr Alan Taylor, Counsel

Record of Determinations – Medical Practitioners Tribunal

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.

Determination on Impairment - 07/12/2018

Background

1. This Tribunal does not intend to rehearse the full factual background to Dr Pervez's case, as this is set out in previous determinations, which are a matter of record. Dr Pervez's case was first considered by a Tribunal which concluded in March 2017 (March 2017 Tribunal). At the time of the events in question Dr Pervez was a GP trainee at the Hollies Medical Centre in Tamworth.

2. Patient A had a history of urinary incontinence and vaginal bleeding. Patient A had undergone a gynaecological procedure six weeks prior to her consultation with Dr Pervez on 4 October 2012. Patient A had been advised by the hospital that if she experienced any problems after the procedure then she should see her GP who would refer her back to the hospital. Patient A consulted with Dr Pervez on 4 October 2012 after she had experienced vaginal bleeding and abdominal pain. During that consultation, Dr Pervez recorded in Patient A's medical notes that she was no longer suffering from vaginal bleeding and that she was 'not keen for any medication or examination', which was at odds with Patient A's version of events. Following this consultation Dr Pervez took advice from Dr B, Patient A's usual GP. He telephoned Patient A, who returned for another consultation on 5 October 2012. He recorded in Patient A's notes '*Not willing to be examined*'. During that consultation Dr Pervez told Patient A that he had been advised by Dr B that he should not refer Patient A to the hospital.

3. The March 2017 Tribunal found that by informing Patient A that Dr B had told Dr Pervez not to refer her to hospital, he had behaved dishonestly and his actions amounted to serious misconduct. It found that not only did Dr Pervez's dishonest conduct bring the profession into disrepute, it also had the potential to damage the reputation of Dr B. The March 2017 Tribunal found that entering incorrect and misleading information in Patient A's medical records was not only dishonest but had the potential to cause Patient A harm. The Tribunal considered that Dr Pervez's dishonesty in relation to Patient A departed from key principles in Good Medical Practice ('GMP') relating to probity and was a serious departure from the standards expected of a registered medical practitioner.

4. The March 2017 Tribunal found that Dr Pervez's fitness to practise was impaired by reason of his misconduct. It noted that whilst he had apologised to Patient A during the Tribunal proceedings, it had no evidence of an apology to

Record of Determinations – Medical Practitioners Tribunal

Dr B. The March 2017 Tribunal determined that it would be appropriate and proportionate to suspend Dr Pervez's registration for a period of six months. It was of the view that this would mark the gravity of his misconduct and send a message to him and the profession that such behaviour was unacceptable. The March 2017 Tribunal also considered that six months suspension would give Dr Pervez the opportunity to reflect fully on his misconduct and develop full insight.

5. The March 2017 Tribunal considered that a future Tribunal reviewing Dr Pervez's case may be assisted by the following:

- a reflective statement demonstrating that he had fully reflected on his misconduct and its consequences on Patient A, Dr B, himself and the profession
- evidence of continuing professional development
- evidence of any courses he had completed in relation to his misconduct including those directed at dishonesty, good communication with patients and colleagues and record keeping
- any other evidence that he felt would assist the Tribunal.

September / December 2017 Review

6. A Tribunal convened in September 2017 to review the case of Dr Pervez. It heard evidence from Dr Pervez, as well as submissions from Counsel on behalf of the GMC and Counsel on behalf of Dr Pervez.

7. That Tribunal noted that, whilst English was not Dr Pervez's first language, his comprehension of questions put to him was not inhibited. During his evidence, the Tribunal found that Dr Pervez did not always answer questions in a direct manner and there appeared to be a difference between his oral evidence and his reflective statement in relation to dishonesty. That Tribunal concluded that Dr Pervez's acceptance of his dishonesty remained incomplete.

8. The September 2017 Tribunal was of the view that Dr Pervez's attempts to keep his medical knowledge and skills up to date was inadequate and superficial in terms of the limited time given to this and the lack of depth of the material.

9. The September 2017 Tribunal determined that Dr Pervez had not fully addressed or appreciated the gravity of his misconduct. As a result, it was not persuaded that Dr Pervez had gained insight into the effects that the matters contained within the allegations had had on the individuals who were affected by his misconduct.

Record of Determinations – Medical Practitioners Tribunal

10. The September 2017 Tribunal then adjourned, part heard, and agreed to reconvene on 22 December 2017 to consider the issue of sanction.

11. The December 2017 Tribunal's opinion was that Dr Pervez had developed a low level of insight into his dishonesty and it considered his explanation for that dishonesty to be lacking. Further, it noted that the undated reflective statement Dr Pervez had submitted was insubstantial and it took the view that Dr Pervez's lack of preparation of such an important document demonstrated a lack of appreciation of the gravity of his misconduct.

12. The December 2017 Tribunal accepted that Dr Pervez had apologised to Dr B but had not been presented with any evidence to indicate that he had made written apologies to either Dr B or to Patient A.

13. The December 2017 Tribunal noted that, since the March 2017 hearing, Dr Pervez had completed only a small amount of Continued Professional Development (CPD) which consisted of a brief list of courses undertaken with little evidence of reflection. It noted, in particular, that Dr Pervez had not undertaken any CPD activities which addressed directly the concerns of the initial Tribunal nor had he selected courses which were specifically relevant to remediation. Further the December 2017 Tribunal was concerned that no CPD activities had been undertaken since it last convened in September 2017.

14. The December 2017 Tribunal had taken into account that Dr Pervez's dishonest behaviour was an isolated incident in a long and unblemished career which occurred several years ago. It considered whether to impose conditions on Dr Pervez's registration. That Tribunal took into account that the longer that Dr Pervez was out of clinical practice, the greater the risk of him becoming de-skilled. It also considered whether the public interest could be best served by allowing him to return to practice in order to remediate and to serve the public.

15. The December 2017 Tribunal noted that Dr Pervez had not undertaken any courses to remediate his dishonesty or his communication skills. It was of the opinion that Dr Pervez had taken insufficient steps to demonstrate remediation. That Tribunal concluded that, in light of its finding on impairment and the limited evidence of insight or remediation, conditions would be neither an appropriate nor a proportionate response. In those circumstances, the December 2017 Tribunal determined to impose a further period of 5 months suspension on Dr Pervez's registration to allow him sufficient time to address the issues raised by previous Tribunals, including the steps he has taken to develop further his insight and to remediate his behaviour.

Record of Determinations – Medical Practitioners Tribunal

May / June 2018 Review

16. The case of Dr Pervez was again reviewed on 31 May and 1 June 2018. At that hearing the Tribunal was provided with further documentary evidence, including short letters of apology to Patient A and to Dr B.

17. Dr Pervez had not provided the June 2018 Tribunal with a statement demonstrating that he had fully reflected on his misconduct and its consequences on Patient A, Dr B and the profession. The Tribunal considered that Dr Pervez's letter of apology to Dr B did not reflect what happened nor did it demonstrate an awareness of the effect that the actions that led to his misconduct had on Dr B's professional reputation. Equally Dr Pervez's letter of apology to Patient A did not reflect the seriousness of his misconduct and the potential effect it might have had on her health. The Tribunal considered Dr Pervez's letters of apology to be wholly inadequate and did not demonstrate that he had reflected on his misconduct or gained any further insight.

18. The June 2018 Tribunal noted that since the review hearing in September 2017 the only evidence of CPD that Dr Pervez had provided was his attendance on a Physicians General Update course on 15 May 2018. However, Dr Pervez did not provide the Tribunal with any details of what the course consisted of or whether it addressed the concerns relating to communication, record keeping and probity.

19. Whilst the Tribunal was mindful that Dr Pervez did not need to admit dishonesty in order to demonstrate insight, it considered that it was essential that he recognised the gravity of his misconduct. The Tribunal considered that he had demonstrated no more appreciation of the gravity of his misconduct than at his review hearing in September 2017. It concluded that Dr Pervez had not developed full insight into his misconduct and that, until he did so, it would not be possible to remediate that misconduct.

20. In those circumstances, the June 2018 Tribunal determined that Dr Pervez's fitness to practise remained impaired by reason of misconduct, and decided to impose a further period of suspension of 6 months.

Today's Review

21. This Tribunal has met to review Dr Pervez's case. It has considered, under Rule 22(1)(f) of the Rules, whether his fitness to practise is currently impaired by reason of his misconduct.

Record of Determinations – Medical Practitioners Tribunal

Evidence

22. The Tribunal has had regard to the oral evidence of Dr Pervez as well as all the documentary evidence provided today. It has taken into account the submissions made by Mr Taylor, on behalf of the GMC, and those made by Mr Cridland on behalf of Dr Pervez.

Documentary Evidence

23. Mr Cridland submitted documentation on behalf of Dr Pervez, including:

- A reflective statement, dated 14 November 2018
- A letter of apology to Patient A, dated 14 November 2018
- A letter of apology to B, dated 14 November 2018
- Certificates of attendance at relevant courses
- Details of courses booked and yet to be attended
- Details of independent reading of a number of medical conditions
- A personal development plan
- A testimonial letter from Dr C, dated 15 November 2018

Evidence of Dr Pervez

24. In his oral evidence, Dr Pervez told the Tribunal that it had been heart-breaking to have been found guilty of dishonesty and serious misconduct by the GMC. He accepted that it reflected badly on himself and on the profession in general. He said that he was ashamed and embarrassed by the events of 2012. Dr Pervez said that he understood the need to make an honest appraisal of a patient's condition. He said that, in the future, he would seek help if required.

25. Dr Pervez said that he loved medicine and was desperate to return to clinical practice. He appreciated that he has not practised for 21 months whilst his registration has been suspended and he told the Tribunal that, if he was allowed to return to practise, his intention was not to work in General Practice. Dr Pervez said that he intended to work in geriatric medicine and that he has paid to undertake a Postgraduate Diploma in Diabetes, a condition prevalent among geriatric patients, which commences on 4 March 2019.

26. When asked about his Personal Development Plan (PDP) Dr Pervez said that he had not sought to undertake any more courses in record keeping because there were not many available and he had completed such a course previously. He referred to the certificates he had provided to this Tribunal which demonstrate that he had undertaken courses in effective communication in June and November 2018. Dr Pervez also provided details of the course in Maintaining Professional Ethics which he has booked and which will take place on 10 – 12 December 2018.

Record of Determinations – Medical Practitioners Tribunal

27. Dr Pervez told the Tribunal that he had sought to undertake clinical observations and had approached two doctors who he had worked with previously and who he thought may be willing to assist him. Dr Pervez reported that one of these doctors went on leave and was unavailable and the other doctor did not respond to his text message.

28. Dr Pervez said that he had been suspended for 21 months and therefore had not been paid a salary. He told the Tribunal that he had lived on his savings for the first 6 months and had taken out a loan for the second 6 months. Dr Pervez had returned to India after the birth of his second child, due to illness in the family. He admitted that he was severely in debt and that financial hardship had inhibited his ability to pay for a lot of courses. However, Dr Pervez maintained that he has made every effort to sign up to as many courses as he could afford in order to assist with a future return to clinical practice.

29. Dr Pervez accepted that he had made a mistake in 2012 but he did not accept that he had behaved dishonestly.

GMC Submissions

30. Mr Taylor submitted, on behalf of the GMC, that Dr Pervez's fitness to practise remains impaired by reason of his misconduct. He submitted that it is a matter for the Tribunal to determine. He reminded the Tribunal of the statutory overarching objective and submitted that the question of impairment needs to take this into account.

31. Mr Taylor submitted that the essence of this case is that it has not moved any further forward since the last Tribunal hearing in June 2018. He reminded the Tribunal that the burden is on the doctor to demonstrate that all identified concerns have been adequately addressed and that remediation has taken place.

32. Mr Taylor reminded the Tribunal that this is the third review hearing at which Dr Pervez has appeared before his professional regulator and that he has been repeatedly directed towards what is required to demonstrate that he has developed insight and has remediated his misconduct. He submitted that Dr Pervez does not appreciate fully the gravity of his misconduct. Mr Taylor said that he understood that Dr Pervez does not have to accept that he behaved dishonestly but it is essential that he recognises the gravity of his misconduct.

33. Mr Taylor referred to the recommendations of the June 2018 Tribunal and the material it expected Dr Pervez to provide to this Tribunal. He submitted that Dr Pervez has provided a reflective statement, albeit it is very short and is only dated 14 November 2018, a short time before the commencement of this hearing. It was Mr Taylor's contention that Dr Pervez had not demonstrated any genuine understanding of his misconduct in this "eleventh hour" statement. He referred to

Record of Determinations – Medical Practitioners Tribunal

paragraphs 35, 36 and 50 of the case of *Yussuf v General Medical Council [2018] EWHC 13 (Admin)* in this regard. In particular, paragraph 50 states:

"... No doubt, (a doctor) can assist the process by being clear and direct as to his position. If the reality is that he maintains his denials, expressions of remorse and shame are unlikely to be viewed as genuine evidence of insight and remediation."

34. Mr Taylor also referred to the letters of apology to Patient A and to Dr B and submitted that they were very short, inadequate in content and also dated 14 November 2018. He submitted that the statement and letters were produced "at the last minute" and do not demonstrate a development of insight and, thus, remediation. Mr Taylor also submitted that the courses that Dr Pervez had attended were inadequate, insufficient and also very "last minute".

35. Mr Taylor submitted that, in all these circumstances, Dr Pervez's fitness to practise remains impaired by reason of his misconduct.

Submissions on behalf of Dr Pervez

36. Mr Cridland, on Dr Pervez's behalf, made three key points as follows:

- a. The Tribunal should accept that the evidence before it, both oral and documentary, is a watershed in this case. He said that the material provided at this hearing is of a different character to that presented to previous Tribunals.
- b. Dr Pervez has accepted that, having been suspended from the Medical Register for 21 months, he would not be allowed to return to unrestricted practice and understands that he would have to be under supervision.
- c. The development of insight is not a "binary concept" and that, having regard to the steps which Dr Pervez has taken, this Tribunal could conclude that he is developing his insight. The development of insight is a continuing process which occurs over time.

37. Mr Cridland told the Tribunal that Dr Pervez is no longer a member of the Medical Defence Union (MDU), although that organisation has covered him for the purposes of this hearing alone. Therefore, Dr Pervez does not have access to the online learning modules which are available to members.

38. Mr Cridland accepted that the burden lies with Dr Pervez to demonstrate that his fitness to practise is no longer impaired. He reminded the Tribunal that this case relates to two instances of dishonesty during one consultation which took place some 6 years ago. He submitted that, if Dr Pervez's fitness remains impaired, it will become increasingly difficult for him to provide what is required.

Record of Determinations – Medical Practitioners Tribunal

39. Mr Cridland referred to the second letters of apology to Patient A and to Dr B which were written in the light of the criticism of the previous Tribunal and to the reflective statement he has provided to the Tribunal. He submitted that Dr Pervez has attended today to give evidence to this Tribunal. Mr Cridland submitted that the Tribunal should take these matters into account when making its assessment of the development of Dr Pervez's insight.

40. Mr Cridland referred to Dr Pervez's denial of dishonest behaviour and agreed that he does not have to accept the findings of a previous Tribunal that he had acted dishonestly and referred the Tribunal to the case of *Karwal v General Medical Council [2011] EEWHC 826 (Admin)* which states at paragraph 11:

"... The FTTP was scrupulous to make clear that it did not see acceptance of culpability as a condition precedent for insight. The GMC's position seems to me sound and unassailable on this point. As the Indicative Sanctions Guidance makes clear, at a review hearing a Panel will "need to satisfy itself that the doctor has fully appreciated the gravity of the offence."

41. Mr Cridland submitted that Dr Pervez's insight is developing and that the doctor has undertaken a programme of personal development in order to demonstrate his insight and remediation. He referred to all the Continuing Professional Development activity which has been undertaken by Dr Pervez and the courses he has already completed as well as those he has booked and is due to attend shortly.

42. Mr Cridland said that Dr Pervez accepts that his fitness is currently impaired but urged the Tribunal to examine the evidence before it and to make an assessment of the degree of insight currently demonstrated by Dr Pervez.

The Tribunal's Decision

43. The Tribunal is aware of its statutory over-arching objective which is 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 the medical profession.

44. The Tribunal has borne in mind that, in a review case, the persuasive burden falls upon the doctor to demonstrate that all the concerns which have been identified have been adequately addressed, and that remediation has taken place. If so, a Tribunal might then conclude that the doctor's fitness to practise is no longer impaired.

45. The Tribunal has found that Dr Pervez does not quite understand how the consultation with Patient A went so wrong and that he should have approached a senior colleague for the appropriate advice. However, it accepts that the events in question related to one consultation which occurred 6 years ago. The Tribunal has

Record of Determinations – Medical Practitioners Tribunal

also borne in mind that Dr Pervez has continued to engage and co-operate with his professional regulator.

46. The Tribunal has considered Dr Pervez's reflective statement which refers to him seeking to specialise in geriatric medicine and it acknowledges that he has managed to enrol in a post graduate diploma course to assist him in that specialty, a significantly expensive course. The Tribunal has had regard to all the evidence that Dr Pervez has provided in relation to keeping his medical knowledge and skills up to date, including all the CPD certificates and evidence of attendance on courses. It has noted the course on ethics that Dr Pervez is due to attend in the near future.

47. The Tribunal is of the view that Dr Pervez's insight is developing, although perhaps not to the level that this Tribunal would have expected. However it accepts that Dr Pervez has made progress since the last review hearing in June 2018. It considers that his latest reflective statement is more detailed and he has made more effort to complete relevant courses.

48. The Tribunal considers that Dr Pervez's fitness to practise remains impaired but is of the view that he is in a better position than he was 6 months ago and that he has moved on since his last review. In particular, the Tribunal received oral evidence and a reflective statement from Dr Pervez. Therefore, this Tribunal has been able to gain a broader view than the previous Tribunal.

49. Notwithstanding all of the above, the Tribunal has determined that a finding of impairment of fitness to practise is necessary for the protection of patients and in the wider public interest. It found that for a finding of impairment not to be made, Dr Pervez was required to have demonstrated full insight and remediation.

50. The Tribunal has therefore determined that Dr Pervez's fitness to practise remains impaired by reason of his misconduct.

Determination on Sanction - 21/12/2018

1. Having determined that Dr Pervez'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 all the evidence received during the earlier stage of the hearing where relevant to reaching a decision on sanction.

3. Dr Pervez submitted further evidence which confirmed he had booked a place on a course in Maintaining Professional Ethics on 10 – 12 December 2018.

Record of Determinations – Medical Practitioners Tribunal

GMC submissions

4. On behalf of the GMC, Mr Taylor reminded the Tribunal of the statutory over-arching objective, which is:
 - a protect and promote the health, safety and wellbeing of the public
 - b promote and maintain public confidence in the medical profession
 - c promote and maintain proper professional standards and conduct for the members of the profession

Mr Taylor submitted that all three limbs of the objective are engaged in this case.

5. Mr Taylor referred the Tribunal to paragraph 17 of the *Sanctions Guidance (SG)* (February 2018) which states:

"17. ... the reputation of the profession as a whole is more important than the interests of any individual doctor."

He also referred to paragraph 164 of the *SG* which indicates that the Tribunal should consider whether the doctor has shown objective evidence of the following:

- "164**
- a. *they fully appreciate the gravity of the offence*
 - b. *they have not reoffended*
 - c. *they have maintained their skills and knowledge*
 - d. *patients will not be placed at risk by resumption of practice or by the imposition of conditional registration*

Mr Taylor accepted that Dr Pervez has provided a little more evidence at this hearing than at his previous review hearings but submitted that it was not sufficient to demonstrate that he has fully appreciated the gravity of his misconduct or that he has fully maintained his medical skills and knowledge.

6. Mr Taylor submitted that Dr Pervez's latest reflective statement on his misconduct is very brief and insufficient and does not demonstrate full development of his insight. He also referred to the courses that Dr Pervez has already completed, as well as those planned for the future. Mr Taylor submitted that the steps that Dr Pervez has taken are not sufficient to show that he has done what has been repeatedly asked of him by previous review Tribunals.

Record of Determinations – Medical Practitioners Tribunal

7. In relation to conditions, Mr Taylor submitted that in the light of Dr Pervez's insufficient evidence of insight, and therefore full remediation, it would not be possible to formulate appropriate conditions which are workable and measurable.

8. In conclusion, Mr Taylor submitted that in order to protect the public and to achieve the statutory over-arching objective, a further period of suspension is the only appropriate sanction. He stated that this would allow Dr Pervez time to develop his insight and to remediate his misconduct in full.

Submissions on behalf of Dr Pervez

9. On behalf of Dr Pervez, Mr Cridland submitted that the proportionate, fair and appropriate sanction is one of conditions.

10. Mr Cridland did not accept the GMC's position that the only appropriate sanction is a further period of suspension. He submitted that:

- a. Dr Pervez's insight is developing
- b. It is difficult for Dr Pervez to provide a Tribunal and the GMC with the material it has requested whilst his registration is suspended and that his difficulties will only increase if his registration continues to be suspended
- c. The events which led to his suspension occurred 6 years ago during one consultation
- d. Dr Pervez has now been suspended for a period of approximately 21 months

11. Mr Cridland accepted that for any doctor to return to unrestricted practice, he must be able to demonstrate full insight into his previous misconduct. However, established guidance shows that if a doctor does have insight, albeit not full insight, he could return to practise under restrictions. He referred the Tribunal to its determination on impairment at this hearing and its acknowledgement that Dr Pervez is gradually developing insight. Mr Cridland submitted that Dr Pervez's developing insight was demonstrated by his conceding impairment of his fitness to practise. It was Mr Cridland's contention that Dr Pervez's insight is developed to a sufficient degree that the current suspension should be lifted.

12. Mr Cridland submitted that Dr Pervez should be allowed to return to work under the full panoply of workplace conditions when there would be reliable evidence of his professional practice and his general conduct as a practitioner and feedback from his professional colleagues.

Record of Determinations – Medical Practitioners Tribunal

13. Mr Cridland told this Tribunal that there is no evidence of repetition and that Dr Pervez had previously practised under an interim order of conditions for 36 months and there were no concerns about his clinical practice. He reminded this Tribunal that this was an isolated incident, involving one patient, which occurred over five years ago.

14. Mr Cridland reminded the Tribunal of the CPD activities that Dr Pervez has engaged in, including his attendance at a course on Maintaining Professional Ethics in December and his enrolment in a post graduate diploma course to assist with his return to clinical practice.

15. In conclusion, Mr Cridland submitted that it is now time to lift the suspension of Dr Pervez's registration and impose appropriate, workable and measurable conditions.

The Tribunal's Approach

16. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken account of the *SG*. It has borne in mind that the purpose of sanctions is not to be punitive, although a sanction may have a punitive effect, but to protect patients and the wider public interest.

17. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Pervez's interests with the public interest. The public interest includes, amongst other things, the protection of patients, the maintenance of public confidence in the profession, and the declaring and upholding of proper standards of conduct and behaviour.

18. The Tribunal has already given a detailed determination on impairment and it has taken those matters into account during its deliberations on sanction.

Mitigating Factors

19. The Tribunal considers the following to be mitigating factors in Dr Pervez's case:

- Six years since the misconduct with no repetition
- Dr Pervez's previous good character

Aggravating Factors

20. The Tribunal considers the following to be an aggravating factor in Dr Pervez's case:

- Dr Pervez's limited insight into his misconduct

Record of Determinations – Medical Practitioners Tribunal

The Tribunal’s Decision

21. The Tribunal has had regard to paragraph 82 of the *SG* which states that conditions are likely to be workable where:

a. the doctor has insight

[...]

c. the Tribunal is satisfied the doctor will comply with them

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

The Tribunal acknowledges that Dr Pervez’s insight requires further development but considers that a further period of suspension would be counter-productive and would not assist in his gaining full insight into his misconduct. It is of the view that Dr Pervez has now reached a point where he has done enough to warrant the lifting of the suspension of his registration.

No Action

22. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Pervez’s case, the Tribunal first considered whether to conclude the case by taking no action.

23. The Tribunal has borne in mind that no doctor should be allowed to resume unrestricted practice following a period of conditional registration or suspension unless it considers that they are safe to do so.

24. The Tribunal considered that there are no exceptional circumstances in this case, particularly in light of this Tribunal’s finding that his fitness to practise remains impaired. The Tribunal therefore, concluded that it would be neither sufficient, proportionate, nor in the public interest, to conclude this case by taking no action against Dr Pervez’s registration.

Conditions

25. The Tribunal next considered whether it would be appropriate and sufficient to impose conditions on Dr Pervez’s registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

Record of Determinations – Medical Practitioners Tribunal

26. The Tribunal is of the view that Dr Pervez's insight has developed since his last review hearing. He has continued to engage with his professional regulator and he has produced a Personal Development Plan. Dr Pervez has completed CPD to assist a future return to work and has enrolled on a post graduate diploma course in diabetes.

27. The Tribunal considers that supervised practice is the most appropriate way to assist Dr Pervez in gaining full insight and, therefore, remediation. Furthermore, there is no evidence to suggest that Dr Pervez would not comply with conditions.

28. The Tribunal were concerned about the fact that Dr Pervez had been suspended for 21 months and would require direct supervision for a period of time to enable him to practise in a way that did not put the public at risk. The Tribunal decided that in order for the risk to be minimised he would need to develop a working relationship with a supervisor who could assist him. Such a relationship could not be established unless he were in a fixed term contract for a minimum of six months, given the conditions that the Tribunal has imposed. It considered that any less than this would not be sufficient to protect patients.

29. In all the circumstances, the Tribunal has concluded that an order of conditions is the appropriate and proportionate sanction to impose in Dr Pervez's case. It has determined to impose conditions on Dr Pervez's registration for a period of two years which will afford him the time and opportunity to obtain suitable employment and to work with his educational and clinical supervisors to bring his medical skills and knowledge up to date. The following conditions refer to his employment and will be published:

1. He must notify the GMC within seven calendar days of the date these conditions become effective:
 - a of the details of his current post, including his job title, job location and responsible officer (or their nominated deputy) information
 - b of the contact details of his employer and/or contracting body, including his direct line manager
 - c of any organisation where he has practising privileges and/or admitting rights
 - d of any training programmes he is in
2. He must notify the GMC:
 - a of any post he accepts, before starting it

Record of Determinations – Medical Practitioners Tribunal

- b 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
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 approved by his responsible officer (or their nominated deputy) and must inform the GMC of these arrangements.
- b He must not start/restart work until his responsible officer (or their nominated deputy) has approved his workplace reporter and this approval has been forwarded to the GMC.
5. a He must design a personal development plan (PDP), approved by his responsible officer (or their nominated deputy), with specific aims to address the deficiencies in the following areas of his practice.
- record keeping
 - communication skills
 - retraining as a junior hospital doctor
- b He must give the GMC a copy of his approved PDP within three months of these conditions becoming effective.
- c He must meet with his responsible officer (or their nominated deputy), as required, to discuss his achievements against the aims of his PDP.
6. He must have an educational supervisor approved by his responsible officer (or their nominated deputy) and must inform the GMC of these arrangements.
7. He must only work as a supervised doctor in an approved NHS hospital setting.
8. a He must be directly supervised in all of his posts by a clinical supervisor as defined in the *Glossary for undertakings and conditions*. His clinical supervisor must be approved by his responsible officer (or their nominated deputy) and he must inform the GMC of these arrangements.
- b He must not start/restart work until his responsible officer (or their nominated deputy) has approved his clinical supervisor and this approval has been forwarded to the GMC.

Record of Determinations – Medical Practitioners Tribunal

9. He must not work:
 - a. As a locum
10. He must not work in a fixed term contract of less than 6 months.
11. He must have a mentor who is approved by his responsible officer (or their nominated deputy).
12. He must inform the following persons of the conditions listed at 1 to 10:
 - a his employer and/or contracting body
 - b his responsible officer (or their nominated deputy)
 - c his immediate line manager at his place of work, at least 24 hours before starting work (for current and new posts including locum posts)
 - d any prospective employer and/or contracting body, at the time of application

30. The Tribunal determined to direct a review of Dr Pervez's case. A review hearing will convene shortly before the end of the period of conditions, unless an early review is sought.

31. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Pervez to demonstrate how he has developed his insight further and how he has remediated his misconduct. Therefore, it may assist the reviewing Tribunal if Dr Pervez provides:
 - Report(s) from his educational supervisor
 - Report(s) from his clinical supervisor
 - Report(s) from his workplace reporter
 - Evidence of any courses or personal development Dr Pervez has completed in relation to his misconduct including those directed at dishonesty, good communication with patients and colleagues and record keeping
 - A copy of the approved personal development plan and evidence of steps taken to address the deficiencies identified
 - Any other information that Dr Pervez considers will assist the reviewing Tribunal

32. The order imposed on 7 December is revoked, along with any appeal period attached to it.

Record of Determinations – Medical Practitioners Tribunal

33. The effect of this direction is that unless Dr Pervez exercises his right of appeal, the Tribunal's decision to impose conditions on his registration will take effect 28 days from when notification is deemed to have been served upon him. Should he decide to exercise his right of appeal, the original period of suspension will remain in force until the appeal has been determined. A note explaining his right of appeal will be sent to him.

34. That concludes this case.

Confirmed

Date 21 December 2018

Mr Stephen Mooney, Chair

Record of Determinations – Medical Practitioners Tribunal

ANNEX A - 7 December 2018

Consideration of adjournment and extension of current sanction

1. The Tribunal has handed down its determination on impairment. It has also heard submissions from both Counsel on the question of sanction and started its deliberations. However, given the lateness of the hour, the Tribunal had to raise the question of adjournment. It considered that it would not have sufficient time to conclude its deliberations today.
2. As such, the Tribunal sought submissions on the question of adjourning the hearing and extending the current sanction.

Submissions

3. Mr Taylor submitted that it would be appropriate to extend the current order of suspension which will expire on 22 December 2018 and that it should be extended for a period of 2 months to allow for service of the outcome of this hearing and the 28 day mandatory appeal period.
4. Mr Cridland agreed that the order of suspension should be extended for 2 months.

Tribunal's Decision

5. The Tribunal had regard to all of the circumstances in this case and has had regard to its powers under Rule 29(2) of the Rules.
6. The Tribunal has been unable to conclude its deliberations on the question of sanction today. It was conscious that it has determined that Dr Pervez's fitness to practise remains impaired but has not yet completed its deliberations on sanction.
7. Given the lateness of the hour the Tribunal is unable to conclude today. As such, it determined to adjourn this hearing part heard.
8. The first available date on which this Tribunal can reconvene is 21 December 2018. It canvassed the availability of all parties, who were not available on that date but assured the Tribunal that suitable replacements would attend. The Tribunal noted that Dr Pervez may attend on that date, given that the intention is that the sanction determination will be handed down at that time.

Record of Determinations – Medical Practitioners Tribunal

9. The Tribunal determined to extend the current order of suspension for a period of two months, by exercising its powers under Section 35D(5)(a) of the Medical Act 1983, as amended. It determined that such an extension, whilst unfortunately required, is necessary and proportionate in the public interest in order to ensure that appropriate safeguards are in place to cover the intervening period before it can reconvene and conclude its deliberations. The Tribunal did not consider that it would be appropriate for the order of suspension to lapse in that time.

10. The Tribunal concluded that there will be adequate time on 21 December 2018 to complete this case.

11. The effect of the Tribunal's decision is that, unless Dr Pervez exercises his right of appeal, the direction will take effect 28 days from when written notice of this determination is deemed to have been served upon him. The sanction currently imposed on Dr Pervez's registration will remain in effect until the appeal period has concluded. If Dr Pervez decides to exercise his right of appeal, the sanction currently imposed on his registration will remain in effect until the outcome of the appeal has been decided.

12. The hearing is adjourned part heard until 21 December 2018, with a listing of one day. The Tribunal will resume, in camera, on that day at 9.30am. Parties are asked to attend to start at 11:30 on that day.