

## PUBLIC RECORD

Dr Ali successfully appealed decisions of this Tribunal. On 09/09/24, the High Court quashed the sanction of erasure and directed that the case be remitted to a Medical Practitioners Tribunal for re-consideration of allegation 4, impairment and what sanction, if any, to impose. Dr Ali's registration remains suspended until the conclusion of the remitted matters.

The judgment can be found [here](#).

Dates: 09/10/2023 - 31/10/2023; 26/02/2024 - 28/02/2024

Medical Practitioner's name: Dr Shah ALI

GMC reference number: 7284246

Primary medical qualification: MB BS 2013 University of East Anglia

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Impaired
Review - Conviction / Caution		Impaired

**Summary of outcome**

Erasure

**Tribunal:**

Legally Qualified Chair	Mrs Tehniat Watson
Lay Tribunal Member:	Mr Chris Weigh
Medical Tribunal Member:	Dr Jeffrey Phillips

Tribunal Clerk:	Mr Andrew Ormsby
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**Attendance and Representation:**

Medical Practitioner:	Present, not represented
GMC Representative:	Mr Ian Brook, 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 - 24/10/2023**

#### **Background**

1. Dr Ali qualified in 2013 at the University of East Anglia. He undertook his Foundation Year 1 ('FY1') at the Heart of England Foundation Trust ('HEFT').
2. On 12 December 2019 at Birmingham Crown Court, Dr Ali was convicted of dangerous driving. On 23 April 2020, Dr Ali was sentenced to nine months imprisonment suspended for 24 months, and 180 hours unpaid work. He was also disqualified from driving for 18 months.
3. Dr Ali was referred to the GMC by the police on 20 March 2019. They informed the GMC that they were investigating an allegation of dangerous driving. He also self-referred by email on 11 April 2019. On 19 December 2019, Dr Ali informed the GMC of the fact of his conviction.
4. During the Covid-19 pandemic NHS Improvement England implemented a 'Bringing Back Staff' Programme ('BBS'). Dr Ali applied to that programme to return to work as, although he was registered on the medical register, he had restrictions on his licence to practise.
5. The Allegation that has led to Dr Ali's hearing relates to an NHS England Disclosure Barring Service declaration form dated 6 June 2020 ('the Form'), which he allegedly submitted to NHS Improvement England, as part of the BBS programme.
6. It is alleged that Dr Ali stated on the Form that he was not subject to any current/new fitness to practise investigations and/or proceedings. It is also alleged that this statement was untrue, and that Dr Ali knew it was untrue as he knew that he was subject to a GMC fitness to practise investigation.

7. It is also alleged that Dr Ali confirmed his agreement to the statement/declaration that the information he had provided on the Form and in any accompanying documentation, was true to the best of his knowledge and belief, and he had signed the Form to that effect. It is further alleged that this statement was untrue which Dr Ali knew and that his conduct was dishonest.
8. Dr Ali told the Tribunal that his registration is currently suspended.
9. Dr Ali was referred to the GMC, regarding this MPT hearing, by Dr A in January 2021.

### **The Outcome of Applications Made during the Facts Stage**

10. The Tribunal refused Dr Ali's application, for the recusal of the Legally Qualified Chair (LQC) due to an alleged conflict of interest. The Tribunal's full decision on the application is included at Annex A.

11. The Tribunal part refused Dr Ali's application to amend the Allegation. The Tribunal amended the word 'application' to 'declaration' in paragraph 1(a) of the Allegation under Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). Dr Ali also stated that the GMC should have made an application to revise their draft Notice of Allegation (NOA) to the final version which the Tribunal ruled was not needed. The Tribunal's full decision on the application is included at Annex B.

12. The Tribunal refused Dr Ali's application of adverse inference under Rule 16A. He had submitted that the GMC had failed to comply with Case Management and Tribunal directions to disclose evidence and, further, that the Tribunal should draw an adverse inference from the GMC's alleged failure to comply. The Tribunal's full decision on the application is included at Annex C.

13. Further, the Tribunal refused Dr Ali's application, made at the close of the GMC's case, pursuant to Rule 17(2)(g) of the Rules. He had invited the Tribunal to determine that the GMC had adduced insufficient evidence upon which it could properly find each paragraph proved. His application was in respect of the entirety of the Allegation. The Tribunal's full decision on this application is included at Annex D.

### **The Allegation and the Doctor's Response**

14. The Allegation made against Dr Ali is as follows:

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

1. On an NHS England Disclosure Barring Service application declaration form dated 6 June 2020 ('the Form'), which you submitted to NHS Improvement England, you: Amended under Rule 17(6)
  - a. stated on the Form "I am not subject to any current/new fitness to practise investigations and/or proceedings"; **To be determined**
  - b. signed the Form to confirm your agreement to the statement "I declare that the information I have provided in this form and in any accompanying documentation, is true to the best of my knowledge and belief". **To be determined**
2. The statement you made as set out in paragraph:
  - a. 1a above included information which was untrue; **To be determined**
  - b. 1b was untrue. **To be determined**
3. At the time of your actions at paragraph 1 you knew:
  - a. you were subject to an ongoing General Medical Council fitness to practise investigation; **To be determined**
  - b. the statement you made as set out in paragraph 1a above included information which was untrue; **To be determined**
  - c. the statement as set out in paragraph 1b was untrue. **To be determined**
4. Your actions as described at:
  - a. paragraphs 1a and 2a were dishonest by reason of paragraphs 3a and 3b; **To be determined**
  - b. paragraphs 1b and 2b were dishonest by reason of paragraphs 3a and 3c. **To be determined**

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

### Witness Evidence

15. The Tribunal received oral and written evidence on behalf of the GMC from the following witnesses:

- Mr B, Investigation Officer at the GMC, who provided a witness statement dated 13 January 2022.
- Ms C, currently Deputy Director of People at Nottingham University Hospitals NHS Trust. In 2020, Ms C was Workforce Planning and Capacity Manager working for NHS Improvement England, who provided a witness statement, dated 28 September 2021, and supplemental statements dated 15 December 2021 and 18 August 2022.
- Dr A, GP and Associate Medical Director for NHS England /NHS Improvement Midlands, clinical support to the medical workforce teams working on the BBS programme as a part of the NHS response to the Covid-19 pandemic, who provided a witness statement, dated, 5 August 2021.

16. Dr Ali provided his own witness statements, undated, and also gave oral evidence at the hearing.

### Documentary Evidence

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

- Redacted MPTS Determination: 01 July 2019 – 11 July 2019;
- Email correspondence between GMC and NHSE referring Dr Ali to the GMC, 26 January 2021 onwards;
- Telephone note of call between GMC Investigation Officer and Dr Ali, dated 11 April 2019;
- Email correspondence between West Midlands Police and the GMC, dated 20 March 2019 – 26 April 2019;
- Email correspondence between Dr Ali and the GMC, various dates;
- Email correspondence between Dr Ali and Ms C, various dates;
- DBS declaration Form, dated 6 June 2020; and
- Copy of Dr Ali’s updated brief disclosure statement, undated, Spring 2020.

## Legal advice and the Tribunal's Approach

18. 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 Ali 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.

19. The LQC advised the Tribunal on the approach to take to evidence and referred to the following passage from the case of *Byrne v GMC* [2021] EWHC 2237 (Admin):

*'First, the credibility of witnesses must take account of the unreliability of memory and should be considered and tested by reference to objective facts, and in particular as shown in contemporaneous documents. Where possible, factual findings should be based on objective facts as shown by contemporaneous documents...'*

20. The LQC further advised that the Tribunal must consider all of the evidence before it before making findings as to the credibility of any witness and should not rely exclusively on a witness' demeanour when giving evidence.

21. The Tribunal was mindful that Dr Ali faces an allegation of dishonesty. It had regard to the case of *Ivey v Genting Casinos (UK) Limited (t/a Crockfords Club)* [2017] UKSC 67 which states:

*'When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'*

22. The LQC referred to the case of *Maxfield Martin v Solicitors Regulatory Authority* [2022] EWHC 307 and advised that the Tribunal should consider all aspects of Dr Ali's state of mind and give proper weight to those findings when applying the second limb of the test within the Ivey case as above. She further advised that there is no requirement that Dr Ali must appreciate that his conduct (if proved) is dishonest by the standards of ordinary decent people.

23. The LQC referred to the case of *Kefala v GMC* [2020] 2480 Admin and advised the Tribunal that, when considering dishonesty, it did not need to identify a benefit or a motive on part of Dr Ali.

24. Mr Brook had invited the Tribunal to consider the issue of propensity by reference to a previous Medical Practitioners Tribunal determination in respect of a finding of dishonesty from July 2019. The LQC directed the Tribunal to take a cautious approach in this regard. She stated that evidence of a registrant's previous disciplinary history or prior conduct is not usually adduced at the facts stage. She stated that even if evidence of a previous determination has a direct bearing on whether the individual had a propensity to act in the manner alleged, that is not relevant to proof of the particular alleged act, which in this case was alleged dishonesty on a specific occasion. The LQC had referred to the cases of *Ziderman v General Dental Council* [1976] 1 WLR 330 and *McLennan v General Medical Council* [2020] CSIH 12 in providing this advice.

25. Lastly, the LQC advised that the Tribunal should only draw an inference if it could safely exclude other possibilities, in referring to the case of *Soni v GMC* [2015] EWHC 364 Admin.

### The Tribunal's Analysis of the Evidence and Findings

26. In the Tribunal's view, Dr Ali's evidence was largely unfocused and didn't clearly address the relevant issues that the Tribunal had the task to determine. Dr Ali's approach was to make various allegations against the GMC, stating that it had acted without propriety, had been racist towards him and other BAME doctors, had acted in bad faith and was '*unfit for purpose*'. He stated '*For the GMC to have preferentially accept 'White Privileged' complaints more-so if internal, whilst reducing FTP [fitness to practise thresholds] against BAME doctors.*' Dr Ali's accusations, statements and comments on such matters were not confined to the current allegations but encompassed his historic dealings with the GMC and previous MPT hearings and findings.

27. Dr Ali alluded to there being a conspiracy against him and collusion amongst the GMC staff and GMC witnesses which led the GMC to have made these allegations against him and in bringing the matter to an MPT hearing. He stated that the GMC had been '*fishing for another complaint*'. His view was that all the actions against him emanated from his initial '*whistleblowing actions*' from 2014 and the protected disclosures he had made. He further referred to the Judge who had sentenced him for the dangerous driving conviction, which followed a jury trial in the Crown Court as being prejudiced against him. He stated, '*I did undermine an angry racist Judge Bond, by pointing out the predicted compensation claim*

*already occurred and was tempted to do everything the Judge was accusing me of, so I could be put in prison as that is nicer than the GMC whom will not consider issues once but multiple times, as has and is occurring.*' The Tribunal did not entertain these views as they were not relevant to the task before it on the given allegations.

28. Dr Ali asserted that Dr A's reason to make the GMC referral was that he had *'taken patients away from her'*, referring to her role as a GP, stating that this was because Dr A refused to see patients face-to-face during the pandemic and that he had reported this whilst he was volunteering in a homeless shelter.

29. Submissions of this nature from Dr Ali were frequent, despite the Tribunal's efforts to focus Dr Ali on the relevant considerations, and were part of his cross examination of witnesses, his evidence in chief and his closing submissions. The Tribunal, nevertheless, sought to elicit the relevant evidence from Dr Ali in order to evaluate it for its assessment of the facts.

30. The Tribunal has considered each paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts. It placed no reliance or weight on a previous 2019 MPT determination with a finding of dishonest conduct on part of Dr Ali.

#### Paragraph 1(a) and 1(b) of the Allegation

31. The Tribunal considered these paragraphs of the Allegation against Dr Ali, in that, whether on an NHS England Disclosure Barring Service declaration form dated 6 June 2020 ('the Form'), which he submitted to NHS Improvement England, he stated on the Form "I am not subject to any current/new fitness to practise investigations and/or proceedings".

32. It also considered whether on an NHS England Disclosure Barring Service declaration form dated 6 June 2020 ('the Form'), which he submitted to NHS Improvement England, he signed the Form to confirm his agreement to the statement "I declare that the information I have provided in this form and in any accompanying documentation, is true to the best of my knowledge and belief".

33. The Tribunal considered the contemporaneous document which was a Disclosure and Barring Service (DBS), Declaration / Model Declaration Form A. It noted that it was a self-declaration form and that it was not in dispute that Dr Ali had stated within box 7 on the Form, that *'I am not subject to any current/new fitness to practise investigations and/or proceedings'*. It was also not in dispute that Dr Ali had inserted his full name where required at the bottom of the Form, after the 'Declaration' section, and had inserted 'S.S Ali' within



the signature box as his signature and had dated the Form '06.06.2020'. Dr Ali had submitted the Form by email to Ms C, NHS Improvement England, Workforce Improvement Manager and Lead on the Bringing Back Staff Programme, by email dated 7 June 2020, and the Tribunal had the contemporaneous email as evidence before it.

34. The Tribunal considered Dr Ali's contention that paragraph 1 of the Allegation did not accurately reflect who he submitted the Form to. The Tribunal considered Ms C's email address and designation which showed that she worked for NHS England and NHS Improvement – Midlands. It considered that paragraph 1 of the Allegation did refer to 'NHS England' and took the view that this slight variation was not material to the essence of the Allegation, and it did not make the allegation unclear or render it incapable of being understood.

35. In the circumstances the Tribunal determined that paragraphs 1(a) and 1(b) were found proved.

#### Paragraph 2(a) of the Allegation

36. The Tribunal considered whether the statement Dr Ali made in paragraph 1(a), namely, "I am not subject to any current/new fitness to practise investigations and/or proceedings" was untrue. It therefore sought to consider if there was a current/new fitness to practise investigation and/or proceedings on 6 June 2020.

37. The Tribunal took account of the Telephone Note, dated 11 April 2019 which purported to there being a call within these times (14:43 – 14:55) between Ms D of the GMC and Dr Ali. The Note stated that Ms D had engaged in a twelve-minute telephone call with Dr Ali, during which she had advised him that the GMC had been contacted by West Midlands Police who had informed it that they were investigating Dr Ali for dangerous driving. Further, the Telephone Note stated that Ms D had informed Dr Ali that she would email him a letter to confirm that there was a 'GMC investigation open'. Dr Ali had confirmed in his evidence that a telephone call had taken place between him and Ms D on this date, which he did recall, although he disputed the details and the duration of the call.

38. The Tribunal further noted the contents of the email from Ms D, dated 11 April 2019, and timed 15:47 which attached a letter, also dated 11 April 2019. The email referred to Ms D attaching a letter 'advising of the investigation'. The letter stated:

*'We've received some information from West Midlands Police on 20 March 2019 that you are being investigated by them for dangerous driving. The Police know we are writing to you.'*

*I know that receiving this letter and being involved in this process can be a stressful experience. I hope you understand after reading the information provided that we need to open an investigation to make sure there are no ongoing risks to patients, as our role is to protect the public. We are keen to work with you to resolve this as quickly as possible.*

...

### **What we're investigating**

*On the basis of the information currently available, we've identified some areas of Good medical practice that have been called into question. We need to find out more information to see if this is correct and, if so, whether your fitness to practise medicine is potentially impaired.*

### **What to expect during the investigation**

*Our investigation will involve gathering more information about the allegations that have been raised and your practice as a whole.*

...

*The next step is for me to write to the organisations for which you are employed or provide services, as is required under s35B Medical Act 1983 – see the section on what you need to do next.*

*This is to inform them of the investigation and for them to send us information which will help with the investigation'*

39. Further, the Tribunal noted subsequent email exchanges between Dr Ali and Ms D, and in particular, noted the email from Ms D dated, 7 January 2020 11:11, in reply to being sent information from Dr Ali, which stated the following:

*'Thank you very much for sending me this information I will add this to the case file as, even though you are not currently practising, our investigation is still ongoing.'*

40. It considered the GMC letter, dated 11 April 2019, and further email correspondence was clear evidence that there was an open and ongoing GMC investigation since 11 April 2019. It noted Dr Ali's stance that it was the later Rule 5 letter dated 6 July 2020, which was

sent two months after his conviction, which had started that investigation. The Tribunal considered the letter of 6 July 2020 and noted that the cover letter from Ms D was referring to an attached letter by the Assistant Registrar advising of the decision taken to refer the case to a hearing before the MPT.

41. In light of the evidence, the Tribunal determined that Dr Ali *was* subject to a ‘current/new fitness to practise investigation’, at the time he signed the Form on 6 June 2020 and consequently, the statement made by Dr Ali at paragraph 1(a) of the Allegation was factually untrue.

42. Accordingly, the Tribunal determined that paragraph 2(a) of the Allegation was found proved.

43. The Tribunal considered 2(b) alongside 3(c) as it necessitated an assessment of what was Dr Ali’s state of mind.

#### Paragraph 3(a) of the Allegation

44. The Tribunal first considered whether, at the time of Dr Ali’s actions at paragraph 1 of the Allegation, Dr Ali knew he was subject to an ongoing General Medical Council fitness to practise investigation.

45. The Tribunal considered Dr Ali’s overall evidence.

46. The Tribunal noted that in his cross examination of Ms C, Dr Ali had asserted that she had stated ‘*fuck the GMC*’ in her telephone conversation with him which is what ‘*endeared her*’ to him. Ms C had vehemently denied this and had been visibly shocked by the accusation. She had responded to state ‘*that is an outright lie*’. She stated that she would never use such profanity and it was inconceivable that she would speak like this in a professional telephone call to someone that she did not know. Dr Ali had further asked Ms C why she had placed his application on hold, and she had responded to say that she had concerns about his suitability for roles. Ms C had further stated that she had felt that Dr Ali lacked openness and transparency when he spoke of the previous regulatory findings against him and also his conviction. She stated that in her initial call with Dr Ali in March 2020, she had decided to place his application on hold as he wanted to give careful thought to the disclosures he would make. Dr Ali did not deny this and stated that it was after this initial call with Ms C in March 2020 that he completed the application/survey which he submitted. He stated that he had also commenced completing the DBS declaration Form in March 2020, which he thereafter submitted. His position was that he had not sought to hide anything,

had completed the Form to the best of his knowledge and belief and in fact had provided ‘over disclosures’ in his documents.

47. The Tribunal considered Dr Ali’s evidence in respect of paragraph 3(a) of the Allegation. In his written statement, Dr Ali stated ‘*The GMC contacted me March 2019 and told me it is on hold/not started as it was supposedly not fair. MPT-3 is unusual in that I received an email informing me of an investigation. However the investigators have back-track and changed start and end dates of investigations which retrospectively means for this parallel investigation, a declaration was expected earlier.*’

48. In his oral evidence, Dr Ali stated that [in March 2019] Ms D had called him ‘*out of the blue*’ and had informed him that that the investigation was a ‘*preliminary process*’ and that there was no investigation. He also stated that Ms D informed him that the GMC were ‘*essentially opening something up which could develop and was not a formal investigation.*’ He further stated that she said that there may be a ‘*potential something*’ if he did receive the charge sheet. He stated that in April 2019, Ms D phoned him back and stated that she needed further information. He said that he was ‘*left unclear*’, but he informed his employers of that ‘*in one hour*’. He stated that he had received a lot of correspondence from the GMC, and he was not sure if something was a Rule 4 or a Rule 5 letter. He said some letters ‘*clearly state that it is a start of an investigation, and some aren’t clear.*’

49. Dr Ali accepted in cross examination that the email and letter dated 11 April 2019 were sent to him. However, he said that he didn’t know there was an open investigation. He stated that as far as he knew there was ‘*one completed GMC investigation in June 2020 and one potentially future investigation*’. In cross examination he referred to his knowledge of the investigation to be ‘*a preliminary investigation*’ ongoing. The Tribunal noted that in re-examination the next day, Dr Ali referred to the open investigation to have been a ‘*triage*’ process.

50. Mr B’s evidence was, that there was a different triage team in the GMC, of which Ms D was not part, who carried out ‘*preliminary enquiries*’ and then, if required, make a decision to refer to open investigations. When this was put to Dr Ali, he stated that the GMC always ‘*change their goalposts*’ on when an investigation is opened and when it is completed. He stated that it would be unfair to open an investigation in April 2019 before/on a criminal charge as the matter may never proceed to a conviction. The Tribunal noted that at one point in his evidence, Dr Ali stated that the ‘*investigation started after the conviction.*’ It also noted an email sent by Dr Ali dated 19 December 2019 to Ms D in which he informed her of the conviction and proceeded to say ‘*Unlike my previous medical job, I can no longer afford representation, mainly due to the ongoing existing GMC processes, and I am not covered by my motor legal insurance, so I will be representing myself for this separate issue.*’ In the

Tribunal's view this demonstrated that Dr Ali was at least aware of the possibility of a consequential fitness to practise hearing due to his conviction. In his oral examination, however, Dr Ali stated that the probation officer had told him that the likely sentence he would receive would be a community service order and a fine and so he thought that the GMC may deal with his case via an alternative pathway and not refer the matter to a MPT hearing. He stated this in support of his stance that there was not an open investigation at that time of his conviction.

51. The Tribunal reminded itself that Dr Ali's criminal conviction took place in December 2019 and he was sentenced in May 2020. It further noted ongoing correspondence between Dr Ali and Ms D, since the telephone call, cover email and letter dated 11 April 2019. It noted that the correspondence continued in 2019 and also in 2020. In particular, it noted the email from Ms D to Dr Ali dated, 7 January 2020 at 11:11, which stated the following:

*'Thank you very much for sending me this information I will add this to the case file as, even though you are not currently practising, our investigation is still ongoing.'*

52. It also noted another email of 5 May 2020 from Ms D to Dr Ali which stated:

*'In the meantime, if you do decide to appeal this conviction, could you let me know so I can include this fact on our investigation file.'*

53. The Tribunal noted that this email of 5 May 2020 was received by Dr Ali, after he had commenced drafting the DBS Form in March 2020. It further noted his evidence that on the DBS Form, *'there is a typo and its badly written...not subject to any new investigation....as there wasn't one at the time in March 2020 when it was originally written...and in June 2020...I thought about it but there hadn't been a change...'*

54. In his re-examination, Dr Ali had introduced an explanation for not knowing about the 'opened investigation' which was not within his written statements, nor within his examination in chief or within his answers in cross examination. He stated that he had not opened Ms D's email and attachment of 11 April 2019 for some time. He stated that he had not checked his emails for a few days. The Tribunal however pointed out that the emails that Dr Ali submitted to the Tribunal, illustrated that Ms D's emails to him with the attachments were sent at 15:47 on 11 April 2019 and he had used the same email address to email her later that day at 23:35. Dr Ali stated that despite this being the case, he had not opened the attachments as he received a lot of correspondence from the GMC and most of the letters were *'template letters'*.

55. In the course of his evidence, Dr Ali had sought to disclose further emails to the Tribunal, one of which showed an email from Dr Ali to Ms D at 23:42 on 11 April 2019 which referred to the letter attachment that Ms D had sent him earlier that day. Dr Ali had not been able to access the link to the 'work details form' within that letter and had also queried reference to the 'revalidation process' which was stated on the last page of the letter attachment. This demonstrated that Dr Ali had in fact opened the letter despite his earlier assertion to the contrary. When challenged on this, Dr Ali maintained that he could not open the attached letter. He also stated that he had forwarded the email from Ms D to the Medical Protection Society ('MPS') for advice without opening it. He stated that he had not received a response from the MPS for a year and had there been an open investigation at the time he sent the email to them, it would have meant that he would have had legal cover from them. He said that there was not any legal cover available to him which supported his stance that there was no open/ongoing investigation at that time – April 2019 onwards.

56. Further, the Tribunal bore in mind the Dr Ali disputed the details of Ms D's Telephone Note, dated 11 April 2019. It noted that Dr Ali had claimed that that Ms D had stated that the investigation was not a formal investigation but was rather a '*triage type thing*'.

57. The Tribunal also noted that in oral evidence Dr Ali had variously referred to any open investigation as being an '*preliminary-type investigation*' a '*preliminary enquiry*' and a '*triage*'.

58. The Tribunal considered the evidence it had received. It was clear that Dr Ali had received the letter of 11 April 2019 advising of the investigation being opened pursuant to the dangerous driving charge notification. It was also evident that Dr Ali had opened the attachment that was the letter of 11 April 2019 the same day, despite saying that '*he had not seen it until 2022, or 2021 or even 2020*'. He had actively taken part in corresponding with Ms D in 2019 and 2020 when references were made to the 'investigation'. The Tribunal had not seen any references to the investigation being referred to as 'preliminary' or a 'triage'.

59. The Tribunal considered the evidence fairly to assess if, despite receiving the letter of 11 April 2019 and ongoing correspondence, there was any evidence from which it could infer that Dr Ali did not know he was subject to an ongoing GMC fitness to practise investigation. It considered that it was not the case that Dr Ali had stated that he had known but had forgotten about the open/current/ongoing investigation at the time of completing the Form or that the investigation had not registered in his mind, or that he failed to double check or verify his statement. On the contrary, he had robustly submitted that there was no open investigation, it was '*on hold*' and his belief was that there was only a '*preliminary investigation*' or a '*triage type process*' and not a current [on 6 June 2020] or open or ongoing investigation that he needed to declare. He had also maintained that it would have been unfair for there to have been an open investigation before his conviction in December 2019

and that he had not opened the letter from Ms D dated 11 April 2019. He stated that he was not a *'clairvoyant'* and would not have known in June 2020 about any future investigation.

60. In all the circumstances, the Tribunal did not consider Dr Ali's evidence to be cogent or plausible. It did not consider that Ms D would have referred to the investigation as *'opening something up'* that could *'develop ...not a formal investigation'* which would be at odds with her written correspondence. It considered that even if there had been a phone call in March 2020 between Dr Ali and Ms D, there was thereafter a telephone call in April 2019 advising of a GMC open investigation after which an email and letter followed the same day. In his closing submissions Dr Ali had stated that he had found Ms D's numerous emails [referring to correspondence post 11 April 2019] to be confusing. It did not consider Dr Ali's evidence and explanations to be credible or plausible.

61. It took the view that, on a balance of probabilities, Dr Ali did know that he was subject to an ongoing GMC fitness to practise investigation when he made the statement within paragraph 1(a) of the Allegation.

62. Accordingly, the Tribunal determined that Paragraph 3(a) of the Allegation was found proved.

#### Paragraph 3(b) of the Allegation

63. The Tribunal next considered whether, at the time of Dr Ali's action at paragraph 1 of the Allegation, Dr Ali knew the statement he made as set out in paragraph 1(a) above included information which was untrue.

64. The Tribunal was mindful that it had found proved that Dr Ali knew that he was subject to an ongoing fitness to practise investigation. It considered his evidence that he thought that there was *'preliminary investigation'* or a *'triage-type process'* ongoing. In cross examination and thereafter in answer to Tribunal questions as to why Dr Ali had not mentioned a *'preliminary investigation'* on the Form, as the question in box 7 asked about investigations 'of any nature', Dr Ali stated that he had not thought he needed to declare that and that it was in his disclosure statement. The Tribunal were mindful that in June 2020, Dr Ali had been convicted and had also been sentenced for dangerous driving.

65. In his evidence, Dr Ali at various times suggested that he had made reference to the *'preliminary investigation'* in his disclosure statement but when asked to take the Tribunal to those he could not do so. Rather, he showed references to where he had stated that the police had contacted the GMC about his dangerous driving conviction and where he had stated that the GMC were aware of his sentence as he had informed them of it. Dr Ali had

also stated that he had referred to the preliminary/triage investigation in his telephone calls with Ms C and Dr A but was not able to evidence this as the GMC had not provided the recordings of the calls. He initially stated in oral evidence that his conversation with Dr A was four hours long. When asked to confirm that, Dr Ali changed his position to the call being two to three hours instead. The Tribunal noted that Dr A had maintained that her only call with Dr Ali had been no longer than 45 minutes. Further, Dr Ali stated that he thought he had made a recording of his call with Dr A but that his phone had since been destroyed in water.

66. The Tribunal noted Dr Ali's evidence that he had no motive to deceive the BBS Programme. It noted that Dr Ali had vehemently maintained that his application for the BBS programme was at the invitation of the late Dame Claire Marx, the then Chair of the GMC, and that, whilst he had been seeking a clinical position when he made his initial application, he had not been seeking a remunerated role. The Tribunal did not have a full copy of the initial application/survey that Dr Ali had made but it had sight of Dr Ali's application/survey to the BBS programme of January 2021 in which he had ticked N (No) to a voluntary/unremunerated role. The Tribunal had noted that Dr Ali had been keen to return to work as a doctor. He had said in his email to Ms D of 25 April 2020, *'For the last couple of years, I have not been working as a doctor. Given the coronavirus pandemic, and having a couple of years of HDU/PICU experience plus one short ITU placement as a doctor, I am keen to return to work as a doctor. I am currently not working as a doctor but I do have conditions on my registration for 2 years having previously been suspended for 6 months.'*

67. It also noted Dr Ali's evidence that at the time of his application/survey (March and June 2020) he was working full-time and long hours within a GP practice and carrying out 3 volunteering roles. He said that he had also *'been busy trying to manage a lot of different things at once.'* The Tribunal noted Dr Ali's explanation that he had sought another volunteering role as he had felt *'guilty...and wanted to give something back'*.

68. The Tribunal further considered Dr Ali's evidence that the statement he had made, as in paragraph 1(a) of the Allegation, was *'badly written'*, had a *'typo'*, was rushed as he had been working long hours and he should have deleted the word *'not'* from it. He further stated that he had found the Form confusing and one of the reasons he gave was that the question box 7 contained *'slashes'*. He initially stated that he had copied and pasted the statement from the question and then later changed to say that he had copied and pasted it from an MPS document. He vehemently maintained that the primary question was answered honestly as he had ticked *'Yes'* to the question as to whether he was currently subject to any ongoing fitness to practise investigations/and or proceedings. The Tribunal considered that Dr Ali had previously stated that he had thought about *'any changes'* since March 2020 when completing the Form but had also stated that he had rushed it and had spent more time completing the disclosure statement that was appended to the Form. In his statement Dr Ali



had stated *'I do admit completing the confusing form in March 2020 and carelessly not updating it in June 2020. Whilst the GMC from the "dustbin" maliciously extracted a mid "single sentence" and purported it is a statement despite the obvious typo and confusion, in the context it was written. It is carelessly and recklessly written but 'out of context' if actually used for employment but I was clearly unsuccessful.'*

69. The Tribunal could not reconcile this explanation given by Dr Ali with the other explanation he had given to the Tribunal that he did not know he was subject to an ongoing investigation and that it was only a preliminary or triage process that he did not need to declare. It found that the existence of both the explanations were incongruent with each other.

70. The Tribunal also considered that the word *'new'* was an addition that Dr Ali would have made to the statement, having thought about it, as it was not sought by the question in box 7 of the Form. Dr Ali had not just omitted to mention any current/ongoing fitness to practise investigation but had specifically denied its existence at that time, in making the statement *'I am not subject to any current/new fitness to practise investigations and /or proceedings'*. The Tribunal took the view that the *'defences'* put forward by Dr Ali lacked cogency, were contradictory and not plausible. It considered and acknowledged that Dr Ali had made detailed disclosures albeit including his own narrative on their legality and veracity. The disclosures were of the conditions on his registration, his dangerous driving conviction and sentence, however those were also publicly available. It considered that any ongoing investigation would not be public knowledge. It also considered the GMC's position that Dr Ali's motivation in not disclosing or in denying an ongoing/current fitness to practise investigation was to maximise his employment opportunities. The Tribunal noted that Dr Ali's response to this was evasive and instead he focused on the Form not being an application as it was never submitted [to DBS] or paid for. The Tribunal considered that not disclosing, or denying, an ongoing/current fitness to practise investigation could strengthen his application for a clinical role.

71. Dr Ali had further downplayed the significance of the Allegation, by referring to his application/survey as an enquiry, and the self-declaration DBS Form not being one which required processing, or needing a payment to be processed. He also referred to the words within the Form, *'please provide'* details and stated that it had not stated that you *'must provide'*. He had also stated that whilst *'honesty'* is a serious issue, the Tribunal were not considering a *'patient safety issue'*.

72. Overall, the Tribunal was concerned about the quality of the evidence that Dr Ali had provided and his various defences and stances on why he had made the statement as contained within paragraph 1(a). Those variances made his evidence unreliable and lacking

in cogency and credibility. It had already found proved that on 6 June 2020, Dr Ali knew that he was subject to an ongoing investigation. It further took the view, that on balance, and on the evidence before it, Dr Ali knew that the statement he made as set out in paragraph 1(a) included information which was untrue.

73. Accordingly, the Tribunal determined that paragraph 3(b) of the Allegation was found proved.

#### Paragraph 2(b) and 3(c) of the Allegation

74. The Tribunal considered whether the statement Dr Ali made as set out in paragraph 1(b), namely “I declare that the information I have provided in this Form and in any accompanying documentation, is true to the best of my knowledge and belief”, was untrue.

75. It also considered whether, at the time of Dr Ali’s actions at paragraph 1, Dr Ali knew that the statement as set out in paragraph 1(b) namely “I declare that the information I have provided in this Form and in any accompanying documentation, is true to the best of my knowledge and belief”, was untrue.

76. The Tribunal reminded itself of its evaluation of the evidence to establish whether there was an ongoing investigation at the relevant time of 6 June 2020 and what Dr Ali’s genuine state of mind was. It noted that it had found that the statement as made out in paragraph 1(a) that Dr Ali was not subject to any current/new fitness to practise investigations and/or proceedings was untrue. It had also found that that Dr Ali knew that he was subject to an ongoing GMC fitness to practise investigation and that he knew that the statement he had made, as in paragraph 1(a) was untrue.

77. Dr Ali had therefore signed the Form confirming his agreement to declare that the information he had provided was true to the best of his knowledge and belief, whilst knowing that the Form contained information which was untrue – which was his assertion that he was not subject to any current/new fitness to practise investigations and/or proceedings. The Tribunal had found that there was an ongoing/current fitness to practise investigation and Dr Ali had been aware of it. It therefore followed that Dr Ali knew that his agreement to a statement that the Form contained information which to the best of his knowledge and belief was true, was in fact untrue.

78. Accordingly, the Tribunal determined that paragraphs 2(b) and 3(c) of the Allegation were found proved.

#### Paragraph 4(a) of the Allegation

79. The Tribunal considered whether Dr Ali's actions as described at paragraphs 1(a) and 2(a) were dishonest by reason of paragraphs 3(a) and 3(b). Namely, the Tribunal considered whether Dr Ali's actions:

- in submitting the Form to NHS Improvement England which stated "I am not subject to any current/new fitness to practise investigations and/or proceedings" when he knew that he was subject to an ongoing General Medical Council fitness to practise investigation, and
- in knowing that the statement he made included information, which was untrue, were dishonest.

80. The Tribunal considered whether Dr Ali's actions were dishonest by the standards of ordinary decent people. It concluded that such people would expect a doctor who had submitted a DBS declaration stating that he was not subject to any current/new fitness to practise investigations, knowing that he was subject to an investigation, and knowing that the information within his statement was untrue, to be dishonest.

81. Accordingly, the Tribunal determined that paragraph 4(a) of the Allegation was found proved.

#### Paragraph 4(b) of the Allegation

82. The Tribunal considered whether Dr Ali's actions as described at paragraphs 1(b) and 2(b) were dishonest by reason of paragraphs 3(a) and 3(c).

83. Namely, the Tribunal considered whether Dr Ali's actions:

- in signing the Form, to confirm his agreement to the statement "I declare that the information I have provided in this Form and in any accompanying documentation, is true to the best of my knowledge and belief", which was untrue; and
- that at the time Dr Ali did so, he knew that he was subject to an ongoing General Medical Council fitness to practise investigation and that he knew that agreement to the declaration statement was untrue,

were dishonest.

84. The Tribunal considered whether Dr Ali’s actions were dishonest by the standards of ordinary decent people. It concluded that such people would expect a doctor, who had signed and confirmed his agreement to a declaration of truth as per allegation 1(b) whilst knowing it was untrue, to be dishonest.

85. In the circumstances, the Tribunal concluded that Dr Ali’s actions as described at paragraphs 1(b) and 2(b) were dishonest by reason of paragraphs 3(a) and 3(c) of the Allegation.

86. The Tribunal acknowledged that this would be contrary to Dr Ali’s views about his actions. It noted that there was no requirement that Dr Ali must appreciate that his conduct by the standards of ordinary decent people was dishonest.

87. Accordingly, the Tribunal determined that paragraph 4(b) of the Allegation was found proved.

### The Tribunal’s Overall Determination on the Facts

88. The Tribunal has determined the facts as follows:

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

1. On an NHS England Disclosure Barring Service application declaration form dated 6 June 2020 (‘the Form’), which you submitted to NHS Improvement England, you: Amended under Rule 17(6)

a. stated on the Form “I am not subject to any current/new fitness to practise investigations and/or proceedings”; **Determined and found proved**

b. signed the Form to confirm your agreement to the statement “I declare that the information I have provided in this form and in any accompanying documentation, is true to the best of my knowledge and belief”. **Determined and found proved**

2. The statement you made as set out in paragraph:

a. 1a above included information which was untrue; **Determined and found proved**

b. 1b was untrue. **Determined and found proved**

3. At the time of your actions at paragraph 1 you knew:
  - a. you were subject to an ongoing General Medical Council fitness to practise investigation; **Determined and found proved**
  - b. the statement you made as set out in paragraph 1a above included information which was untrue; **Determined and found proved**
  - c. the statement as set out in paragraph 1b was untrue.  
**Determined and found proved**
4. Your actions as described at:
  - a. paragraphs 1a and 2a were dishonest by reason of paragraphs 3a and 3b; **Determined and found proved**
  - b. paragraphs 1b and 2b were dishonest by reason of paragraphs 3a and 3c. **Determined 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**

#### **Determination on Impairment - 31/10/2023**

1. This determination will be handed down in private under the provisions of Rule 41 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended (‘the Rules’). A redacted version will be published at the close of the hearing.
2. The Tribunal now has to decide in accordance with the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Ali’s fitness to practise is impaired by reason of misconduct. The Tribunal also has to decide whether Dr Ali’s fitness to practise remains impaired by reason of conviction.

#### **The Outcome of Applications Made during the Impairment Stage**

3. The Tribunal granted Mr Brook’s application to clarify an aspect of the submissions he made earlier which was also in response to a Tribunal question posed to him. Dr Ali had

objected to this on the basis that Mr Brook had already made his submissions. The Tribunal considered it was fair for Mr Brook to proceed with the clarification.

## The Evidence

4. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, it took into account further evidence received, which included but was not limited to:

- High Court Defence Appeal Bundle. Dr Ali asked the Tribunal to consider the following documents within it: His consolidated grounds of appeal, statement of case and skeleton argument. Dr Ali also placed before this Tribunal a chronology and witness statement from 2022. From the appendices Appeal bundle, Dr Ali placed electronic pages 1 – 154 and electronic pages 250-254 before this Tribunal, comprising variously dated emails, appraisal documents and exhibits;
- Judgment of HHJ Mithani KC, dated 29 September 2023;
- Appraisal Summary for Dr Ali [self-appraisal], dated October 2023;
- XXX; and
- ‘Public Interest Reflections for Dangerous Driving Conviction 2019’ bundle, dated October 2023;
- March 2023 MPT hearing determinations;
- Record of Determination dated 26 May 2021;
- Record of Determination dated 17 December 2021;
- Record of Determination dated 12-22 December 2022 & 18 March 2023;
- Record of Transcript dated 19 December 2022;
- Record of Transcript dated 20 December 2022;
- Letter of determination dated 20 March 2023 from MPTS to Dr Ali; and
- Letter of acknowledgement of appeal dated 3 May 2023 from MPTS to Dr Ali.

5. Dr Ali gave further oral evidence at the hearing.

6. The Tribunal also received two testimonials from Dr Ali’s colleagues, both of which it has read, namely:

- Testimonial from Dr E, GP Principal and Dr Ali’s employer, Pearl Medical Centre, dated 7 October 2023; and
- Professor F, BMA Council Chair, undated, which confirmed that Dr Ali took up a post as a representative for the West Midlands following the close of the BMA’s annual

representative meeting on 29 June 2022 and had since attended eight BMA council meetings held between July 2022 and October 2023.

7. The Tribunal noted and acknowledged the two positive testimonials it had received. In particular it noted the testimonial from Dr E, Dr Ali's employer, who had commented on Dr Ali's competence and positive performance in his role as a medical administrator and as a health care assistant. He had also highlighted Dr Ali's positive volunteering work. The Tribunal however noted that Dr E did refer to '*past and current GMC accusations by third parties for enquiring to volunteer at a call centre by way of a GMC's request*' and were not clear if Dr E was aware of any findings that had been made by Tribunal/s. The Tribunal considered that Dr Ali's CPD and positive testimonials had little bearing on the current finding of dishonesty and Dr Ali's previous misconduct following his conviction for dangerous driving.

## Submissions

### Submissions on behalf of the GMC

#### In relation to the New hearing

8. Mr Brook referred to *Good Medical Practice (2013)* (GMP) and relevant case law.
9. Mr Brook submitted that Dr Ali had shown no insight into his dishonesty in relation to the Form.
10. Further, Mr Brook submitted that Dr Ali had not remediated in any way in relation to his dishonest declaration on the Form.
11. Mr Brook stated that on the basis of a lack of insight, there being a risk of repetition and on the application of the principles of the overarching objective, Dr Ali's fitness to practise was clearly impaired.

#### In relation to the Review hearing

12. Mr Brook submitted that Dr Ali's fitness to practise remains impaired by reason of conviction.
13. Mr Brook adopted Mr Moran's submissions, made on behalf of the GMC, for the December 2022 Tribunal in relation to the review hearing.

14. Mr Brook submitted that the position was no different than it was at the first review hearing and submitted that, in fact, the present position was worse. He stated that the evidence exacerbated Dr Ali's position on insight.

15. Mr Brook stated that Dr Ali had not implemented new strategies to minimise the risk of his misconduct. He referred to Dr Ali's statement that there was a zero percent risk of repetition in respect of his criminal conviction as he did not have a current driver's license. Mr Brook stated that this was not correct as Dr Ali could apply for a driver's licence at any time.

16. Mr Brook referred to the finding of the previous review Tribunal that Dr Ali's '*prevention strategies*' in relation to his misconduct had no bearing and noted that Dr Ali had merely '*recycled them*' and re-submitted them, and '*no matter how he dressed it up*', Dr Ali still relied upon the same material he put before the previous review Tribunal.

17. Mr Brook emphasised that there are no strategies in place to minimise the re-occurrence of Dr Ali's misconduct in relation to his driving conviction.

18. Mr Brook referred to Dr Ali's reflections and submitted that Dr Ali was '*sorry for the public perception*', the '*perceived other driver*' and the actions of a '*right-wing newspaper*' but stated that the doctor did not have remorse for what happened, and emphasised that Dr Ali could not have, as the doctor still disputed the circumstances of the offence.

19. Mr Brook submitted that the Dr Ali was '*still blaming everyone but himself*' and was still claiming that the other driver involved in the Dr Ali's dangerous driving conviction incident had switched places with an older person in his eighties. Further that he had still not addressed how his actions had affected the victim and the witnesses. Mr Brook submitted that Dr Ali still described the victim as a '*crazy drunk driver*' in his oral evidence at the present hearing. He stated that Dr Ali was doing more than denying the offence and was '*casting aspersions on all and sundry*'.

20. Mr Brook submitted that, as far as Dr Ali was concerned, the doctor had done '*nothing other than driven at twelve miles per hour in a five mile per hour car park*'.

21. Mr Brook submitted that Dr Ali had gone beyond denying the offence and that '*we were in Sawati territory*' which can be taken into account when considering insight.

22. Mr Brook submitted that there was still an entrenched reluctance to accept responsibility for his criminal behaviour and that Dr Ali's insight was '*worse this time*'.



Dr Ali's submissions

23. Dr Ali submitted that he accepted the 'new' findings and also the outcomes of the 'driving tribunals'.
24. He stated that he had been effectively suspended since 2017 with 'specific reasons and prior-whistleblowing present'.
25. Dr Ali stated that FTP impairment is about current impairment and not past and that the GMC focus was 'even now with cross-examination mainly on the past, they have acted as expected and still attempt to change my witness statement'.
26. Dr Ali submitted that the GMC had made an 'attempt at smoke and mirrors to infer lack of insight despite the story not changing from original or review MPT and punishments' and 'highlighted the scorn of the profession on the bad-GMC-practice abuse'.
27. Dr Ali asserted that there was an 'inequality of arms' between GMC and him and that 'if the GMC wanted to, like other good regulators, it could have given advice, provided disclosures and been honest, especially with all doctors about when an investigation starts/stops but that would reduce further FTP prosecutions of doctors'.
28. Dr Ali referred to the 'new' allegations as made by the GMC as a game of 'cat and mouse' regarding his 'disclosure statements' and that there was no attempt to hide his past and that 'given developments with the Patterson Inquiry and both Berwick Reports has clearly developed into a David vs Goliath problem'.
29. Dr Ali submitted that, 'in 2021, I believed that he needed to show '(1) ongoing GMC consequences and conditions; (2) driving conviction and sentence after April 2020, and (3) potential consequences related to whistleblowing (this included splitting of conviction consideration by GMC/deanery)'. He stated in his closing submission 'Clearly, I was wrong and needed to also highlight a GMC investigation from March 2019....of the conviction and this is also at an enquiry/pre-application stage of potential employment of volunteering'.
30. Dr Ali asserted that he had clearly followed instructions and that if the GMC had 'finally agreed to mediation' a constructive outcome could have been reached in relation to the 'overall issues'.
31. Dr Ali submitted that there were no public safety issues regarding the 'new' issues but admitted that 'on the face of it' he was impaired on public confidence grounds. However, he asserted that the Tribunal should consider 'pandemic guidance'. He referred to the

*‘entrapment and weaponization of the GMC’* and argued that this started with an invitation from Dame Clare Marx and continued with emails and telephone calls from Ms C which are what led to the new allegation.

32. Further, Dr Ali submitted that, *‘if the public had been aware’* that *‘Dr [A]’s letter was not sent by her and appears not created until after the GMC third investigation began’* they would not consider his actions to have undermined public confidence but would rather consider that the GMC had undermined public confidence’.

### The Relevant Legal Principles

33. The LQC advised the Tribunal that at this stage of proceedings, in respect of the findings made by the Tribunal relating to the ‘new’ matter, within which dishonest conduct was found proved, it has to decide whether Dr Ali’s fitness to practise is impaired and there is no burden or standard of proof in respect of that, the decision of impairment is a matter for the Tribunal’s judgement alone.

34. The LQC advised the Tribunal that it is also conducting a review. A review hearing is not an appeal or an opportunity to reopen the earlier determination, but a procedure to consider and determine, with the benefit of evidence and submissions, whether the practitioner’s fitness to practice remains impaired. She stated that the persuasive burden is on Dr Ali to show he is no longer impaired by reason of his criminal conviction. The previous reviewing Tribunals have set out matters that a future Tribunal may be assisted by. This Tribunal should take into account what steps Dr Ali has taken since to allay their concerns.

35. In respect of demonstrating insight at a review hearing, the LQC directed the Tribunal to a relevant passage from the case of *Blakely V GMC* [2019] EWHC 905 Admin, in which Lewis J referred to the case of *Yusuff v GMC* [2018] EWHC 13 (Admin). She advised that whilst this case considered the issue of dishonesty, the principles were still relevant:

*“26...the essential question is how to reconcile the need to ensure that the doctor in question has acquired the requisite insight into his or her conduct so that there would not be an unacceptable risk of repetition with the fact that a doctor cannot be required to accept that he or she has done something when this is denied, or, on the facts of this case, when the conduct is regarded as dishonest by the Tribunal but is not accepted as dishonest by the doctor.*

*27. In such cases, remediation, and insight, may be demonstrated in a number of ways. These include, by way of example, the following. A doctor may accept that, with the benefit of hindsight, what he or she did was wrong (or dishonest) even though the doctor*

*did not at the time consider that he or she was acting dishonestly. Alternatively, the doctor may accept that members of the public would view the conduct as dishonest and undermining their trust in the doctor even if the doctor considers that the conduct, viewed in context, was excusable or not dishonest.*

*28. ... It was [the dishonest] conduct that the Appellant had to have insight into. Unless the Tribunal were satisfied that the Appellant had sufficient insight into why that conduct was considered unacceptable on the part of a doctor, there was a risk that it would be repeated.*

*29. There were ways in which the Appellant could have demonstrated sufficient insight. The Appellant might have accepted at the review hearing that, with the benefit of hindsight her actions were dishonest even if she had not appreciated that at the time. Even if she were not prepared to accept that, she might have demonstrated that she understood why the Tribunal took the view that members of the public would regard such action as dishonest and why, therefore, that conduct could not be repeated.”*

36. In approaching the decision on impairment in respect of the ‘new’ matter, 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.

37. The LQC referred to the case of *Roylance v GMC (No 2)* [2000] 1 AC 311, in that:

*‘Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances.’*

38. The LQC stated that the Tribunal should also have regard to the principle that any finding of misconduct as to fitness to practise should relate to serious misconduct, as described by Lord Justice Elias in *Remedy UK Ltd v GMC* [2010] EWHC 124:

*‘sufficiently serious misconduct in the exercise of professional practice such that it can be properly described as misconduct going to fitness to practise’.*

39. The LQC outlined that there is no statutory definition of impairment and referred to guidance and questions to be considered in determining whether a doctor’s fitness to practise is impaired, provided by Dame Janet Smith in the Fifth Shipman Report, as referred to in the case of *CHRE v NMC and Grant* [2011] EWHC 927 (Admin):

*'...the Tribunal should consider whether the findings of fact in respect of the doctor. ... show that his fitness to practise is impaired in the sense that he:*

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession...*
- d. has in the past acted dishonestly / or is liable in to act dishonestly in the future.'*

40. The Tribunal must determine whether Dr Ali's fitness to practise is impaired today, taking into account his conduct at the time of the events and any relevant factors, such as insight, whether the matters are remediable, whether they have been remedied and any likelihood of repetition.

41. The LQC referred to the following passage from the case of *Meadow v GMC* [2006] EWCA Civ 1390:

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

42. The LQC referred to the case of *Sayer v General Osteopathic Council* [2021] EWHC 370 Admin, and advised:

- When considering insight, the Tribunal should not equate maintenance of innocence with a lack of insight. A doctor who maintains his innocence may nevertheless show that he fully appreciates the gravity of offence alleged.
- Insight is concerned with future risk of repetition – to this extent it is to be distinguished from remorse for past misconduct.

43. The LQC also referred to a number of cases.

44. As per the case of *Sawati v General Medical Council* [2022] EWHC 283 (Admin) the Tribunal should bear in mind that doctors are properly and fairly entitled to defend themselves. When considering whether it is fair to use a doctor's 'rejected defence' when considering insight and/or to aggravate any sanction imposed on them, a tribunal may find it helpful to think about four things:

- how far state of mind or dishonesty was a primary rather than second-order allegation to begin with (noting the dangers of charging traps in adding 'dishonestly' to a primary allegation to aggravate it disproportionately, colour any denial of the primary allegation with dishonesty or characterise denial of the dishonesty as itself dishonest or lacking insight) or not an allegation at all;
- what, if anything, the doctor was positively denying other than their own dishonesty or state of knowledge;
- how far 'lack of insight' is evidenced by anything other than the rejected defence; and
- the nature and quality of the defence, identifying clearly any respect in which it was itself a deception, a lie or a counter-allegation of others' dishonesty.

45. As per the case of *GMC v Armstrong* [2021] EWHC 1658, the LQC advised:

*'Tribunals must have proper regard to the nature and extent of a practitioner's dishonesty and engage with the weight of public interest factors tending to a finding of impairment in such cases.'*

46. The LQC referred to the case of *GMC v Chaudhry* [2017] EWHC 2561 (Admin) in which the Court affirmed that dishonesty is not necessarily a '*monolithic concept*'. Also that dishonesty will be a matter of degree and does not have to be an '*all- pervading*' trait in the sense that a person can be dishonest on just one occasion. A finding of dishonesty need not inexorably lead to a finding of impaired fitness to practise.

47. Further, the Tribunal noted the principle in the case of *Yeong v the GMC* [2009] EWHC 1923 Admin, that:

*'There will be occasions where impairment of fitness to practice must be found as a matter of public policy to uphold public confidence in the profession where to make no such finding would have an adverse impact on public confidence in the profession.'*

48. The LQC reminded the Tribunal that it must consider the overall risk to public protection by considering the impact of its findings on all three elements of the overarching objective. The Tribunal must also determine whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of current impairment was not made.

## The Tribunal's Determination on Impairment

### Misconduct

49. In reaching its determination on whether Dr Ali's actions amounted to misconduct, the Tribunal first reminded itself of the proven facts in this case. It had found proved that Dr Ali had stated on the Form '*I am not subject to any current/new fitness to practise investigations and /or proceedings.*' Also, that he had signed the Form to confirm his agreement to the statement '*I declare that the information that I have provided in this form and in any accompanying documentation, is true to the best of my knowledge and belief.*' It had found proved that Dr Ali had known that he was subject to an ongoing GMC fitness to practise investigation, and therefore his actions in making the statement as above, and in signing the declaration in which he confirmed that the information he had provided was true to the best of his knowledge and belief, were dishonest.

50. The Tribunal had regard to the following paragraph of GMP:

*'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.'*

*'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.'*

51. The Tribunal considered that Dr Ali's dishonest conduct was a significant departure from the principles within GMP as above. He had specifically denied being subject to current/new investigation when completing the Form in June 2020, when he knew that he was subject to an ongoing investigation at that time. The Tribunal considered that such misconduct was serious.

52. The Tribunal acknowledged Dr Ali's invitation for it to take into account the '*GMC guidance for decision makers on Covid-19*' (COVID-19: assessing the risk to public protection) posed by a doctor as a result of concerns about their practice during the pandemic' when considering his conduct. The Tribunal considered this document at the request of Dr Ali which he had provided. This guidance related to concerns about doctors resulting from them 'delivering care' in a 'clinical setting'. It took the view that this guidance was not applicable to this case.

### Impairment

53. The Tribunal went on to consider whether Dr Ali's fitness to practise was currently impaired as a result of his dishonest conduct. Throughout its deliberations, the Tribunal had regard to all three limbs of the statutory Overarching Objective, as set out above.

54. The Tribunal referred to the approach as referred to in the case of *Grant*, as quoted in full above. The Tribunal was of the view that limbs (b), (c) and (d) were engaged. Dr Ali had brought the medical profession into disrepute, had breached a fundamental tenet of the profession and had acted dishonestly.

55. The Tribunal was mindful that dishonesty was conduct which was not easily remediable. It was of the view, that whilst difficult, remediation was not impossible in this case. The Tribunal sought to find evidence on Dr Ali's part which showed any reflection and/or remediation.

56. It noted that Dr Ali had stated that he had accepted the findings of the Tribunal and had stated that '*honesty is a serious issue*'. He had conceded that he would be impaired on '*public confidence*' however he stated that he was '*absolutely not*' impaired when considering promoting and maintaining proper professional standards and conduct as a doctor. He also referred to the 'new' allegation as '*silly and a bit of a farce*'.

57. The Tribunal was mindful that Dr Ali's was entitled to continue to defend himself, which he did. He stated that he had prepared many iterations of disclosure statements from 2016 – 2023 after having sought advice from the Department of Work and Pensions (DWP), charities and medico-legal representatives and with each advice his statements had changed. He also maintained that he could '*not have mentioned that there was an open conviction before conviction occurred*'. The Tribunal noted however that this was not the basis on which it had found Dr Ali's conduct to be dishonest.

58. Dr Ali further clarified that whilst he accepted the findings, he had not known about the investigation opened in March 2019, and that he had made a '*typo*' on the Form. The

Tribunal had considered such defences on part of Dr Ali as not capable of co-existing. Dr Ali also continued to blame Ms C and Dr A for his conduct. He stated that *'none of the submissions for the first case would be present if she [Ms C] had not contacted me...you are aware that I was busy'*.

59. Dr Ali's evidence at this stage continued to focus on the *'entrapment'* that he alleged, the GMC had carried out, in a) sending an invitation to him to apply for the BBS programme and b) Ms C sending him many emails when there was *'absolutely no opportunity or job to work in a call centre or work as a doctor in April 2020 and June 2020 and January 2021'*.

60. The Tribunal noted that the *'invitation to him'* was a *'message from Dame Clare Marx, Chair of the GMC'* in a *'GMC News for Doctors'* circular which would have been sent to all doctors, rather than a personal invitation to him. Indeed, the bulk of the message was focused on doctors in current clinical practice and the challenges they might face in the pandemic.

61. The Tribunal remained concerned with Dr Ali's evidence, the focus of which remained on his counter allegations against the GMC, Ms C, Dr A, rather than on his own insight into the finding of dishonesty. Dr Ali continued to refer to the Form as an *'enquiry'* at a *'pre-application stage'* for *'voluntary work in a call centre'* to minimise the seriousness of his actions. There was no evidence before the Tribunal that Dr Ali had understood the gravity of the dishonesty or the link between his actions and the finding or its significant impact on upholding and maintaining professional standards in the medical profession. Whilst Dr Ali had conceded impairment on *'public confidence'* and referred to *'honesty'* being a *'serious issue'* there was no other evidence of reflection on his part. The Tribunal considered that Dr Ali had also not displayed sufficient insight. It took that view that, due to insufficient insight, also insufficient reflection and a lack remediation on Dr Ali's part, there remained a risk of repetition.

62. In the circumstances, the Tribunal concluded a finding of impairment was necessary to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for members of the profession.

63. Accordingly, the Tribunal determined that Dr Ali's fitness to practise was impaired by reason of his misconduct.

## Review – Impairment in relation to the Conviction

64. In his opening statement for the Review matter, Mr Brook set out the background to



Dr Ali's criminal conviction, pursuant to Rule 22(1)(c). On 12 December 2019, Dr Ali was convicted by a jury of dangerous driving. He was sentenced, on 23 April 2020, to nine months' imprisonment, suspended for 2 years.

65. Attached to that were 15 Rehabilitation Activity Requirement days, 180 hours of unpaid work, and he was disqualified from driving for 18 months, ordered to take an extended retest, to pay £300 compensation and costs of £2,800.

### The Offence

66. On 22 August 2018 Dr Ali was behind the wheel of his vehicle in the car park of Highbury Park in Moseley, Birmingham. As he was about to leave the car park, Mr P, the victim, drove along the access road and was about to turn right into the car park. Dr Ali's vehicle approached Mr P's vehicle head-on. Both vehicles stopped nose to nose. Dr Ali lost control of his temper when Mr P's vehicle did not move despite Dr Ali gesturing that he should.

67. In his sentencing remarks, the trial Judge described the incident which gave rise to Dr Ali's conviction as, '*a clear case of road rage*'. The Judge described how Dr Ali shouted offensive language at Mr P as he got out of his car. Mr P attempted to tell Dr Ali that he was going to park in one of the two spaces available in the car park. However, Dr Ali refused to listen and continued to shout using offensive language. The Judge described the language used by Dr Ali, which was heard by a member of the public, as '*absolutely disgusting*'.

68. Mr P got back into his vehicle and then got out again to pacify his dog who was yelping in the back. Dr Ali became angry again, revved his engine, reversed slightly and then drove in the direction of Mr P who was standing by his open, front car door. Dr Ali drove his vehicle in a curve as if to drive around Mr P's car and then changed the angle so that he could side swipe Mr P so that he would hit the front corner or the side of the car.

69. Dr Ali's car wing mirror struck Mr P and he fell to the ground. Mr P, who was 83 or 84 years old at the time of the incident, suffered relatively minor injuries, including a cut to his wrist that was bleeding, bruising to his right hand and swelling of his wrist. Dr Ali then left the scene.

70. Dr Ali pleaded not guilty at Birmingham Crown Court and has maintained his innocence throughout those proceedings, subsequently and throughout these proceedings.

71. The Tribunal noted that Dr Ali had in the previous review Tribunal accepted the conviction.

72. This Tribunal noted the findings of the previous Tribunals:

#### **May 2021 and December 2021 Tribunal**

73. In finding Dr Ali's fitness to practise impaired, the Tribunal had noted that although Dr Ali had maintained his innocence throughout the proceedings, he had acknowledged that his conviction affected the wider public interest and had apologised for the negative impact his conviction would have on the reputation of the profession and public confidence in it. The Tribunal also had regard to the fact that Dr Ali had complied and engaged with the requirements of his sentence. The Tribunal had noted that Dr Ali's probation officer described him as '*very compliant*', '*respectful*' and '*polite*'. Dr Ali had also completed payment of court costs and compensation sooner than required. The Tribunal had borne in mind that Dr Ali had no previous convictions or cautions. The Tribunal noted that Dr Ali has engaged in voluntary community work and gone some way to completing his 180 hours of community work despite the impact of the pandemic.

74. Whilst the Tribunal accepted that Dr Ali had demonstrated some insight into the fact and consequences of his conviction, it had concluded that Dr Ali's insight was limited. It had found that Dr Ali had been unable to engage with consideration of the impact of the incident on Mr P.

75. The Tribunal accepted that Dr Ali had voluntarily attended six sessions of XXX which he had privately funded despite limited means. During those sessions Dr Ali has sought to reflect on his behaviour and consider the incident giving rise to his conviction from different perspectives.

76. The Tribunal was persuaded that the risk of repetition of his offending behaviour was low given Dr Ali's engagement with the rehabilitation service and his work with his XXX to help him understand aspects of his behaviour. The Tribunal was satisfied that those engagements had given Dr Ali appropriate strategies and tools to cope with stresses in the future. It had found Dr Ali impaired.

77. The Tribunal had some concern that although Dr Ali had taken some steps to develop insight and remediate, he had not demonstrated sufficient remediation such that the Tribunal could be assured that the risk of repetition was very low.

78. The Tribunal had accepted that the behaviour leading to Dr Ali's conviction, namely losing his temper whilst driving a vehicle appeared out of character. It had seen no evidence of other similar incidents. However, his lack of complete insight and remediation remained a concern. The Tribunal was not wholly reassured that Dr Ali has developed and put in place strategies which would prevent a reoccurrence should he find himself in a similar situation.

The Tribunal noted Dr Ali's acknowledgement of fault centred around him bringing the profession into disrepute and did not address the personal impact of his actions on Mr P or witnesses to the offence.

79. The Tribunal had also stated that there was no evidence of an underlying deep seated attitudinal issue.

#### December 2022 and March 2023 Tribunal

80. Dr Ali had accepted the Dangerous Driving conviction and his sentence. He had explained that he was involved in a '*freak accident*', in an empty car park involving him driving away at 12 mph from Mr P who fell. He had accepted that he had exceeded the 5mph speed limit but that was the extent of his admitted wrongdoing. Dr Ali had stated that he had continued to have annual driving lessons so as not to fall into bad habits and he had passed his driving theory and hazard perception tests.

81. Dr Ali had stated that he had felt a lot of anger during and after the court hearing and had engaged in a series of sessions with a XXX. He had stated that he could not rule out a risk of repetition, and the sessions had mitigated against the risk of reoffending. Dr Ali had also stated to the Tribunal that his remorse and remediation was limited as he maintained his innocence, but he should not be penalised for this.

82. This Tribunal noted paragraph 25 of the previous reviewing Tribunal's determination:

*"25. Dr Ali also submitted that he now had full insight into his behaviour, and he maintained that it was quite possible to demonstrate insight even though he had denied the offence. However, he also stated the following:*

- *That Mr P's complaint against him was malicious and motivated by a claim for compensation to get rich;  
'Mr P' was a crazy drunk who chased after him in his car;  
That some of the witnesses were not independent but were friends of Mr P; That one of the witnesses gave evidence at the criminal trial behind a screen because she was frightened of one of the police officers;*
- *That the Judge had misrepresented the facts in his sentencing remarks;  
That the Judge was racist;  
That the GMC, in pursuing various allegations against him, had failed to follow due process, was motivated by racism and lacked insight;  
The 2021 Tribunal's decision to adjourn the hearing after initially going part heard was motivated by malice;*

- *The Chair of the 2021 Tribunal did not understand the nature of a dangerous driving conviction; and*
- *He made a bare assertion that a number of witnesses against him were drug dealers.”*

83. This Tribunal also noted the previous Tribunal’s findings that whilst Dr Ali did not accept the underlying reason for his conviction, he accepted the conviction and the court sentence and there had been no repeat of offending and had completed sentence.

84. This Tribunal noted the previous Tribunal’s comments:

*‘...XXX, the prevention strategies had no bearing on whether Dr Ali is likely to reoffend. In reaching that decision the Tribunal is mindful that the case does not relate to Dr Ali technical ability to drive but rather related to his behaviour when faced with conflict and confrontation.*

*...Whilst it is to Dr Ali’s credit he has undergone some XXX, the Tribunal has not had sight of any independent supporting evidence in relation to the nature and focus of the therapy, Dr Ali’s progress and how he would act in a similar situation in the future.*

*...Whilst Dr Ali admitted the fact of his conviction, the Tribunal had concluded that Dr Ali’s stated position as set out at paragraph 25 above has gone beyond a mere denial of facts. The Tribunal concluded, taking into account the principle derived from the case of Sawati, that those matters can properly be taken into account when assessing the extent of Dr Ali’s insight. Having done so the Tribunal has concluded that Dr Ali’s insight remains significantly limited. Given his entrenched reluctance to accept responsibly for his criminal behaviour, the Tribunal cannot have confidence that it would be highly unlikely that his behaviour would be repeated.’*

85. The previous reviewing Tribunal therefore determined that a finding of impairment was necessary to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the medical profession.

86. That Tribunal had identified an ‘*entrenched lack of insight*’ and that Dr Ali had been unable to demonstrate any meaningful insight into his behaviour. It had considered that Dr Ali’s continued failure to demonstrate meaningful insight into his criminal behaviour reflected a failure to address and therefore remediate his attitudinal issues that led to his conviction.

### **This 2023 Review Tribunal**

87. The Tribunal bore in mind the persuasive burden on Dr Ali to demonstrate why he was no longer impaired. It evaluated the evidence to identify what steps had been taken by Dr Ali to allay the concerns of the previous Tribunals on the issue of insight, remediation and the risk of repetition. It noted that the last reviewing Tribunal, which directed a further review, stated that it may assist the reviewing Tribunal if Dr Ali provided:

- Evidence that Dr Ali has developed insight; and
- Evidence that he has kept his knowledge and skills up to date.

88. The Tribunal carefully considered the additional papers that were submitted by both Dr Ali and the GMC and the oral and written evidence of Dr Ali to make its evaluation. It bore in mind the relevant section from the SG which stated that *'it is important that no doctor is allowed to resume unrestricted practice following a period of conditional registration or suspension unless the tribunal considers that they are safe to do so.'*

89. In considering Dr Ali's evidence, the Tribunal bore in mind that Dr Ali had throughout the hearing, represented himself without any assistance from a lawyer. It also bore in mind that he was fully entitled to maintain his innocence in respect of the criminal conviction and was properly and fairly entitled to defend himself.

90. The Tribunal had noted the sentencing remarks of the criminal trial judge and in particular where he had stated to Dr Ali, *'you ignored the fact that you had hit him and you drive down the access road stopping to check your wing mirror but you were so heartless you did not even look around to see how Mr P was. You then left the scene without any concern for the man you had just hit. I find that you drove your vehicle deliberately at Mr P and you intended to hit him. When you used your vehicle as a weapon in this way you were putting Mr P's life in danger. It was only because he had time to get out of the direct path of your vehicle that he escaped with relatively minor injuries. You could so easily have killed this old man or lifechanging injuries upon him.'*

91. The Tribunal bore in mind all three elements of the Overarching Objective. It also considered that limbs (b) and (c) were engaged in that Dr Ali had brought the medical profession into disrepute by virtue of his conviction and had committed a serious breach of one of the fundamental tenets of the medical profession, namely, to act within the law.

92. The Tribunal noted that Dr Ali's contention that he accepted that he had a criminal conviction and had never denied that. In his closing submissions he stated *'I accept the .... outcomes of the Driving tribunals and HMCTS hearings.'* He stated that he didn't agree with the sentencing remarks in their entirety and also stated in evidence that they did not reflect the evidence within the criminal trial. He said that he had obtained transcripts of the criminal

trial, but the GMC had failed to put those before the Tribunal. The Tribunal noted however that Dr Ali had not submitted the transcripts himself to the Tribunal.

93. The Tribunal also had regard to Dr Ali's document dated October 2023 which he submitted, entitled:

*'Public Interest Reflections for the Dangerous Driving Conviction 2019'*

*"Acceptance of Conviction and Responsibility*

*I have a criminal conviction for Dangerous Driving. The conviction has clearly never been denied. As part of public protection punished by the court, this includes a suspended sentence, community service hours, a significant fine and rehabilitation activity requirement. This is with consideration of maintaining my innocence and delayed 2020 sentencing with circumstances. The 2019 jury made only a single finding based on an honest admission. They were unaware of my profession at the direction of the Judge whom imposed restrictions throughout the hearing and evidence, due to the GMC probity factoid 2019 and registration-suspension. Judge Bond being aware of my GMC suspension, made additional judgements and directions at conviction; as he disclosed my previous profession, imposed passport/abode restrictions and disclosed my family address under Public Interest, then this was again punished additionally at delayed sentencing. Given wider implication I understand why this poses public interest concern.*

*The public, profession and I, believe the GMC should not undermine the courts but has to consider medical-aspects not considered by the courts as part of regulation.*

*Stage 1 of the MPTS process, I has repeatedly made clear, I accept the fact I have a serious conviction and a sentence and this is despite maintenance of innocence. It is clearly perceived the GMC focus on particular delayed sentencing remarks to change the Stage 1, the cross-examination is reframed with directions; a trap which not being a lawyer I have fallen in. The conviction is not-contested and is underlined by a certificate from the court obtained in 2020 after GMC formal investigation for the conviction with FTP Rule 5. I understand Stage 2 is to consider if my Fitness to Practice is impaired regardless of not having a Licence to Practice and that I have not worked as a doctor throughout the suspended-sentence, since externally raising my whistleblowing concerns 2017 in the Public Interest. Although, I may not work as a doctor, I am well aware of the weight and onus there was on me, to consider and act on the impact of the conviction and sentencing to potential patients, previous patients, colleagues, and public confidence in the medical profession. Hence, I have been fully compliant with Probation services as previously evidenced in the first and second*

*review. I attend before another MPT highlighting that I accept there is a dangerous driving conviction and a historical suspended sentence with all elements of the sentence are completed. Historically, the 2021 submissions were made by defence for suspension as the misconduct by any conviction is serious.*

#### *Maintenances of Fitness to Practice and exploration of feelings*

*Throughout the ordeal, I have strived to keep my Fitness to Practice up to date as evidenced in the annual shadow Portfolios since 2018 and GMC Performance Assessments 2021. There was a public interest argument of having experienced doctors like me working during the pandemic, but as I could and did not work as a doctor, this mitigates the effect but clearly adds guilt. Having transferrable skills and experiences I have continued to apply it in several roles in an NHS GP practice because we still had a duty of care and responsibility. Nonetheless, I am well aware; the prosecution and I, do not see eye to eye on public perception thus public confidence in the profession. The GMC-witnesses in the parallel split case illustrate this worsened by right-wing newspaper article imagining the other driver was little, frail, vulgar language was supposedly used and I did not check the scene despite the opposite being shown in the trial and admissions by the other driver he may have misheard. Regardless, I am clearly sorry for the public perception to both the perceived-other-driver of being super vulnerable in the second incident and to those that have read the newspapers, the painted picture is disturbing. Understanding that perception, I explored that perspective and re-educated all my safeguarding training, to the extent I regularly now assist in safeguarding administration weekly.*

*Given potential seriousness, I had also explored externally the anger that was present at sentencing (unrelated to driving) and found that it was mainly from the perception of direct racism from the GMC July 2019 and, partly from the Court and GMC mutually refusing a Good Character reference each, due to each other. As the GMC split this case in 2021 I was XXX and paused the exploration as it was no longer emotionally appropriate. The exploration of anger at the GMC, was resumed with the Freedom To speak up Guardian, whistleblowing programme whilst I speaking openly with other doctors about the convictions and FTP, including with GMC-MPTS staff clearly has helped, this has led to additional national action against the GMC, in the interest of doctors. The insight here was shared and accepted by Probation.*

#### *Public Confidence and perception*

*My perception of Dangerous Driving is based on public interaction and media/news but trying to bridge the gap, I had looked at GMC funded research, for an objective understanding of public confidence in a conviction. Exploring the GMC document*

*'Promoting and maintaining public confidence in the medical profession, 2019'*  
[https://www.gmc-uk.org/-/media/documents/promoting-and-maintaining-public-confidence-in-the-medical-profession---final-report\\_pdf-78718694.pdf](https://www.gmc-uk.org/-/media/documents/promoting-and-maintaining-public-confidence-in-the-medical-profession---final-report_pdf-78718694.pdf) The qualitative research highlighted individual cases of wrong doing that were generally considered 'one-offs' had little impact on confidence in the wider medical profession. Further, 'the research suggests that the public does not automatically expect the GMC to have involvement where a doctor commits a criminal offence outside of the workplace.' The overarching issues for clinical errors, professional boundary issues or unrelated (to workplace) criminal acts, was:

1. The act needs be intentional, deliberate or reckless.
2. The effect needs to be an outcome of grave and lasting harm or death.

*The 'act' and the 'effect' have been acted upon by the CPS and court. As the charge sheet demonstrates there were originally two charges and the CPS conceded the effect was not grave in the worst-case narrative, to the extent they offered an alternative conviction of Careless Driving. However, this does not fully address Public Interest in relation to our profession, as it has potential to make a lasting impact on the public thus, patient confidence in the profession.*

#### *Impact on professional practice*

*The conviction has prolonged my absence from professional practice despite competence being illustrated by the GMC during the suspended sentence. The underlying reason for absence from professional practice is whistleblowing in the public interest, this has led to weaponisation of the GMC for multiple split complaints which is partly beyond the scope of this reflection, despite being related to behaviour.*

*The above GMC commissioned document does highlight there is a public expectation in criminal acts other than those relating to clinical errors, that the GMC should be involved if 'the doctor has intentionally harmed another individual.' As in, causing (serious) harm or death, participants expected the GMC to take action. Like me, some felt that 'do no harm'/'primum non nocere' is a central tenet of medical practice, and as such, it applies to a doctor's life outside of work too. I do agree, yet maintain my innocence in relation to this case, I had no intention of causing harm driving away but I was speeding despite the low speed and Judge Bond's sentencing remarks highlights possible minor injuries, the GMC have provided images but refuse to medically examine/see. In this research, 'there is more divided opinion on the extent to which professionalism from doctors is expected outside of the workplace' as this occurred outside the workplace and I was unemployed. Judge Bond clearly makes his opinion known in the delayed sentencing report exacerbated by highlighting the other driver*



*road-rage and had already made multiple claims for compensation. I would highlight that the CPS did consider harm, whilst the jury were directed to only consider from evidence available (including my 12mph speeding admission in an almost empty carpark) if, the level of my driving was far below that expected of a competent and careful driver. The GMC research actually attempts to scale the differences in conviction types. I am aware given the suspended sentence and the nature of conviction, this research (Fig.17, Pg.50) may look favourable upon me but the GMC process is adversarial and is at all costs despite complying with all GMC directions regardless of the reality of effectively been suspended for the foreseeable future. Although this should be considered in relation to my fitness to practice, the actual judgement here is one, for the MPT to make.*

*I have explored and compared my Dangerous Driving conviction to that of several doctors at various points of the perceived spectrum. Dr T whom caused harm to a police officer also at a low speed. At the opposite end, as highlighted to the 2022 review tribunal, I listened to relatives whom lost their loved ones to another speeding drunk doctor on the wrong side of the road. The effect on them was horrific and they have significant anger at the GMC for not acting in the Public Interest when there was death. Those that I have discussed Dangerous driving considered internal factors and similar to GMC research felt that those that caused death should be sanctioned or erased and thus were perplexed with my case until GMC Politics and right-wing press stating not-stopping despite clearly stopping was discussed. Risk factors they highlighted were substances; despite difficulties, thankfully I am teetotal and do not misuse drugs. Further, I have always accepted the need to be vigilant and not fall into bad driving habits, historically I continued annual driving lessons after passing. On reflection this is due to seeing and treating victims in A&E and ITU in my over 25-year NHS career, the effects of speeding is potentially deadly. Openly sharing my learning and history brought comfort to relatives, and does to the Public.*

#### *Public Confidence*

*A helpful paragraph from the GMC 'Promoting and maintaining public confidence in the medical profession' research as it highlights, I understand this panel should deal with this case on the basis of the conviction and sentence, is:*

*“When considering scenarios where doctors have committed potentially criminal acts in a non-work context, the more ‘relaxed’ view of the behaviours was more frequently expressed. As well as considering whether the doctor has harmed another person, it is expected that the GMC should base its response on whether the criminal behaviour had the potential to affect the doctor’s ability to practise safely and effectively, whether there was a pattern of*

*criminal behaviour, or whether the behaviour suggested the doctor was dishonest, aggressive or deceitful in character. A conviction and sentence had no more of an effect on public expectations of regulatory action than the criminal act and the circumstances surrounding it.”*

*There is no danger to patient care from this conviction. Given the freak nature, there is little chance of repetition. The risks of another Dangerous Driving conviction throughout every GMC review over the last several years have been kept at near 0% for the fact I deliberately have not regained my licence despite being told I am ready by my driving instructor. I had continued to drive until 2021 and then with other incidences of other drivers, I uploaded dashcam footage immediately doing different. If something similar was to occur again I would stay in my car and call the police about a drunk driver whom attempted a head-on collision, I am unlikely to drive away without calling the police first which is what I did with unregistered clumper on a public road in 2021. However, throughout the whole ordeal and since, I have continued to use the public roads as a cyclist and despite navigating regularly to work through one of the highest driving insurance and claims areas in the world, I have not caused any incidences. I have called the police where there is car crimes with knives and guns, whilst separately, looked after those knocked over as a Good Samaritan. Understanding the wider implications of criminal activities and related mandatory training like ‘protect’ has, led to currently working on community initiatives with the police around crime and health awareness in my work area. I still apologise and regret how my conviction incident came about; there is no denying I am sincerely sorry about this. I appreciate that this is disappointing to the profession and sincerely apologise. The profession appears to accept my apology and with full disclosure of ongoing GMC difficulties, nationally elected me to represent almost 200,000 doctors.*

#### *Commitment to rehabilitation*

*I have fully complied with all aspects of the conviction and requirements of the suspended sentence. Despite the pandemic, I have done a Foundation of Rehabilitation course for the Rehabilitation Activity Requirement, despite enthusiasm for other courses (like anger management) Probation services whom I had at least monthly supervision with, decided not to utilise all 15 days, given low risks and insight. I have participated in community service which due to the pandemic and fear of the GMC I had done more additional hours than needed. I had fully paid the fine early. I have had regular supervision and have sought to integrate rehabilitation aspects proactively into personal CPDs and growth. Probation services were pleased to hear how through the safeguarding learning I had further developed policies and procedures in the practice. Probation services and the courts were satisfied and discharged me in April 2022. If the risk was not negligible or very low, probation services would not have*

*hesitated to return my case to Judge Bond as directed, rather than allowing the conviction to lapse.*

*Despite doing the best that I can over the last 5 years, the biggest punishment for me has been the guilt of being unable to work as doctor whilst seeing people die and suffer during the pandemic, whilst I remained effectively suspended. I have done another Performance Assessment and was in January 2022 found Fit to Practice which just adds more guilt. The conviction and far-reaching consequences have let myself, my family and my community down and, I wholeheartedly apologise.*

*I understand that my reflection statement will be used in evidence for the purpose of a review hearing before a medical practitioner's tribunal and for the purpose of any appeal. The contents of this Statement are true to the best of my knowledge and belief.*

*Dr Shah Ali, October 2023. GMC 7284246 effectively suspended since 2017"*

94. In his oral evidence, Dr Ali made the following points:

95. In respect of the issue of insight, Dr Ali stated that his view was that if he challenged evidence, it was said that he lacked insight. Despite maintaining his innocence, he stated that he accepted the conviction and had complied with his sentence. He stated that there was a difference between medical insight and medico-legal insight. His view was that *'insight was more about having emotional readiness to explore and understand and consider thoughts and behaviours and actions'*. He further stated that the version used by the GMC was incredibly hard to pin down and the GMC were *'changing goal posts depending on the colour of your skin'*.

96. In his evidence on insight, Dr Ali stated that *'overall in terms of insight, our profession has tried to understand GMC perspective that the standard GMC want to uphold is really hard to do, due to actions taken, it is not congruent.'* He stated, *'that professional behaviour is expected but it is not what we see from them [GMC]'*.

97. In giving evidence, Dr Ali stated that in relation to the driving offence, he realised that he had shown no remorse and so remediation was impossible. He stated that was not however the view that had been taken by the Probation Service. He stated that he had abided by his sentence and explored the sentencing remarks, but he maintained his innocence and felt it was unfair to expect him to feel remorse. Dr Ali stated that the requirement for remorse would be an *'expectation from the Court Service [HMCTS] and the GMC are not a substitute for it'*. He stated, *'the remit here for the GMC and the Medical Practitioners Tribunal is regulation and not around dangerous driving and the law'*. Dr Ali

stated that *'I believe GMC are better placed when on medical issues and [when] non-medical issues are not related to medical practice...courts are better placed for those, and probation services have better structure and are superior.'* He stated that the *'GMC could learn from probation services but given their arrogance they never will.'*

98. Dr Ali was clear in his evidence that he would be taken back before Crown Court Judge Bond, the trial judge in the criminal matter, if there was even a risk of him reoffending in the future or even *'a risk that he would steal a pencil from WH-Smiths'* or if he had breached the terms of his sentence. He said that is for the courts to monitor and the public safety and public interest issue is for the courts to have responsibility for and not the GMC. He said that *'it is not a public confidence issue if it is not medically related'*.

99. In giving evidence, Dr Ali stated that the previous Tribunals had not understood his conviction. He maintained that his conviction was due to his standard of driving being far below that of competent and safe driver. He stated that he accepted driving at a speed of 12-mph in a 5-mph road. He stated that he *'drove away from a crazy drunk man'*. He told the Tribunal that *'the version you have is that I drove towards him'*.

100. Dr Ali stated that he maintains what he had stated to the Probation Service in 2020, that it was the *'fear of the GMC'* that had *'driven him to put his handbrake on and not move, whilst the other driver came at him for a head on collision'*. He stated that being violent was not in his nature and it was the *'other driver who had veered off on the tarmac road and stopped his car a metre and half from mine.'* He further stated that he [Dr Ali] had *'used symmetrical body language...put one foot out of the car to speak louder...'* He stated *'I didn't use bad language and as the GMC do not have the court transcript, they have a partial lack of insight into what occurred.'*

101. He stated that *'the judge had moved it to the tarmac and said I drove towards him [Mr P] due to the location as that was the only way I could get out.... but I was aware that the judge for some reason didn't have copies of the maps provided by witnesses...I am not sure why.'*

102. When questioned on the impact of the circumstances on Mr P, Dr Ali stated that Mr P had fallen possibly due to the heat wave and the *'half-baked road'* and Mr P's injury on his hand, which had not been medically analysed was a *'V shaped laceration'* and most probably a dog bite or from a *'pebble on the ground'*. Dr Ali was vehement that a *'conviction by a regulator was about patient safety and not an opportunity to reconvict'* him.

103. In his submissions, Dr Ali stated that given that he is the *'person concerned ...and I was at the court, I believe I have more insight than the GMC as I have more information and knowledge which is one of the basic needs for insight...'*

104. When questioned by the Tribunal on his use of the words *'the theoretical Mr P'* Dr Ali referred to the possibility that the other driver may have not even been Mr P but his younger nephew who was in his sixties and not a frail man. Dr Ali further submitted that he was not asking the Tribunal to go behind the conviction, which he stated needed to be given *'weight'* and he stated that he was not asking the Tribunal to dismiss it.

105. Dr Ali stated that the *'accusation made was not a characteristic of driving, and that he drives 20-mph in a 20-mph zone which infuriates other drivers'*. Dr Ali stated he had paid for sessions at Harley Street to explore his anger in 2020 and also in 2021. He stated that he had explored his anger which the Crown Court Trial judge had highlighted and stated that it *'was more to do with the GMC'*.

106. Dr Ali explained that he *'is angry as most whistle-blowers are'* and he further conceded that whilst he had stated that he is no longer *'fearful of the GMC'*, he did still have some fear. The Tribunal noted that Dr Ali had also stated in his submissions that *'I despise the GMC'*. When questioned by the Tribunal on his *'anger'* and *'fear'* being a trigger for Dr Ali impacting on the risk of repetition, he responded to say that he was now changed. He said he was now more *'stubborn'* and *'a lot more cynical and negative not the happy positive'* person he was. He said if the GMC wished to bring more cases against him, then they should *'go ahead'*.

107. In evidence, Dr Ali also maintained some of his previous views in respect of the trial judge's alleged racism towards him and the witnesses being *'drug dealers'*. Dr Ali stated that *'to have insight means to have knowledge'* and he made reference to having been a juror for Judge Bond previously and having observed him for a decade as a basis for his view. He also referred to being a local to that area where the incident happened and professed to knowing about the pubs that the witnesses would frequent to form his views.

108. Overall, Dr Ali's evidence was that he did not feel that he was impaired by his conviction. He said that he had *'seen his conviction from a public perspective'*. He highlighted that he did not have any previous convictions or cautions, and he does not pose a risk to the public. He reiterated that rehabilitation is prescribed by the courts and not the GMC. He stated that he had tried to gain insight and self-reflect. He had apologised *'for the public perception'* and that one of the witnesses who *'had not witnessed the event but was present in the aftermath was profoundly affected and had written a statement that she read out in court'*. He said that he was *'deeply sorry'* about that. The Tribunal also noted that in his

reflective document, Dr Ali had stated the conviction and far-reaching consequences have ‘let myself, my family and my community down and I wholeheartedly apologise’.

109. The Tribunal was mindful of the tension that existed between Dr Ali demonstrating insight into his conviction whilst robustly defending the circumstances which led to the conviction, which he had a right to do. It also noted that Dr Ali had stated that he was preparing to appeal the criminal conviction. The Tribunal noted however that this was the second review hearing. The previous Tribunals in their determinations and HHJ Mithani KC, in his written judgment dated 29 September 2023, on Dr Ali’s appeal, had clearly identified how Dr Ali could demonstrate remediation and insight despite denying the offence.

110. The Tribunal noted that Dr Ali had not denied the conviction, he had apologised and had stated that he accepted the impact of his conviction on public confidence. Dr Ali had however, contrary to this apology and recognition, maintained throughout his evidence that the public interest and other public risk elements of the conviction were not something the GMC or this Tribunal should concern itself with and it was solely for the criminal courts to determine. The Tribunal took the view that this undermined Dr Ali’s recognition of the impact of such a conviction on members of the public and their trust in doctors.

111. The Tribunal noted that Dr Ali had previously raised the issue of criminal conviction on non-clinical matters as not being within the remit of the GMC. It noted that HHJ Mithani KC had previously ruled on this. Within his judgment, dated 29 September 2023, HHJ Mithani KC had stated ‘*Nor am I able to accept that a non-medical charge of Misconduct is inappropriate for action by the Respondent [GMC]*’. The Tribunal took the view that, in raising this issue again, Dr Ali had not reflected on this ruling.

112. Furthermore, the Tribunal could not find any signs on part of Dr Ali, of a meaningful recognition or acceptance of the seriousness of the circumstances that led to the conviction. It did not note any acknowledgment of the impact the circumstances of the incident would have had on Mr P. Instead at each point the ‘seriousness’ of the circumstances were mentioned within the hearing, Dr Ali sought to minimise the gravity of the circumstances by referring to the ambit of his conviction being a ‘driving offence’ where he drove over the speed limit of 5-mph. He showed no insight or acknowledgement of the gravity of the situation which the trial judge had referred to as ‘*use of car as a weapon*’. Instead, Dr Ali sought to refer to Mr P as a ‘*crazy drunk man*’, and questioned whether Mr P was even the driver of the other vehicle.

113. The Tribunal remained concerned that Dr Ali had not shown any recognition of the seriousness of the criminal conviction by a jury on a higher standard of proof and instead maintained his allegations against the sentencing judge as a racist stating that he [Dr Ali] had

the benefit of XXX training which enabled him to recognise the racism and also maintained that the witnesses were drug dealers. It considered that rather than show any insight into the circumstance of Mr P, an elderly man, found to have fallen and injuring himself, and the impact this would have had on Mr P, Dr Ali chose to comment on alternative ways in which Mr P could have fallen and injured himself. It considered Dr Ali's evidence that he had explored different perspectives and different versions of Mr P – from the point of view of Mr P, the Judge, the witnesses etc. However, despite this, Dr Ali's evidence did not highlight any understanding of impact or empathy with the victim in light of the seriousness of the information within the sentencing remarks.

114. The Tribunal could not be satisfied that Dr Ali had shown any meaningful understanding of why the conduct behind the conviction (despite his denial of it) would be considered unacceptable on part of a doctor. It considered that this would have a significant impact on the risk of repetition, especially as Dr Ali had not shown such understanding on his part despite the time that had elapsed since the conviction and since the last reviewing Tribunal's consideration of this issue.

115. The Tribunal considered Dr Ali's strategies that he submitted he had put in place to counter any risk of repeating the offence:

*“Strategies to reduce the risk of reoccurrence of conviction*

*Previous submissions was confusing and inc. risk of reoccurrence of further MPT hearings, removed*

- 1. For GMC only, have deliberately not regained license so risk of recurrence of Dangerous Driving Conviction is 0%. Prosecution has higher risk, how negative does my risk need to be and will it be applied to BAME doctors or just me given whistleblowing/current action????*
- 2. Difficult given freak nature, question I asked Probation services and was told it would be by participation in RAR days and assessment. I clearly also participated in feedback and wrote a few reflections. Unlike GMC, HMCTS Probation service had supervision and pastoral discussions +completed all aspects. It was supportive and made me want to explore.*
- 3. Completed Probation service Foundation of rehabilitation course, found self-directed CGL mindfulness component that was expanded with homework very useful and calming*
- 4. Was keen to do other courses but told not needed, unclear RAR days used. Specifically hmcts probation service did not use anger Mx course. Understanding GMC perspective still explored anger Mx via NHS post-whistleblowing support scheme last year*

5. *Largest factor was fear of the GMC, its why I had my handbrakes on before other car even came into car park, why I waited before leaving. Since 2021 I am no longer scared – openly discussed FTP issues inc. Conviction and have been elected to represent colleagues. Unfortunately personality has changed but does mean I would act differently and have done*
6. *I obviously used insurance for first time and have experience of that – thus more likely to be specific with solicitors and not accept trainees at all stages, act differently -2021 incident with violent illegal clamper – called police, followed instructions*
7. *Obviously after 2018 drove used public road driving and no incidents but did do things differently e.g. having replaced dashcam I uploaded footage online following near-miss with car pulling out at roundabout and stopping without break-lights working +police submissions*
8. *Continued to use public road cycling to/from work via highest car insurance area in country, lots of potential incidents on daily basis but clearly I have not been involved in incidences but have looked after those in car crashes and children crossing the road, with other incidents like 2 months ago called police to stop escalation and traffic issues*
9. *As previously highlighted understanding the media perspective I re-did the safeguarding for adults and children and went to Level 4, has clearly developed on one hand weekly meetings and supporting GP regional meetings and on other work with police -parks and schools*
10. *Obviously inconsistencies were highlighted same way as with deanery accusations of re-attributed events – with objective GPS evidence, has always been really useful*
11. *XXX”*

116. The Tribunal considered that Dr Ali had referred to the incident that led to his dangerous driving conviction as a ‘*freak incident*’. He stated that part of the strategies that he had developed since the last review Tribunal was him not currently having a driver’s licence, therefore the risk of repetition was zero percent. The Tribunal noted that this was indicative of Dr Ali’s limited perspective into what the Dangerous Driving conviction involved. It considered that for Dr Ali it was merely a driving offence of driving at a higher speed of 12-mph in a 5-mph zone. He had not shown any consideration of the wider issues and actions leading to the conviction. It also noted that there was no restriction on Dr Ali applying for a licence, once he had passed his enhanced driving test, thereby allowing him to resume driving. This would impact his calculation of zero percent risk.

117. The Tribunal considered the remainder of Dr Ali’s strategies set out above. It did not consider that they necessarily addressed the risk of repetition arising from Dr Ali’s lack of



insight into the circumstances that led to the conviction. It did however consider that it was positive that Dr Ali had submitted that he would seek to call the police in the future rather than take action himself.

118. The Tribunal further considered Dr Ali's assertion that the dangerous driving incident was related to his '*fear of the GMC*' and the anger that was present was towards the GMC. In evidence he had stated that he was '*no longer fearful of the GMC*' and at a later point he accepted that he was still fearful and that he also despised the GMC. He had been vocal about his anger and vehement disagreement with the GMC's practices, which the Tribunal considered was still a live and present issue for Dr Ali. Given Dr Ali's own submission about his anger relating to the driving incident, it considered that the '*fear*' and '*anger*' towards the GMC would be relevant to a future risk of repetition.

119. The Tribunal acknowledged evidence of XXX sessions that Dr Ali had booked in 2021. Dr Ali stated that he had funded this himself and the Probation Service had considered his rehabilitation as completed, ahead of schedule, and had not asked him to engage in an anger management course. However, as noted by the previous review Tribunal, there was still no independent evidence of the content or outcome of the XXX.

120. The Tribunal also considered the positive aspects of Dr Ali's evidence. It was clear that Dr Ali had taken steps to develop areas of his practice. It considered the '*shadow appraisals*' [Dr Ali's term] which, although not appraised by a trained independent appraiser, contained a comprehensive record of CPD activities in a range of clinical areas. The Tribunal considered that it was to Dr Ali's credit that he had carried out this work. It determined that Dr Ali had evidenced that he had endeavoured to keep his knowledge and skills up to date whilst not working in a clinical setting.

121. Overall, The Tribunal considered the totality of the evidence. It considered that the conviction was remediable despite it being denied. There had been a significant period of time since Dr Ali's fitness to practice was first found impaired due to his conviction. This was time he could have utilised to reflect, develop insight and remediate to deal with any future risk of repetition. It had not seen any meaningful recognition of its serious and grave nature from Dr Ali, it had found that he still showed significantly limited insight on the wider circumstances that led to the conviction, and it had not developed sufficient strategies to combat a risk of repetition. Overall, it had not allayed the concerns of the previous reviewing Tribunal.

122. The Tribunal also remained concerned that a significant proportion and focus of Dr Ali's evidence was on making counter allegations against others, such as:

- Dr Ali referred to HHJ Mithani’s judgment being altered at the influence of Ms K, part of the GMC’s. He stated that the draft judgment initially handed down was different to the finalised one.
- Dr Ali’s continued to detail his ‘*GMC difficulties*’ emanating from his initial whistleblowing in 2014. Dr Ali also detailed that the GMC were racist towards him and referred to a previous GMC counsel’s racist treatment of him.
- Dr Ali referred to ‘last minute’ changes of allegation/s by the GMC and not granting the disclosures he sought under the Freedom of Information and Subject Access Requests.
- Dr Ali referred to the GMC/MPT not applying Rule 12 and Rule 21 correctly previously.
- Dr Ali referred to ‘*this case has been taken worse than killing someone, by the GMC*’.
- Dr Ali maintained that the GMC were prosecuting him twice - referring to ‘double jeopardy’ an issue dealt with in his appeal by HHJ Mithani KC.
- Dr Ali referred to his performance assessment, which was part of the initial MPT case in 2019. He stated that it involved ‘*marks which had been changed*’ on purpose.
- Dr Ali stated that in line with the CEO for GMC’s view, ‘*the Medical Act 1983 provided far too much flexibility and cases like this get confusing when they get separated when they then get pulled back together*’.
- Dr Ali maintained that the issue of insight and remediation was not for this Tribunal. He referred to the Tribunal as a ‘*supposedly specialist medical Tribunal*’.

123. The Tribunal took the view that Dr Ali’s strong views that this Tribunal did not have the remit to consider the issues of upholding public confidence and maintaining professional standards had shown his ‘entrenched lack of insight’ and a ‘serious attitudinal issue’. It considered that in light of the counter allegations that Dr Ali had made listed above, Dr Ali’s entrenched lack of insight and attitudinal issues, which had also been highlighted by the previous reviewing Tribunal, had worsened and were deep-seated. It considered that this was in line with Dr Ali referring to himself having a ‘*changed personality*’ and becoming more ‘*stubborn*’. It considered that Dr Ali had not discharged the burden on him to persuade the Tribunal that his fitness to practice was no longer impaired by his conviction.

124. It further considered that based on the evidence before it, a finding of impairment is necessary to promote and maintain public confidence in the medical profession, and to maintain proper professional standards and conduct for members of the medical profession.

125. Accordingly, the Tribunal determined that Dr Ali’s fitness to practise remained impaired by reason of his conviction.

#### Extension of current order of suspension

126. The Tribunal noted that the current order of suspension imposed on Dr Ali's registration is due to expire on 4 January 2024.

127. The Tribunal referred to paragraph 170 of the Sanctions Guidance:

*'Where a review hearing cannot be concluded before the conditional registration or suspension expires, the tribunal can extend it for a short period. [footnote Section 35D (5) and (12) Medical Act 1983 as amended]. This would allow for relisting of the review hearing as soon as practicable and to maintain the status quo before the outcome of the review hearing'.*

128. As the hearing is being adjourned until after the date on which the suspension would otherwise expire, the Tribunal determined under section 35D(5)(a) of the Medical Act 1983 to extend the current order of suspension on Dr Ali's registration for a period of six months from the expiry of the current order of suspension on 4 January 2024.

#### **Determination on Sanction - 28/02/2024**

1. This determination will be handed down in private under the provisions of Rule 41 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). However, a redacted version will be published at the close of the hearing.

2. Having determined that Dr Ali's fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with and Rule 22(g) and 21A, whether to make a direction under s35D of the Medical Act 1983.

#### **The Outcome of Applications made during the Sanction Stage**

3. The Tribunal refused Dr Ali's application for the Tribunal to disregard the findings made by the 2019 Tribunal when considering the evidence at the sanctions stage. The Tribunal's full decision on the application is included at Annex E.

#### **The Evidence**

4. The Tribunal has taken into account the background to the case and the oral and written evidence received during hearing, where relevant, to reaching a decision on what direction, if any, it should make with regard to Dr Ali's registration.

5. The Tribunal received a further bundle of evidence on behalf of Dr Ali including:

- An updated shadow appraisal, dated 9 October 2023;
- Additional testimonials, various dates;
- MPTS Appeal Circulars;
- ‘GMC Research 2015; Analysis of cases resulting in doctors being erased or suspended from the medical register’; and
- Correspondence relating to FOIA – FTP Rule 17 (2) g ‘Successes’.

## Submissions

### Submissions on behalf of the GMC

6. Mr Brook referred the Tribunal to the Sanctions Guidance (2020) (SG) and submitted that, given both cases, the new and the review matter, the appropriate sanction was erasure. He stated that this was necessary to maintain high standards within the profession and maintain public confidence.

7. Mr Brook stated that the new matter of dishonesty was aggravated by the previous dishonesty case.

8. Mr Brook submitted that after hearing Dr Ali’s evidence, it was clear that, when considering the extent of Dr Ali’s insight, his lack of insight went further than just a denial of the events.

9. Mr Brook submitted that Dr Ali had shown a persistent lack of insight into the seriousness of the findings or the consequences of his actions and referred the Tribunal to various parts of its impairment determination. He reminded the Tribunal that it had found that Dr Ali’s deep-seated and attitudinal issues had worsened since the previous reviewing Tribunal’s consideration of the case.

10. Referring to the previous reviews, Mr Brook stated that it was inappropriate to extend suspension as a sanction continuously in regard to Dr Ali’s conviction.

11. Mr Brook stated that, although Dr Ali’s conviction was a significant period of time ago, the doctor had failed in that time to sufficiently reflect, develop insight, and remediate, in order to address any future risk of repetition. He stated that the determinations of previous Tribunals, and the written judgement of the learned High Court Judge in Dr Ali’s recent appeal hearing, of September 2023, had clearly identified how, despite denying the offence,

Dr Ali could demonstrate remediation and insight. He stated that Dr Ali had not sufficiently addressed these areas of concern.

12. Mr Brook concluded by submitting that, when considering Dr Ali's new and review cases together, the appropriate and proportionate sanction was erasure. He also referred the Tribunal to case law.

#### Dr Ali's submissions

13. Dr Ali began by stating that he appreciated that it would be difficult to follow his submissions because they were unstructured.

14. Dr Ali submitted that the appropriate sanction in relation to his new case of dishonesty was a short period of suspension. For the review case, there should be no sanction. Dr Ali had further stated that, based on the issue of 'entrapment', the dishonesty case should be classed as having exceptional circumstances, and no action should be taken.

15. Dr Ali criticised the GMC and the MPTS and referred to the Tribunal as a '*kangaroo tribunal*'. He also referred to the latest version of Good Medical Practice and stated that paragraph 6 required devotion to the GMC as a religion which it was not and that he had a right to practice his own religion.

16. Dr Ali apologised to the Tribunal and Mr Brook for any offence caused, but stated that he had '*strong opinions*'.

17. Dr Ali submitted that he had insight. He further stated that his problems with the GMC did not start in 2017, but rather, ten years ago when he reported how '*some doctors got away with murder*'.

18. In relation to his conviction, Dr Ali stated that the Crown Court jury only considered '*a very limited and very defined question and did not consider the bigger picture*'.

19. Dr Ali submitted that the GMC had engaged in '*smoke and mirrors*' and referred to experiencing difficulties with the GMC based on his race. He stated that he was '*not white*' and asserted that this had caused him difficulties.

20. Further, Dr Ali stated that he did not have access to Legal Aid as GMC Tribunals are not-registered and not-funded by the public purse. He stated that he was not represented or provided with a defence which '*naturally leads to insight abuse by another all-white panel*'.

He argued that any challenge is regarded as a *'lack of insight regardless of common-sense, justice or fairness'*.

21. Dr Ali stated that he had made a Freedom of Information (FOI) request of the GMC and had not received what he had asked for. He also asserted that the GMC had also used *'smoke and mirrors'* by changing the Allegation at the last moment.

22. Dr Ali submitted that the purpose of a sanction was to protect the public and it was not to be used as an extra punishment which would go on for decades. He referred to the previous Tribunals' determinations on sanction and stated that it made no sense for a short period of suspension to then be followed on review by a longer period.

23. Dr Ali concluded by stating that he was aware that he would not practice in the UK again but that the GMC should not perpetually punish doctors based on *'driving matters'* and *'non-professional matters'*.

### The Tribunal's approach

24. The decision as to the appropriate direction in respect of any sanction to impose was a matter for the Tribunal exercising its own judgement. There was no burden or standard of proof at this stage. It recognised that every case will necessarily turn on its own facts.

25. In reaching its decision, the Tribunal had given careful consideration to the SG. It had borne in mind that the purpose of a sanction was not to be punitive although it may have a punitive effect. Further, in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive.

26. Throughout its deliberations, the Tribunal had taken into account the overarching objective, and applied the principle of proportionality, balancing Dr Ali's interests with the public interest.

27. The Tribunal also had regard to the judgment in the case of *Bolton v. Law Society* [1994] 1 WLR 512, in which Sir Thomas Bingham stated that *'the reputation of the profession is more important than the fortunes of any one individual member'*.

### The Tribunal's Determination on Sanction

28. Before considering what direction, if any, to make in respect of Dr Ali's registration, the Tribunal considered the aggravating and mitigating factors in this case.

Aggravating and Mitigating factors

29. The Tribunal reminded itself of the specific paragraphs of the Allegation which it had found proved in respect of Dr Ali's dishonest conduct and that Dr Ali's fitness to practise remained impaired in respect of the conviction matter.

30. The Tribunal was mindful that Dr Ali had a previous (2019) finding of dishonest conduct and impaired fitness to practise resulting from a similar matter, namely, failing to disclose relevant information to a prospective employer. It considered this to be an aggravating feature in this case. This Tribunal had found that there was also no evidence before it that Dr Ali had understood the gravity of the dishonesty and had referred to it as '*silly*' and a '*bit of a farce*'. In his submissions at this stage, he maintained that whilst there was an impact on public confidence, due to the '*entrapment*' issue, the '*public would say no*', and hence not agree to the impact on public confidence.

31. The Tribunal further considered the inherent seriousness of Dr Ali's criminal conviction which was reflected in the Crown Court Judge's sentencing remarks where the Judge had stated that Dr Ali had used his vehicle as a weapon and placed Mr P's life in danger. Dr Ali had referred to the incident as a '*freak incident*'. The Tribunal had found that Dr Ali's insight to be significantly limited and that he had not developed sufficient strategies to combat a risk of repetition. It had found Dr Ali to have an entrenched lack of insight and a serious attitudinal issue, which it had considered were deep-seated and had worsened since the previous reviewing Tribunal's decisions. In his further submissions, Dr Ali continued to minimise the gravity of the circumstances behind the conviction. The Tribunal considered that this continued to show a lack of reflection and insight. Dr Ali also continued to make counter allegations and focused on his perceived failings of others.

32. The Tribunal considered that the lack of insight continued despite the passage of over three months since its impairment decision, during which Dr Ali had also seen the judgment of HHJ Mithani which clearly identified how Dr Ali could demonstrate remediation and insight despite denying the criminal offence. The Tribunal considered such continued lack of insight on both the dishonest conduct and criminal conviction, to be an aggravating feature in this case.

33. The Tribunal balanced these aggravating features against the mitigating features in this case. It acknowledged that Dr Ali was apologetic to his friends, family and community and noted that Dr Ali had not reoffended since 2018. It considered that it was positive that

Dr Ali had fully engaged in the hearing process without legal representation and had shown the Tribunal evidence of keeping himself updated on medical knowledge and skills. It also reminded itself that Dr Ali had submitted that he had completed XXX. Although, as this Tribunal had limited evidence supporting this and no evidence of the outcomes achieved it could only place limited weight on it.

34. The Tribunal however noted that Dr Ali continued to state that whilst the MPT could consider the matter of upholding and maintaining proper professional standards, *'driving matters and non-medical matters'* were not in its remit.

35. In the Tribunal's view, Dr Ali's dishonest conduct, lack of insight and lack of reflection on the gravity of the both the dishonesty and the criminal conviction and its impact on others was inherently serious and remained a significant concern.

36. The Tribunal considered three further references/testimonials provided by Dr Ali. An email from Ms S, senior manager for the Speaking Up Support Scheme which confirmed his engagement and attendance with the scheme, and an email from Head of Support Services at As Suffa Trust, Mr Q, confirming Dr Ali to be a longstanding volunteer for the Homeless Outreach Project. Within this it was stated, *'I am aware of the Dangerous Driving Conviction and the GMC has prosecuted the same matter previously. I understand that there are no concerns of his ability to work safely as a doctor and it appears all matters considered are not about doctoring'*, and further *'I cannot understand how preventing a competent junior doctor from working as a doctor for non-doctor matters is in the general public [sic] interest'*.

37. Dr Ali's line manager Ms R commented on her personal experience of the doctor. She stated *'Due to the pandemic, and his interaction with Dr [A] for a failed volunteering at a COVID call centre, openly discussed with us, his role from supervision and support of the call centre evolved to include healthcare assistance activities'*.

38. Ms R further commented on Dr Ali's work to be of good quality and described him as *'very reliable, caring, diligent with strong work ethics, someone who will go the extra mile; hence he is an asset to our organisation. I have not had any issues or concerns with his professionalism and probity'*. The Tribunal acknowledged the positive aspects of the references, but could not however apportion significant weight to them as, whilst they demonstrated the authors' personal experience with Dr Ali, they lacked relevance as they did not show a recognition or a reflection of the nature of the Tribunal's specific findings in respect of Dr Ali's dishonesty and the seriousness of his criminal conviction on which it found that he lacked insight.



39. Having considered and balanced the above factors, the Tribunal took the view that the aggravating features in this case outweighed the mitigating features.

#### No action

40. The Tribunal first considered whether to conclude the case by taking no action as had been submitted by Dr Ali.

41. The Tribunal noted from the SG that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal did not consider that there were any exceptional circumstances that would justify such a course. It would also not be sufficient, proportionate or in the public interest to conclude the case by taking no action.

#### Undertakings

42. The Tribunal noted that no undertakings had been agreed in this case.

#### Conditions

43. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Ali's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

44. The Tribunal determined that the imposition of conditions on Dr Ali's registration would be unworkable given the doctor's lack of insight and the finding of dishonesty.

45. The Tribunal further considered that the imposition of conditions on Dr Ali's registration would also be inappropriate as it would not send a sufficiently robust message to the public or the profession as to the inappropriateness and seriousness of his misconduct. In the circumstances, the Tribunal determined that a period of conditional registration would neither be appropriate nor meet the public interest.

#### Suspension

46. The Tribunal then considered whether a period of suspension would be appropriate and proportionate. It considered paragraphs 92, 93 and 97 of the SG.

47. The Tribunal bore in mind that suspension had a deterrent effect and could be used to send out a signal to the doctor, the profession and the public about what is regarded as behaviour unbecoming a registered doctor.

48. It noted paragraph 92 and 93 of the SG which states:

*'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 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 acknowledgment of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see that the doctor has taken steps to mitigate their actions'.*

49. The Tribunal had found that the misconduct in this case was serious. It further considered that an aggravating feature was a previous finding of impairment due to dishonest conduct found proved. It had found limbs (b) and (c) of the Overarching Objective engaged and that Dr Ali had breached a fundamental tenet of the medical profession, had brought the medical profession into disrepute and had acted dishonestly.

50. The Tribunal had also found that there was a failure on Dr Ali's part to demonstrate any meaningful recognition or acceptance of the seriousness of the circumstances that led to the conviction. Further, that Dr Ali had an entrenched lack of insight in respect of both the dishonest conduct and the circumstances behind his criminal conviction. It took the view that Dr Ali's behaviour was unbecoming of a registered doctor, and so serious that action must be taken to maintain public confidence in the profession.

51. The Tribunal considered the following factors listed at paragraph 97 of the SG:

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

...

*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.'*

52. The Tribunal acknowledged that there was no evidence of a repetition of similar behaviours since the date of the respective incidents. The Tribunal however reminded itself of its finding of impaired fitness to practise, over three months ago, when it had considered Dr Ali to have insufficient insight and insufficient reflection and remediation. It had found Dr Ali to minimise the seriousness of his actions. There was no evidence before the Tribunal that Dr Ali had understood the gravity of the dishonesty or the link between his actions and the finding or its significant impact on upholding and maintaining professional standards in the medical profession. It had also considered that Dr Ali had not developed sufficient strategies to combat a risk of repetition and it had very limited information XXX, as remediation, which Dr Ali submitted he had undertaken.

53. The Tribunal considered the further documents submitted by Ali and his further written and oral submissions. Dr Ali stated that he accepted the findings of the Tribunal but maintained that Ms D had referred to '*provisional enquires*' being made as opposed to an '*open investigation*'. He also maintained that he had made a '*typo*' on the form that he '*rushed to complete*' at a '*random time*', and it was Ms C who had chosen to call him which was the precursor for the actions that followed. Dr Ali further stated that he had completed a voluminous amount of CPD. Dr Ali stated that he felt he had done enough to satisfy his colleagues and the profession but that he would not be able to ever do enough for the GMC to restore confidence in him and queried if these were requirements for the public or the GMC.

54. Dr Ali also submitted that he had the emotional ability to explore, engage and reflect upon the issues and go through them again. In respect of strategies, he stated that he was engaging in preventing organised crime in his area and '*exploring with the families of actual victims of people who had their loved ones die the doctor had run over them... and the GMC refused to take action*'. He apologised for the '*GMC construct regarding his conviction*' and was sorry to his friends. He stated that it was the GMC which had limited insight into the driving matter and the need to uphold public standards and the public interest.

55. The Tribunal considered these further submissions and took the view that they were akin to Dr Ali’s evidence and submissions at the impairment stage more than three months ago. It could not find evidence of any developing insight. It could not be satisfied that Dr Ali now had insight such that he would not pose a significant risk of repeating his behaviour both in terms of dishonesty and the circumstances leading to his criminal conviction.

#### Erasure

56. The Tribunal considered whether erasure was the appropriate sanction. It had regard to the following paragraphs of the SG.

*‘108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.’*

*‘109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*

*a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.*

*B A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.*

*...*

*h Dishonesty, especially where persistent and/or covered up*

*j Persistent lack of insight into the seriousness of their actions or the consequences.’*

57. The Tribunal considered these paragraphs of the SG to be engaged. Dr Ali’s dishonest behaviour was a serious and deliberate departure from the principles set out in GMP. Dr Ali continued to minimise the gravity of the dishonesty and continued to demonstrate insufficient insight. His conviction, and the facts underlying it, as described by the trial Judge, also illustrated the seriousness of the circumstances and the Tribunal had considered Dr Ali’s fitness to practice remained impaired and his insight into the impact and gravity of his actions continued to be lacking and entrenched.

58. The Tribunal considered that these matters had the potential of seriously undermining public trust and public confidence in the profession.

59. The Tribunal considered what a reasonable and informed member of the public would think. It considered that such person would not trivialise or underestimate the seriousness of Dr Ali's behaviours and actions. It weighed in the balance Dr Ali's interest in not being able to practise as a doctor. However, it considered that the reputation of the profession and the need to maintain public confidence and proper professional standards and conduct for the medical profession to be more important. It took the view that Dr Ali's behaviours were fundamentally incompatible with being a doctor.

60. In all the circumstances, the Tribunal therefore determined that erasure was the appropriate and proportionate sanction.

61. Accordingly, the Tribunal directed that Dr Ali's name be erased from the Medical Register.

62. Dr Ali's name will be erased from the Medical Register 28 days from the date on which written notice of this decision is deemed to have been served upon him, unless an appeal is made in the interim. If an appeal is made, the existing substantive order of suspension will remain in force until the appeal has concluded.

63. This concludes the hearing.

**ANNEX A – 09/10/2023**

**Application to recusal of the Legally Qualified Chair (LQC)**

1. At the outset of the hearing, before the opening of the case, Dr Ali, made an application for the recusal of the Legally Qualified Chair (LQC).
  
2. Dr Ali submitted that he had raised an objection when initially being told by MPTS managers that the LQC was an LQC on panels that hear misconduct cases at the West Midlands Police. He said that he had not received a response to his objection. He submitted his objections to be based on:
  - The Chair having a role with the West Midlands Police and a witness for the GMC, Dr A also having done work for the West Midlands Police as part of her portfolio career. He said that a police officer for West Midlands Police had given evidence against him in the criminal case and the GMC had held interviews with him as part of one of the previous MPT cases concerning Dr Ali.
  
  - Dr Ali further stated that one of the LQC's other roles is the same as one of the previous LQC's other roles. He explained his reference to the previous LQC as being the LQC who heard the matter on the disclosure application.
  
  - Dr Ali further submitted that Dr A is a member of the MPTS and therefore this case should not be heard by this Tribunal or in fact by anyone on the list of LQCs whom he had identified to the MPTS Managers. He submitted that due to these reasons and that this case does not have any clinical aspect to it, it should be heard by another regulator.
  
3. Dr Ali, having made clear his objections, did stress that he did want to press ahead with the hearing as he wishes to move on with his life.

4. Mr Brook stated that many LQCs and Tribunal members have additional roles where they sit on other regulatory panels. He said the link between the Chair sitting as a LQC for West Midlands Police and being potentially biased to hear this case was a weak argument. He stated that this case does not involve consideration of Dr Ali's dangerous driving conviction. He further submitted that the issues on this case are extremely narrow.

### The Tribunal's decision

5. In making its decision on whether the LQC should recuse herself, the Tribunal had regard to the case of *Porter v Magill* [2002] 2 AC 357 which sets out the test for bias:

*'whether a fair minded and informed observer, having considered the facts, would conclude that the tribunal was biased.'*

6. The Tribunal reminded itself that it must first identify all the circumstances which have a bearing on the suggestion that it could be biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the Tribunal was biased.

7. The Tribunal was mindful that there must be good reason for recusal and has borne in mind the submissions of Mr Brook and Dr Ali.

8. The Tribunal noted that the LQC was an independent member of the West Midlands police misconduct panel, it had no affiliations to that police service.

9. It further considered that neither the LQC nor the other members of the panel had sat on any case/s with Dr A nor had they any other professional or personal connection with her.

10. It also took into account that the LQC had no knowledge of the police officer mentioned and the Tribunal noted that Mr Brook stated that the GMC had no intention of calling this police officer, or any other police officer, in this case.

11. Further, the Tribunal considered that it was sitting solely to determine the allegation relating to the alleged events of 6 June 2020 on the relevant evidence pertaining to that allegation. This hearing was a new alleged misconduct matter and not a re-hearing of any of the issues relating to any previous hearings.

12. The Tribunal bore in mind that the Parties are entitled to expect that their dispute will be heard by a fair and independent tribunal. Having considered all the circumstances the Tribunal took the view that that a fair-minded and informed observer would not consider that there was a real possibility of bias on part of the LQC or any of the tribunal members.

13. Accordingly, the Tribunal rejected Dr Ali's application for the LQC to recuse.

## ANNEX B – 09/10/2023

### Application to amend the allegation

1. Dr Ali made an application to amend the Allegation and also stated that the GMC should have made an application to revise their draft Notice of Allegation (NOA) to the final version.

2. Dr Ali submitted that he had, prior to September 2023, an '*original*' Allegation and that this had been altered to a version that he received on 5 September 2023.

3. Dr Ali submitted that it would be unfair to proceed with an altered version of the Allegation and that the GMC had taken the opportunity to make further '*accusation*' against him.

4. Dr Ali asserted that he had made some admissions to the original Allegation but not to this version as the use of double-negatives had given the Allegation the opposite meaning.

5. Dr Ali argued that GMC's approach to serving altered allegations was '*Kafkaesque*' and would allow a doctor to be prosecuted either way on different accusations.

6. Dr Ali argued that either the Allegation should be altered or that the original Allegation that he received before 5 September 2023 should stand.

7. Further, Dr Ali argued that GMC Rules and the Medical Act 1983 allowed for changes to the Allegation when it is proper and when they have been agreed. He stated that the word '*agreed*' was the pivotal word as there was no agreement on his part.



8. Mr Brook submitted that the GMC stood by the Allegation and that it was not up to the doctor to alter the charges but did concede that if charges are deficient then they can be amended.
9. Mr Brook emphasised that the evidence remained exactly the same as it had been at the beginning of the case and that there had been neither injustice nor unfairness to the doctor whatsoever.
10. Mr Brook argued that the GMC had abided by the Rules and that it had the right to amend the Allegation whilst stating that the charges had been properly served on Dr Ali on 5 September 2023.
11. Nevertheless, Mr Brook did concede that the GMC would be willing to agree to deleting the word ‘application’ in the stem of paragraph 1 of the Allegation.

### Tribunal’s Decision

12. The Tribunal bore in mind paragraph 17(2)(c) of the Rules which states:

*‘17(2) The order of proceedings at the hearing before a Medical Practitioners Tribunal shall be as follows–*

*...*

*(c) the Chair of the Medical Practitioners Tribunal shall enquire whether the representative for the GMC wishes to amend the particulars of the allegation, and if that representative so wishes, the Medical Practitioners Tribunal shall consider whether to amend the particulars under paragraph (6);’*

13. The Tribunal took account of paragraph 17(6) of the Rules 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.’*

14. The LQC also referred the Tribunal to case law in respect of clearly particularising allegations and where amendments can be made without injustice and without the amendments being procedurally unfair.
15. The Tribunal first considered whether the GMC were entitled to amend the draft NOA that was served on Dr Ali by 26 May 2023, in accordance with the case management direction of 11 May 2023. Dr Ali had confirmed that he had received the draft NOA and then a revised version on 5 September 2023 via email.
16. The Tribunal considered Rule 15(2) that *'unless the practitioner consents to a lesser period of notice being given or the Registrar or MPTS considers it in the public interest for there to be such a lesser period, a notice referred to in the paragraph (1) shall be given by the Registrar or MPTS (as the case may be) at least 28 days before the hearing'*.
17. It noted that a finalised version of the NOA was emailed to Dr Ali on 5 September 2023 which he acknowledged receipt of. Dr Ali was thereby provided with the NOA 34 days prior to the hearing date of 9 October 2023. The Tribunal could not see a requirement on part of the GMC to make an application to the Tribunal that would hear the case from 9 October 2023 to amend the Allegation before it was served.
18. The Tribunal considered the submissions of both parties. It considered the amendments to the NOA that Dr Ali had invited the Tribunal to make. It took the view, it could consider this under Rule 17(6), if it appeared to it, that the amendment should be made and further that it could be made without injustice.
19. It considered the points noted in Dr Ali's skeleton argument and oral submissions. It further considered the track changed NOA that he submitted.
20. The Tribunal considered 'the Form' referred to in the NOA as the 'NHS England Disclosure Barring Service application form'. It considered that the title of that document as it appeared in the bundle was in fact a 'Disclosure Barring Service (DBS) Declaration' form which is what Dr Ali also submitted in his submissions.
21. It considered Mr Brook's submission that they would concede to changing the word 'application' to declaration.
22. The Tribunal took the view that, the more accurate reference to 'the Form' would be to amend paragraph 1 of the Allegation to read 'NHS England Disclosure Barring Service

Declaration form.’ It further considered that this amendment could be made without injustice and determined to make the change.

23. It considered Dr Ali’s submission that paragraph 1 of the Allegation should also be amended to reflect that he submitted the form to St Chad’s Court rather than NHS Improvement England. The Tribunal took the view that this would be a matter that would need determination once the Tribunal had heard evidence from the parties and would be part of its final determination on facts. It did not view this to be an amendment that needed to be made at this juncture, if at all.

24. It considered the further amendments suggested by Dr Ali in his track changed version of the draft NOA. The Tribunal was clear in its view that it was not for Dr Ali to seek to suggest amendments to the draft Allegation which may suit the way in which he had drafted his statement in response. It nevertheless considered that the amendments made to the draft NOA were non-substantive as submitted by Mr Brook. The Tribunal had also already determined that the finalised version of the NOA was provided to Dr Ali in compliance with Rule 15(2) and it could not seek a requirement on the GMC to make any application to amend the draft NOA before the final version was given to Dr Ali at least 28 days before the hearing.

## **ANNEX C – 17/10/2023**

### **Application of adverse inference made pursuant to Rule 16A**

1. At the close of the GMC case at stage one on the facts, Dr Ali made an application of adverse inference under Rule 16A. He submitted that the GMC had failed to comply with Case Management/Tribunal directions to disclose evidence and, further, that the Tribunal should draw an adverse inference from the GMC’s alleged failure to comply.

#### **Dr Ali’s submissions**

2. The Tribunal found Dr Ali’s submissions to be wide ranging, lacking in focus and at times difficult to follow. It did seek, several times, to clarify his submissions by direct questions to him.

3. Dr Ali submitted that this is his third attempt to ask for there to be an adverse inference drawn. He mentioned that the background was the same in that the Tribunal

would be aware that *'before the GMC problem started'* after he had *'followed up with the coroner...at no fault of my own.'* He stated that he *'represents concerns about disclosures....shared by a lot of people, such as voices for doctors group...'* He stated that he was adamant that he wanted to submit this application.

4. Dr Ali further submitted *'given escalating difficulties between GMC and I, which are not part of this case, but this case is now split with another... historically and retrospectively another issue was brought in by GMC Legal and separated out, which is what I highlighted to probation services ..given them a lot of information and they summarised it in four lines to GMC..'* Dr Ali then also mentioned that there were other allegations removed from this case.

5. The Legally Qualified Chair [LQC] asked Dr Ali on a few occasions to focus his submissions on the alleged failure/s of the GMC in complying with directions and providing disclosure, so the Tribunal could fairly assess the matter.

6. Dr Ali submitted that *'the preliminary directions are binding on this panel if related to this panel...another set of investigation is not...'* He referred to the preliminary hearing being partly in private and partly in public session. Dr Ali mentioned the case of GMC v Awan 2022, and that *'the request for disclosure was not just in relation to the Rule 15 but other part of this case and split case which were live as the hearing didn't start and there was a preliminary argument and a changing in allegation last minute.'*

7. He said that the Rule 7 GMC letter had been provided but his response was four pages and only two pages were provided. He said *'that the other two pages of my response was the response to witness statement'*.

8. The LQC asked Dr Ali to make specific points in relation to each aspect of the directed disclosure. Dr Ali's submission had been considered below is this determination under the relevant headings.

9. Finally, Dr Ali stated that he *'had made specific disclosure requests and applications and it should be provided'*. He said that *'it has been really difficult and frustrating ...when I have issued Rule 38 letter, and it has been refused'*.

10. Dr Ali stated that *'I realise and fully accept that the hearing on December 2020, further time was needed which was reasonable, but it has been more than one further month, it has been ten months'*, which the Tribunal took the view was in reference to the time period since the preliminary hearing of November 2022.

11. Dr Ali nevertheless confirmed that Mr I's statement was not relevant for his application and that Dr Ali had emailed him and received an unsatisfactory answer. The Tribunal noted that Dr Ali had previously been asked if he wished to call Mr I to cross examine him. He categorically refused to do so stating that Mr I's evidence was focused on 2021 when Dr Ali's disclosure request related to 2020 and therefore, he did not wish to call Mr I. Dr Ali further stated that he accepted Mr I's evidence in his statement and did not challenge it.

### Submissions on behalf of GMC

12. Mr Brook submitted that it was very unclear as to what adverse inference Dr Ali was referring to.

13. Mr Brook submitted that in order to find adverse inference the Tribunal would have to find that the alleged materials sought after by Dr Ali exist and that there had been a refusal to admit the said materials. Dr Ali stated that by alleging that the GMC was refusing to provide the said material he was implying that the GMC was refusing to provide information that might benefit Dr Ali.

14. Mr Brook stated that Dr Ali had made a far wider application than he had in the previous preliminary hearing and asserted that despite the application, the GMC had engaged in '*voluminous disclosure*'.

15. Mr Brook submitted that the GMC had offered to produce Mr I as a witness '*since day one*'. Mr I's statement had been included in the bundle for the Tribunal, by Dr Ali. However, Dr Ali had chosen not to call Mr I as a witness before the Tribunal.

16. Mr Brook invited the Tribunal to find that the material that Dr Ali sought simply did not exist. He also stated that it was interesting to note that Dr Ali had purported to be able to access the alleged weblink but had not taken a screenshot of it.

17. Mr Brook submitted that Ms C and Dr A had dealt with the issue of telephone records and that there were no outstanding issues regarding '*Lightning Arc files*'.

18. Mr Brook submitted that the GMC responded to Dr Ali's outstanding disclosure requests in detail and Dr Ali was provided with Mr I's witness statement. He also stated that it was confirmed by NHS Resolution that no '*HPAN*' notice was circulated, and that email was provided to the doctor.

19. Mr Brook stated that the GMC had not refused to provide anything and that there was no evidence of a refusal other than what Dr Ali claimed. Further, he stated the GMC had made extensive efforts to enquire as to the existence of telephone records but asserted that, *'frankly, there was nothing to disclose'*.

20. Mr Brook concluded that the Tribunal could not simply find that the GMC had withheld materials in its possession. He further emphasised that there had been no failure to disclose and that it could not disclose what does not exist.

### Legal Advice

21. This application was made by Dr Ali for the Tribunal to draw an adverse inference from the alleged failure of the GMC to provide all the disclosure that was directed at the hearing on 17 November 2022.

22. If the Tribunal acceded to this application, it could also award costs in accordance with Rule 16B – however it would then invite any evidence and further submissions from the parties before any ruling on that.

23. The Chair referred the Tribunal to the 10-page guidance for on case management and exercising powers under Rule 16 A – Adverse inferences, refusal to admit evidence and awarding costs.

24. The Chair specifically referred to paragraph 7 of the guidance – which stated that where a party has failed to comply with a rule or case management direction, the Tribunal has discretion to:

- Draw adverse inferences
- Refuse to admit the evidence and /or
- Award costs

25. The Tribunal was reminded that in exercising its powers the Tribunal must have regard to the over-arching objective.

26. The Chair emphasised that the Tribunal should consider whether the directions in question were binding. She highlighted that the guidance provided that substantive directions of Tribunals were binding but that it should consider whether there has been a

change in circumstances and or whether it may not be in the interest of justice for the direction to be binding.

27. The Tribunal was reminded that before deciding whether to exercise any of these powers it should consider whether there was a rule or direction not complied with.

28. The Tribunal considered that if it found that there has been non-compliance, it should consider all the circumstances of the case to establish whether it amounted to a culpable failure. The Tribunal should consider the non-exhaustive checklist of factors at paragraph 14 of the guidance and also consider if there were any barriers to compliance, outside the party's control.

29. Further, the Tribunal reminded itself that an adverse inference could be drawn only if it is appropriate in all the circumstances of the case.

30. The Tribunal also bore in mind that it should determine its view on the motivation of the failing party – whether there was ill-motivation or bad faith, or whether there was another explanation.

### **Tribunal Decision**

31. The Tribunal considered in turn, the items of disclosure ordered by the November 2022 Tribunal, that Dr Ali asserted GMC had not complied with.

- *Disclosure 1 Telephone recordings, records and notes from [Dr A]*
- *Disclosure 2 Telephone recordings, records and notes from [Dr A]*
- *Supplemental disclosure request – 5) emails and correspondence between [Ms C] and [Dr A], including emails 17 June 2020 and attachments.*

32. The Tribunal bore in mind the over-arching objective and the guidance for Medical Practitioners Tribunals for exercising powers under rule 16A.

33. Dr Ali submitted that the emails from 17 June 2020 were the ones he was seeking despite those being presented by GMC. By seeking other emails, he wished to demonstrate *that 'there were emails of 11 June 2020 ... forwarded [to Dr A] and at some point, the attachments changed and [he] wanted to know why'.*

34. Dr Ali further stated that he had made two requests for telephone recordings and that in a telephone call Dr A said that she was making notes and scribbling. He said this was

on a computer file or notepad. He said he knew Ms C had also taken notes, but he couldn't remember what had *'triggered'* him to say that.

35. Dr Ali stated that the NHS use a variety of different phone systems and have services like *'redcentrix'*. He stated *'if someone was calling me on landline [he referred to being called by a patient the previous day whilst in the Tribunal hearing and further referred to seeking permission to turn the phone off and the call transferred to my mobile, then there would be a record of it and it would be kept for 90 days]'*. He stated that the witness statement presented by the GMC each had reference to notes but those were not exhibited. Dr Ali did not specify which statement he was referring to. He said that he knew that there would be a Covid Inquiry and therefore the records would be kept for 5-7 years.

36. Dr Ali further asserted that Ms K for the GMC had refused to provide these disclosures to Dr Ali as she did not consider them to be relevant.

37. The Tribunal considered the determination of the November 2020 Tribunal which stated that *'the question needed to be posed at a more formal level, to somebody in an authority position who can either definitively confirm that a recording was not made and retained'*.

38. The Tribunal determined that this direction was and continued to be binding on the GMC.

39. In deciding whether there was a failure to comply it referred itself to the statement of Mr I dated 24 May 2023. It noted that Mr I was the Information Governance and Sharing Manager in the Medical Directorate at NHS England – Midlands (NHSE).

40. Mr I provided in his statement that *'As the Bringing Back Staff (BBS) scheme had been closed it was difficult to locate staff with access to it. I managed to locate a member of staff, [Mr L], who had the original data from the survey which I then disclosed to the GMC. I then had to get forensic search of mailboxes. I received that approval and then I put the request through to our information security team who sent the request to NHS Mail. They completed a first download which failed, then we received a second download. NHS mail extracted the data and the NHS England Information Security Team performed the searches requested and then we reviewed it and sent it to the Regional Medical Director, Dr [M]'*. Mr I further provided that the *'request has to be allocated to our IT Service Desk to consider the feasibility of the request, specifically in relation to searching the systems of the NHSE employees. An interrogation of the NHSE systems and deeper analysis of the NHS data depository for correspondence between those named in the disclosure request meant that we were not able*



to provide the requested disclosure in time for Dr Ali's hearing beginning on 8 December 2022.'

#### Telephone recordings

41. In respect of telephone calls, the Tribunal in particular noted the following paragraph:

*'In relation to points a) and b) above pertaining to the GMC's disclosure requests for telephone recordings, I confirm that NHSE staff cannot record telephone calls I received this information from our IT department. NHSE mobiles do not have the functionality to record and store telephone conversations, therefore NHSE are satisfied that we hold no records of the telephone conversation Dr [A] had with Dr Ali on 28 March 2020. A telephone conversation took place between myself and Dr [A] [on] 30 November 2023 [sic] following an email sent by myself to Dr [A] relating to the Section 35A disclosure request, she confirmed during this phone call that she had not recorded the call between herself and Dr Shah Shahin Ali and confirmed that she had provided all evidence she held already to the Tribunal.'*

42. It also noted Ms C and Dr A's stance that the phone calls with Dr Ali were not recorded and this was in line with the information provided by the IT department of NHS England.

#### Note of call between Dr A and Dr Ali – June 2020, and notes of call/s between Ms C and Dr Ali

43. The Tribunal noted Dr A's evidence that in line with her usual practice, she had made a file note of her call with Dr Ali, but that she could not locate it. She explained that she could not upload the file note in the usual case management systems, as Dr Ali's case was not a usual professional standards case relating to a GP connected to NHS England. Similarly, Ms C's position was that she no longer had any notes as all items were disposed when the BBS programme closed down.

#### Emails

44. It further noted from Mr I's statement which was not challenged by Dr Ali, that there was a retention policy change at NHS Digital pertaining to NHS mail in March 2021. This meant that anything that was deleted by Dr A or Ms C in the 180 days prior to March 2021 would not be recoverable. The Tribunal noted therefore that any deleted email would therefore only be recoverable from September 2020 onwards.

45. The Tribunal further noted that on 23 February 2023, a formal request for forensic searches of NHS depository, NHS mail was submitted in relation to Dr A and Ms C. Mr I states that he had to wait for approval from the Director of Corporate Operations (Deputy National SIRO) and National Director for Human Resources, as part of the formal process relating to forensic searches of mailboxes. Mr I stated that once he had sought approval on 1 March 2023, he had forwarded it to the IT department as a priority to action. The Tribunal noted that Mr I then *'required various approvals in order to obtain the material to disclose. For the forensic search of mailboxes, I required approval from [Ms N], National Director of Human Resources and approval from [Mr O], Deputy National Senior Information Risk owner. I needed those approvals as per the policy for Forensic Searches within NHS Mail'*.

46. Mr I stated *'on 1 March 2023 the forensic examination request of Dr [A] and Ms[C]'s mailboxes was approved. I raised the request with NHSE's IT service desk to complete the search on 3rd March 2023. I also spoke with the Service Manager to ensure the request was escalated. The main reason for the delay in disclosure was due to short staffing in the NHS England Information Security Team'*. It was further to these efforts, the Tribunal noted that copies of emails were located by the IT department, which were redacted for third party personal information. It also noted that Dr Ali conceded that the GMC had provided the emails of 17 June 2020 which Dr Ali had requested.

47. The Tribunal noted that in addition to the efforts outlined by Mr I outlined in the above paragraphs, he had also been in touch with the Midlands Medical Workforce team who had searched their inbox and found no results. Mr I stated that this search was carried out as he wanted to cover all bases for the disclosure request. He stated that he had also been in touch with the Professional Standards Team who had conducted a search of the shared inboxes and restricted SharePoint library and had found no results using the search criteria. The Tribunal considered these efforts to be fastidious.

48. The Tribunal noted that emails which were found using these searches were disclosed and the GMC could not disclose emails which it did not have and which may not even have existed. It also considered the correspondence with various individuals, exhibited to Mr I's statement which further demonstrated efforts on part of the GMC to comply with the directions for disclosure.

49. The Tribunal considered the position on telephone recordings, note of a telephone call/s as above and emails and took the view that it could not therefore be said that there was non-compliance with the direction of the November 2022 Tribunal.

Disclosure – 4. BBS NHE England weblink page copy and history.

50. Dr Ali stated that this weblink has been refused to be provided by the GMC. He stated that *'the link was available until a few months ago when it became unavailable and that was after his request and the disclosure direction'*. In response to Tribunal's query as to why Dr Ali had not accessed it himself when it was available and provided it to the Tribunal, he stated that he *'got stuck'* on the page – *'it was a blank page with only a logo showing'*. Dr Ali further stated that he would not have been able to produce it and as he *'didn't save the survey page weblink application.'* Dr Ali referred to a 'Qualtrics' survey system which collected data and stated that it *'went into the backdoor database.'* He said that he had hoped that the GMC would have arranged for NHS England – Midlands to have explored 'Qualtrics'. It did, however, note that the *'broken web-form'* was produced in his bundle.

51. Dr Ali stated that upon him submitting his application/survey to BBS in March 2020, he had received an email within hours for an interview to be arranged. He said that the November 2022 Tribunal went further than what he was seeking. He sought the weblink access, and the November 2022 Tribunal directed the application/survey form to be disclosed. It noted that Tribunal's comments which were highlighted by Dr Ali. Those were that Dr Ali's original BBS weblink form (application/survey) may be relevant to the case of dishonesty against him. It noted that the determination of that Tribunal stated, *'Dr Ali's submission to the Tribunal was that when he completed the webform, he believes that he may have disclosed the fitness to practise proceedings regarding his conviction.'*

52. The Tribunal noted correspondence between Ms J, Head of Medical and Clinical Workforce NHS England – Midlands and Ms K. Ms J had confirmed that *'there was a first screening process completed at national level which we do have access to'*.

53. The Tribunal noted that an extract of the Weblink application/survey form that was able to be recovered was provided. The Tribunal had also noted correspondence between Mr I and Ms K of 9 February 2023 which clearly showed the efforts on part of the GMC via Mr I to seek answers to further the disclosure directions relating to the weblink application/survey and the date stamp for its submission. It noted that one of the questions did seek to answer the time and date stamp on the weblink application/survey form provided. Mr I had confirmed that the *'survey was started 24/3/2020 12:45 and submitted at 24/3/2020 12:51'*.

54. The Tribunal also noted that the 'Questions for BBS Midlands Returners January 2021' form – both a blank template and a completed form by Dr Ali had been provided on 2 December 2022 by Mr I. Further a 'GP Returner's questionnaire' was also provided and attached to Mr I's statement by way of disclosure.

55. The Tribunal noted correspondence by Ms K, on behalf of the GMC, to further the disclosure directed, which included seeking the weblink forms which were all put in train from 30 November 2022. As such the Tribunal took the view that the direction to disclose the application/survey had been complied with which were the documents relating to the weblink referred to by Dr Ali, which itself was no longer available. It therefore determined that there had been no non-compliance in this regard.

#### HPAN Notice

56. Dr Ali submitted that the disclosure covered the official HPAN to be disclosed and not a local one. He stated that he had sought the latter. The Tribunal noted disclosure exhibited to Mr I's statement of the email from Ms G, Senior Case Officer, NHS Resolution which stated, '*we do not have a HPAN in the practitioners [sic] name*'. It also noted that the actual HPAN form had been disclosed.

57. The Tribunal took the view that the GMC has complied with the request for disclosure in this regard.

#### Original complaint /referral form to GMC

58. The Tribunal noted that there was no evidence before it which suggested that there was in fact a referral form or a complaint form in existence. It noted enquiries made with Dr A. It also noted Dr A's and Ms C's evidence on this issue that neither of them could recollect there being a form used. It noted the GMC's enquiries with Mr H who had also confirmed that he was not aware of a referral type form in this case. The Tribunal noted correspondence between Mr H of the GMC and Dr A dated 3 February 2021 which included a note of their Microsoft Teams call that took on the 20 January 2021.

59. In light of these considerations, the Tribunal took the view that there may not have been a referral form in existence. It noted the efforts on part of the GMC to identify whether there was a form used and attempts to locate it. As such, it did not consider that the GMC was non-compliant with any direction for this referral/complaint form to be disclosed.

#### CV of Dr A

60. Dr Ali submitted that this had only been '*part provided*'. The Tribunal noted that a comprehensive CV was provided with personal and third-party information redacted.

61. It determined that the GMC was compliant with the direction to disclose Dr A's CV.

Minutes of BBS programme meeting 17 June 2020

62. The Tribunal considered Dr Ali's submission that it was extraordinary that given the 'numbers' were being discussed as opposed to names of applicants listed on the spreadsheets, that there would not have been any minutes of meetings. He stated that he had worked for the NHS for 25 years and everything is documented. He said it would be highly unusual to discuss doctors' cases and not make notes. Dr Ali stated that the 2021 spreadsheets had been made available to him but not the ones for 2020.

63. Dr Ali further submitted that he was not seeking the Tribunal to make any adverse inferences related to the Lightning Arc disclosure. He stated that the *'SharePoint was active and still backed by Microsoft and would hold email distributions and archives from attachments of emails and that it didn't collate emails, minutes and attachments. It was a central repository [depository]'*. He further submitted that *'he had worked with SharePoint for 25 years and access to them is hard to remove remotely, people have to often be present physically and there would be a whole trove of people who would still have access'*.

64. Dr A's position was that she didn't think that she would have the minutes and that Ms C would know more as she was *'involved with the running and administration of the programme'*. Dr A further stated that *'these meetings did not in any case discuss individuals but were more operational and focused on the general numbers...'* It noted Ms C's stance that there were no minutes taken that she could recall. The Tribunal reminded itself of the information within Mr I's statement relating deleted emails and attachments not being available prior to September 2020 and further efforts that had been made by him to:

- Search the Midlands Medical workforce Teams Restricted Library in SharePoint
- Search of the Athena Software using Dr Ali's name and GMC registration number.
- Search of the entire SharePoint Open library.

65. The Tribunal did not have any evidence before it to suggest that any minutes of 17 June 2020 were in existence and had purposely not been disclosed. In light of the efforts and information provided, it did not consider the GMC to have been non-compliant with the direction of the November 2022 Tribunal which in any event directed the GMC to elicit a definitive answer as to the existence of the emails/document.

Rule 34(8) disclosure

66. Lastly, the Tribunal considered Dr Ali's submissions that the GMC had failed to disclose the '*workings behind the Rule 8 letter*'.
67. The Tribunal could not find a direction in this regard. Dr Ali submitted that whilst not a direction, it had been agreed between the GMC and him that the 'Realistic Prospect Test' would be disclosed to him. He stated that whilst the Case Examiner's decision reasoning had been disclosed, the '*workings*' had not been.
68. Mr Brook submitted that there were no other '*workings*' and the reasoning had been disclosed to Dr Ali in full. Further that the GMC had sought to redact, for the Tribunal, aspects of Ms K's email to Dr Ali, dated 26 May 2023, as those were prejudicial to Dr Ali. Dr Ali had chosen to place the full unredacted document before the Tribunal.
69. The Tribunal determined that the GMC had provided the disclosure sought by Dr Ali in this regard and had acted in good faith in seeking to make the redactions referred to as above.
70. The Tribunal took the view that since the directions of the November 2022 Tribunal, there had been substantive efforts on part of the GMC to locate the said disclosure sought by Dr Ali. It noted that these enquires were time consuming as evident from Mr I's statement and the timeline within it. Some further evidence was disclosed by the GMC, and there was no certainty that some documents such as the BBS minutes of 17 June 2020 or the initial complaint referral form were even in existence.
71. The Tribunal was not able to determine that there was non-compliance with any of the directions referred to by Dr Ali in his application and therefore did not proceed further to consider the issue of drawing an adverse inference.

## ANNEX D – 18/10/2023

### Application pursuant to Rule 17(2)(g)

1. At the close of the GMC's case, Dr Ali made an application pursuant to Rule 17(2)(g) of the General Medical Council (Fitness to Practise Rules) 2004, as amended ('the Rules'). His application was in respect of the entirety of the Allegation. He invited the Tribunal to determine that the GMC had adduced insufficient evidence upon which it could properly find each paragraph proved.

## Dr Ali's Submissions

2. Dr Ali made submissions to support his application under Rule 17(2)(g) of the 2004 Rules. He submitted that the outcome of his application to amend the allegation had muted one part of his case (i.e. that there was no DBS *application* but rather a *declaration* form). He stated that the other part of his application was that there was no complaint form before the Tribunal.

3. Dr Ali further submitted that the Tribunal had heard from two GMC witnesses and a GMC Investigator who was not the main investigator on the case. He stated that his submissions are quite clear. He stated that there is no denial of the fact that that he had made spelling mistakes and [his documents] were littered with spelling and grammar mistakes, as were those of the witnesses.

4. Dr Ali referred to paragraph 1(a) of the Allegation. He stated that *'this was not substantive and did not meet the high threshold of Good Medical Practice (GMP)'*.

5. He referred to the realistic prospect test which had been disclosed to him at his request. He stated that there was a presumption of impairment i.e. guilty until proved innocent and he stated that, therefore, *'his case would naturally always go to a hearing'*.

6. Dr Ali stated that the Tribunal would have heard, throughout his various submissions, his concerns regarding the GMC's racism and that *'the case would only go forward due to the colour of his skin'*. He further referred to the Rule 7 and 8 letters which highlighted that the GMC pandemic guidance was not applied equally to all and should have been followed despite the colour of their skin. He further stated that through hearing the GMC's case, it was quite clear that a pandemic occurred and so he stated that *'naturally the pandemic guidelines should be applied to all doctors regardless of colour, creed, caste and other legally protected characteristics'*.

7. Dr Ali submitted to the Tribunal that, given the allegation before it, based on the Disclosure Barring Service declaration form, *'you have a doctor trying to leave the profession and GMC adding a nail in the coffin by adding NHS England into the accusation'*. He submitted that was not the original allegation before him on which his original written statements were based. He stated that such action on part of the GMC was to ensure that there were consequences for him.

8. Dr Ali submitted to the Tribunal that the case it has in front of it, even though quite broad, has quite narrow accusations. He stated that one allegation is regarding a *'typo,*

*spelling mistakes and a badly written question*'. He stated that he clearly declared that what he had done was not as good as it could have been, but he had provided all the information to the best of his knowledge and belief at the time.

9. Dr Ali submitted that the original application in March [2020] was for medical practice, but his application in June [2020] was quite clearly for a call centre. He said that there was a remote possibility that they [BBS] might have considered him for medical work.

10. Dr Ali submitted that the accusations before the Tribunal were not serious, even though *'honesty is a serious issue'*, he said, looking at the context, it was quite clearly nothing to do with medical practice.

11. Lastly, Dr Ali stated that *'this only really applied if you are white'*. He stated that he is not registered under the Medical Act 1983 and that this was a self-defeating submission as he informed the Tribunal that he is currently suspended.

#### Submissions on Behalf of the GMC

12. Mr Brook submitted that Dr Ali's submissions were totally unfounded. He referred the Tribunal to the test in such applications which arises out of the criminal case of *R v Galbraith* [1981]. Mr Brook proceeded to outline the test for the Tribunal.

13. Mr Brook submitted that one has to apply the test to the charges. He referred to Dr Ali's submissions and stated that the fact that there was no complaint form was irrelevant, he stated that it did not matter that there were only two witnesses and a GMC investigator who was not the original investigator. He further submitted that it did not matter that within over 100 pages of disclosure, Dr Ali had stated that paragraph 1(a) was not substantive and that it did not meet GMP. Mr Brook submitted that Dr Ali's submissions as to the presumption of impairment, alleged racism, whether the pandemic guidance was followed, and Dr Ali's reference to protected characteristics were all irrelevant.

14. Mr Brook submitted that Dr Ali's submission that 'NHS England' noted in the Allegation was simply not material. He further submitted that Dr Ali had completed the DBS form and had submitted it – that was the reason why that part of the charge was there.

15. Mr Brook submitted that the case was not broad, it was exceptionally narrow. Whether there are grammatical errors were a matter for the Tribunal and it was for the Tribunal to apply the test in *Galbraith*. He stated that Dr Ali's submission that the Allegation was nothing to do with medical practice was irrelevant.



16. Mr Brook stated that Dr Ali must be registered with the GMC and is simply suspended at the current time. Mr Brook took the Tribunal through his submissions on each paragraph of the Allegation in submitting that it could not be said that there was no case to answer.

17. Mr Brook submitted that it was open for the Tribunal to find a deliberate omission on Dr Ali's part [in completing the Form] and he stated that if the Tribunal found that, then it was not a large jump to infer that Dr Ali's actions were dishonest. Mr Brook referred the Tribunal to the evidence of Ms C in that Dr Ali was guarded in his initial involvement with her and wanted time to think about the Form. He stated that there was solid evidence, and most of it was unchallenged by Dr Ali. Mr Brook submitted that the challenges in this case had been about peripheral matters unrelated to the Allegation. He submitted that, applying the *Galbraith* test, this application should fail.

### The Legal Advice and the Tribunal's Approach

18. The Tribunal had regard to Rule 17(2)(g) of the Rules:

*“the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld”.*

19. It reminded itself that, at this stage, its purpose was not to make findings of fact but to determine whether sufficient evidence, taken at its highest, had been presented by the GMC such that a Tribunal, correctly directed as to the law, could properly find the relevant paragraphs proved to the civil standard.

20. The Tribunal considered the submissions of both parties. It also took account of all of the evidence presented to date, both oral and documentary, in reaching its decision.

21. The Tribunal had particular regard to the case of *R v Galbraith* [1981] 1 WLR 1039, which sets out that:

*(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.*

*(2) The difficulty arises where there is some evidence but it is of a tenuous character; for example, because of inherent weakness or vagueness, or because it is inconsistent with other evidence.*

*(a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.*

*(b) Where, however, the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury..'*

22. It also noted that this authority had been applied by the courts to disciplinary proceedings in the case of *Solicitors Regulation Authority v Sheikh* [2020] EWHC 3062 (Admin). In that case Davis LJ held that the key question at the half-time stage is whether, on one possible view of the evidence, there is evidence upon which a reasonable Tribunal (not all reasonable Tribunals) could find the matter proved when making the final adjudication. If the answer is 'yes', then there is a case to answer.

### The Tribunal's Decision

23. The Tribunal bore in mind the Galbraith test in making its careful assessment as to whether or not, looking at each specific paragraph of the Allegation, there was a case to answer.

24. It first considered that Dr Ali was registered as a doctor under the Medical Act 1983, albeit currently suspended as per his submission.

#### Paragraph 1(a) and 1(b) of the Allegation

25. The Tribunal considered the allegation against Dr Ali that, '*on an NHS England Disclosure Barring Service declaration form dated 6 June 2020 ('the Form'), which you submitted to NHS Improvement England, you: a. stated on the Form "I am not subject to any current/new fitness to practise investigations and/or proceedings", and 'b. signed the Form to confirm your agreement to the statement "I declare that the information I have provided in this form and in any accompanying documentation, is true to the best of my knowledge and belief"*'.

26. The Tribunal noted that it had received evidence of a contemporaneous document, namely a NHS England Disclosure Barring Service declaration form, dated 6 June 2020, and submission of this form was not disputed by Dr Ali.

27. The Form stated *“I am not subject to any current/new fitness to practise investigations and/or proceedings”*.

28. The Form also contained a declaration, showing Dr Ali’s name in the signed box, namely, *“I declare that the information I have provided in this form and in any accompanying documentation, is true to the best of my knowledge and belief”*.

29. The Tribunal considered Dr Ali’s assertion that there was insufficient evidence to find paragraph 1 of the allegation proved. In light of the availability of the contemporaneous declaration document, it took the view that the sufficiency of evidence was such that it could render these paragraphs of the Allegation capable of proof to the civil standard of proof.

30. Accordingly, it refused Dr Ali’s application under Rule 17(2)(g) of the Rules in relation to paragraph 1(a) and 1(b).

#### Paragraph 2 of the Allegation

31. The Tribunal considered whether it could find that the statements Dr Ali made as set out in the Form, dated 6 June 2020, namely *“I am not subject to any current/new fitness to practise investigations and/or proceedings”* included information which was untrue and *“I declare that the information I have provided in this form and in any accompanying documentation, is true to the best of my knowledge and belief”* included information which was untrue.

32. The Tribunal noted that it had seen email and letter correspondence dated 11 April 2019 onwards, from the GMC with Dr Ali, that indicated that an investigation had been opened.

33. In the circumstances, the Tribunal considered that taken at its highest, there was sufficient evidence which could lead a Tribunal to find that paragraphs 2(a) and 2(b) were proved.

34. Accordingly, it refused Dr Ali’s application under Rule 17(2)(g) of the Rules in relation to that paragraph 2(a) and 2(b).

#### Paragraph 3 of the Allegation

35. The Tribunal considered whether there was sufficient information that it could find the entirety of Paragraph 3 of the Allegation capable of proof, in that Dr Ali *knew* that he was subject to an ongoing General Medical Council’s fitness to practise investigation; further that Dr Ali *knew* that the statement as set out in paragraph 1(a) of the Allegation included information which was untrue; and that Dr Ali *knew* that the statement as set out in paragraph 1(b) of the Allegation was untrue.

36. The Tribunal reminded itself of the contemporaneous DBS declaration document referred to above and also the correspondence from 11 April 2019 onwards. The Tribunal had also heard evidence from GMC witnesses relating to their perception of Dr Ali’s ‘openness’ and ‘honesty’.

37. Accordingly, the Tribunal considered that the sufficiency of evidence was such, that taken at its highest, and on one view, these paragraphs of the Allegation could be capable of proof.

38. Accordingly, it refused Dr Ali’s application under Rule 17(2)(g) of the Rules in relation to that paragraph 3(a) and 3(b).

#### Paragraph 4 of the Allegation

39. The Tribunal considered whether the GMC had presented sufficient evidence that, taken at its highest, could prove dishonesty on part of Dr Ali.

40. It noted its determination in respect of paragraphs 1 – 3 of the Allegation which it considered to be capable of proof. It therefore followed that *if* it were found proved that Dr Ali had submitted Form 1 to NHS improvement England, with the statement “*I am not subject to any current/new fitness to practise investigations and /or proceedings*”, and had signed the form to confirm his agreement to the statement that “*I declare that the information I have provided in this form and in any accompanying documentation, is true to the best of my knowledge and belief*”; and *if* it were found proved that the said statements were untrue and Dr Ali *knew* those to be untrue, then then there could be sufficient evidence to render paragraph 4 of the Allegation in respect of dishonest actions capable of proof.

41. The Tribunal therefore considered that, looking at the evidence presented to it, taken at its highest, there was a case to answer regarding the allegation of dishonesty.

42. Accordingly, it refused Dr Ali’s application under Rule 17(2)(g) of the Rules in relation to that paragraph 4(a) and 4(b).

43. Overall, it considered that all the paragraphs of the Allegation were capable of proof to the necessary civil standard which was the Balance of Probabilities and determined that there was a case to answer.

44. The Tribunal was mindful that it had only considered the sufficiency of evidence and was careful in not making any findings of fact, particularly as it was conscious that it had not heard evidence from Dr Ali.

#### ANNEX E – 26/02/2024

#### Application for the Tribunal to disregard the 2019 findings when considering sanction

1. At the start of the resumed hearing, Dr Ali made an application for the Tribunal to disregard the findings made by the 2019 Tribunal, when considering the evidence at the sanctions stage.

#### Dr Ali's submissions

2. Dr Ali submitted that the findings made by the 2019 Tribunal were '*deceitful*' and should not be taken account of by the current Tribunal.

3. Further, Dr Ali cited that this Tribunal had initially stated that it would not consider the 2019 findings at the Facts stage but had considered it at stage 2 when considered the '*CHRE*' case, referring to the case of *CHRE v NMC and Grant* [2011] EWHC 927 where Dame Janet Smith's observations in the Fifth Report of the Shipman Inquiry were endorsed. He stated that an '*ordinary decent person*' would consider that the 2019 findings were false.

4. Dr Ali stated that he was not asking the present Tribunal to change the findings that it had made but asked that it not consider the findings of the 2019 Tribunal as they were '*wrong, plain and simple*'.

5. Dr Ali concluded by submitting that if the GMC could go over its previous findings in regard to the investigation in relation to the conviction, it could also go over this investigation too.

#### GMC submissions

6. Mr Brook submitted that Dr Ali was seeking to invite the Tribunal to re-open the 2019 determination and stated that, in accord with the principle of *functus officio*, the only way that Dr Ali could do so was through an appeal.

7. Mr Brook submitted that the findings made by the 2019 Tribunal were relevant to the present Stage 3 under paragraph 54 of the *Sanctions Guidance* (2024) (SG). He stated that the 2019 Tribunal findings were relevant to the Stage 3 investigation and that it was not for Dr Ali to say that they were wrong '*plain and simple*'.

8. Mr Brook concluded by asserting that, by making this application, Dr Ali was seeking '*in a roundabout way*' to re-open the factual findings made and that the doctor cannot go behind the facts. He stated that the GMC intended to, in due course, invite the Tribunal to consider paragraph 54 of the SG and that it was not a Tribunal function to re-open and re-litigate previous findings.

### The Tribunal's approach

9. The relevant consideration for the Tribunal was whether it is fair for the Tribunal to consider the 2019 Tribunal findings and whether it is relevant to the case before them. The determination of this application is at the discretion of the Tribunal and they should have regard to the interest of fairness and also consider the balance of prejudice to each party. The decision should also be considered through the lens of the over-arching objective.

10. It was outlined that the fairness to the doctor is of paramount importance, but the public interest must also be considered.

### The Tribunal's decision

11. The Tribunal was mindful that the redacted determination of 2019 was before it within the evidence bundles throughout the currency of the case. It considered whether it would be fair for the Tribunal to have regard to that determination when considering the evidence at the next stage of the proceedings relating to whether to impose any sanction. It noted that whilst Dr Ali disagreed with the 2019 determination and its findings, and he considered them to be '*wrong – plain and simple*', there was no subsequent decision overturning the findings and they remained valid.

12. It further considered the contents of the SG by which the Tribunal would be guided in the next stage of these proceedings. The Tribunal noted that it was entitled to consider any

previous finding of impairment as part of its assessment of any aggravating and mitigating factors. It also considered that there was a public interest in all relevant matters being properly considered when assessing any sanction to impose.

13. In light of these considerations, the Tribunal considered that it was both fair and relevant and in the public interest for it to have regard to the findings of the 2019 Tribunal and determined to refuse Dr Ali's application.

14. The Tribunal was not clear if Dr Ali was also asking the Tribunal to re-open/review the findings of the 2019 Tribunal. In any event, it was clear that it could not do so, and whilst Dr Ali expressed his absolute disagreement with the findings of the 2019 Tribunal, the only course would be to appeal that decision and this Tribunal did not have any jurisdiction on any application to reopen/review the findings of the 2019 Tribunal.