

## PUBLIC RECORD

Dates: 19/07/2021 - 23/07/2021

Medical Practitioner's name: Dr Shaukat ALI

GMC reference number: 6113323

Primary medical qualification: Mu Dr 2002 Jeseniova Lekarska Fakulta

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Not Impaired

## Summary of outcome

No action (warning not considered)

## Tribunal:

Legally Qualified Chair	Mr Ian Comfort
Lay Tribunal Member:	Mr Andrew Waite
Medical Tribunal Member:	Dr Thandla Raghavendra
Tribunal Clerk:	Mr Matt O'Reilly

## Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Ms Alexandra Felix, QC, instructed by the Medical Defence Union
GMC Representative:	Ms Catherine Cundy, Counsel

## Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.

## Overarching Objective

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

## Determination on Facts - 23/07/2021

1. Dr Ali qualified in 2002 from medical school in Slovakia. He undertook GP training between 2002 and 2008. During this period Dr Ali had travelled to the UK to practise medicine. Between 2006 and 2009 he worked as a clinical fellow and a Senior House Officer (SHO) in the West Midlands.
2. Dr Ali worked as a middle grade doctor between June 2009 and August 2011 in the Accident and Emergency department at Manor Hospital, Walsall.
3. In September 2011 Dr Ali began working as a middle grade doctor in Accident Emergency at George Eliot Hospital, Nuneaton ('the Trust') and was appointed a locum consultant in 2016.
4. Dr Ali returned to General Practice in 2019 and passed the Applied Knowledge Test and Clinical Skills Assessment. He undertook placements at Rotton Park Medical Centre and Tower Hill Partnership, Birmingham. Dr Ali has been employed as a GP/Medical Lead for Dudley Clinical Hub since April 2021. Since May 2020 Dr Ali has also worked in Accident and Emergency medicine as a locum consultant at Russell Hall Hospital, Dudley and at Heartland's Hospital, Birmingham.
5. The matters before this Tribunal relate to Dr Ali's conduct towards Ms A, a nurse working in Accident and Emergency, when Dr Ali was a locum consultant at the Trust between January 2018 and October 2018.
6. It is alleged that in January 2018 and October 2018 there were two incidents of behaviour by Dr Ali towards Ms A that were sexually motivated. It is also alleged that Dr Ali's course of conduct towards Ms A between January 2018 and October 2018 amounted to bullying. Ms A made a complaint to the Trust on 12 December 2018. Following her complaint to the Trust, Ms A reported the incidents to the police on 27 December 2018. On 1 March 2019, Ms A received confirmation from the police that following their investigation into the allegations raised, they would be taking no further action. Ms A submitted a complaint to the GMC on 12 March 2019.

## The Facts to be Determined

7. The Allegations made against Dr Ali are as follows:
1. On a date in January 2018, whilst working with your colleague, [Ms A], you:
    - a. touched [Ms A] on the shoulder; **To be determined**
    - b. ran your hand down [Ms A's] back along her bra strap until you reached the clasp of her bra; **To be determined**
    - c. said to [Ms A] 'you can touch me but I'm not allowed to touch you like this' or words to that effect. **To be determined**
  2. On 20 October 2018, whilst working with your colleague [Ms A], you stood in close proximity to [Ms A] and brushed your trousers against her buttocks. **To be determined**
  3. Your actions as described at paragraph 1 and 2 were sexually motivated. **To be determined**
  4. Between January 2018 and October 2018, you pursued a course of conduct which amounted to the bullying of your colleague, [Ms A], including the incidents referred to in Schedule 1. **To be determined**

### The Evidence

8. The Tribunal received evidence on behalf of the GMC from the complainant, Ms A, by video link. Ms A also provided a witness statement, dated 17 July 2019.
9. Dr Ali provided his own witness statement, dated 27 May 2021. He also gave oral evidence at the hearing.
10. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:
- Ms A's initial complaint to the Trust, dated 4 December 2018;
  - Ms A's additional comments to her initial complaint to the Trust, dated 28 December 2018;
  - Ms A's amendments and additions to the investigatory meeting notes, dated 6 March 2019;
  - A WhatsApp message from Ms A to a colleague, dated 16 January 2018;
  - Ms A's statement to the police, dated 27 December 2018;
  - The Investigation outcome email from the police to Ms A, dated 1 March 2019;
  - The Complaint to the GMC from Ms A, dated 12 March 2019;
  - Notes from the Trust investigatory meeting with Dr Ali, dated 13 March 2019;
  - Dr Ali's curriculum vitae; and

- Testimonial evidence on behalf of Dr Ali.

### The Tribunal's Approach

11. 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.

12. The Tribunal also bore in mind the judgement in the case of *Re H (Minors) [1996] AC 563* in which Lord Nicholls said (at p.586D):

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event, was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. ... Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established”.

### Assessing credibility

13. When assessing witness credibility, the Tribunal had regard to *Khan v The General Medical Council [2021] EWHC 374 (Admin)*:

- Tribunals should not assess a witness's credibility exclusively on their demeanour when giving evidence.
- Tribunals should consider all of the evidence before them before coming to a conclusion about a witness's credibility. This could include conflicts in evidence with another witness, denials of the allegations and reasons why they could not be true.
- It is open to Tribunals not to rule out the whole of a witness's evidence based on credibility; credibility can be divisible.
- Tribunals must take good character evidence into account in their assessment of credibility and propensity, where relevant. However, they are not required to give a

self-direction to that effect in their reasons, if it is clear from all the material received orally and in writing, including any direction from a legally qualified Chair, that the Tribunal must have taken good character into account.

### Good Character Direction

14. The Legally Qualified Chair advised the Tribunal that good character is not a defence to any allegation. However, evidence of good character counts in the doctor's favour in two ways:

1. the doctor's good character supports his credibility and so is something which the tribunal should take into account when deciding whether they believe his evidence (the 'credibility limb'); and
2. the doctor's good character may mean that he is less likely to have committed the act with which he is charged (the 'propensity limb').

15. He further advised that it is for the Tribunal to decide what weight they give to the evidence of good character, taking into account everything they have heard about the doctor.

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

16. The Tribunal noted at the outset that the evidence before it was primarily the evidence of Ms A and Dr Ali. Although events are said to have happened in areas where there was Close Circuit Television (CCTV) and where other hospital staff were present, no corroborating evidence has been provided.

17. Further, the Tribunal noted that matters were not reported until almost a year later and that no contemporaneous reports or recordings were made.

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

#### Paragraph 1a of the Allegation

1. On a date in January 2018, whilst working with your colleague, Ms A, you:
  - a. touched [Ms A] on the shoulder; **Found proved**

19. In her evidence Ms A said that she touched Dr Ali either on the elbow or the shoulder to get his attention. It was agreed by the parties that this was accepted practice in the department.

20. Dr Ali says that he cannot remember the incident but that he may have touched her on the shoulder in response. The Tribunal noted that there was some confusion regarding

what exactly Dr Ali said in the Trust’s investigation meeting. However, having considered the evidence the Tribunal was satisfied that, on the balance of probabilities, Dr Ali did touch Ms A on her shoulder.

21. The Tribunal therefore found paragraph 1a of the Allegation proved.

Paragraphs 1b and c of the Allegation

- b. ran your hand down [Ms A’s] back along her bra strap until you reached the clasp of her bra; **Found not proved**
- c. said to [Ms A] ‘you can touch me but I’m not allowed to touch you like this’ or words to that effect. **Found not proved**

22. In her evidence Ms A explained how Dr Ali ran his hand down her back. The Tribunal noted that there were some inconsistencies in how she described what happened and whether Dr Ali had used the palm of his hand or his fingers.

23. Ms A also explained how Dr Ali had spoken to her. Again there were some inconsistencies in her account particularly whether the words were spoken before the act of touching or after.

24. Ms A explained that the incident happened in a busy area and sought to demonstrate to the Tribunal how she approached Dr Ali whilst he was at a table with a number of other colleagues.

25. Dr Ali denies any such touching and said that he would never behave in this way.

26. The Tribunal bore in mind that it had before it no contemporaneous evidence to support either of these paragraphs of the Allegation. It considered that if it accepted the incident as alleged it would have happened in a busy Accident and Emergency department with colleagues all around, in an area covered by CCTV and in view of other doctors. It noted there was no corroboration of this alleged incident by any witnesses and that the report of this incident was made in December 2018, almost a year after it had occurred.

27. The Tribunal noted that in her evidence Ms A said that she had ‘issues previously with other colleagues being touchy-feely’ and that ‘I have found it is quite common in the workplace that people are looking for more than just a work colleague relationship’. She said that she had already formed a view of Dr Ali in December 2017, identifying him as a doctor who was “very ‘touchy-feely’ and “in your face”. This predated the alleged incident in January 2018. The Tribunal was concerned that Ms A may have allowed her experiences to have influenced her views of Dr Ali and the reliability of her evidence.

28. Dr Ali has no previous fitness to practise concerns or probity issues that this Tribunal is aware of. The testimonial evidence speaks of his good character, professionalism and

assertiveness. In the overall circumstances of this case the Tribunal bore in mind Dr Ali's good character in relation to his credibility and propensity.

29. Taking account of the circumstances set out above, the inconsistencies in Ms A's accounts, Dr Ali's good character and the testimonial evidence which reflected Dr Ali's professionalism, the Tribunal determined that, on the balance of probabilities, paragraphs 1b and c of the Allegation are not proved.

#### Paragraph 2 of the Allegation

2. On 20 October 2018, whilst working with your colleague [Ms A], you stood in close proximity to [Ms A] and brushed your trousers against her buttocks.

**Found not proved**

30. In her evidence Ms A explained that she was either kneeling or stooping whilst cleaning an ECG machine. She explained that the machine was in an area where several other colleagues were present. The area was covered by CCTV. She said that she sensed someone behind her and that they either stood behind her or walked past her. The Tribunal noted the inconsistencies in this evidence.

31. Dr Ali said that he has no recollection of this incident. He explained that the machine is located on a corridor opposite the desk of the nurse in charge and in full view of a CCTV camera. He said that the corridor is sufficiently wide that ordinarily, there would be no reason for anyone to brush against someone; however, if the corridor is busy, it may be necessary to squeeze past anyone standing at the ECG machine.

32. The Tribunal considered that this incident took place in a busy Accident and Emergency department, with colleagues all around and with CCTV cameras, which the staff were well aware of. The Tribunal considered that it would have been unlikely for the incident, as described by Ms A, to have taken place given the circumstances as set out.

33. The Tribunal therefore found paragraph 2 of the Allegation not proved.

#### Paragraph 3 of the Allegation

3. Your actions as described at paragraph 1 and 2 were sexually motivated.

**Found not proved**

34. Having found paragraphs 1b, c and 2 not proved, it follows that paragraph 3 falls in relation those paragraphs of the Allegation.

35. The Tribunal then had regard to the relevant legal principles when considering an allegation of sexual motivation. In particular, *Basson v General Medical Council [2018] EWHC 505 (Admin)*, where Mostyn J described the test for sexual motivation as, "sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship".

36. The Tribunal also had regard to the case of *Haris v General Medical Council (Rev 1) [2021] EWCA Civ 763 (20 May 2021)*, in which Andrews LJ concluded that the best evidence of a sexual motivation could be the behaviour itself. It may be appropriate to draw an "irresistible" inference of sexual motivation when the only way the behaviour could be perceived was as overtly sexual and in the absence of any other plausible innocent explanation.

37. The Tribunal considered that, as has already been set out, both Ms A and Dr Ali agreed that it was accepted practice to touch a colleague on their shoulder or elbow to get their attention in the busy environment of an Accident and Emergency department. It then considered whether Dr Ali's actions were sexually motivated in touching Ms A on the shoulder on a date in January 2018.

38. When considering the principle set out in *Basson* the Tribunal determined that there was no evidence Dr Ali had either gained any sexual gratification from, or pursued a future sexual relationship with Ms A in the act of touching her on the shoulder. It noted that the only evidence before it was that Ms A had the perception Dr Ali was pursuing her in an inappropriate manner and stated that there were others who were present when this contact took place. However, this account was not supported by any contemporaneous or supporting witness evidence.

39. When considering the principle set out in the case of *Haris*, the Tribunal was satisfied that there was a plausible innocent explanation for touching Ms A on the shoulder and this action was not overtly sexual.

40. The Tribunal therefore found paragraph 3 of the Allegation not proved.

#### Paragraph 4 of the Allegation

4. Between January 2018 and October 2018, you pursued a course of conduct which amounted to the bullying of your colleague, [Ms A], including the incidents referred to in Schedule 1. **Found not proved**

41. The Tribunal noted that there is no legal definition of bullying and unlike harassment it is not covered in law. This matter is alleged as bullying by a course of conduct and at the request of the parties the Tribunal has applied the following agreed dictionary definition:

“deliberate pattern of words or behaviour directed at another intended to hurt, frighten, intimidate, humiliate, belittle or undermine.”

42. In considering this allegation as a whole, the Tribunal took account of the fact that Dr Ali was overall in charge of the Accident and Emergency department and was responsible for its efficient and effective functioning. As a manager, it would be necessary for him to speak with staff about their performance.

43. In her evidence Ms A made it clear that she objected to doctors interfering or meddling in her work. She said that she was a competent nurse who did not need to be told what to do. She explained the way that agency nurses were treated in general. The Tribunal was provided with a copy of a WhatsApp message dated 16 January 2018 that Ms A had sent to a colleague which stated:

“He is dumb! He written his 5 like an 8 on the X-ray card. Then X-ray took number 8. Then they check in their (sic) and her name was wrong. But he wanted to tell me off for pt in 5 not having her X-ray. Then he told me to hurry up my giving pt the digoxin infusion and take Pt the digoxin infusion and take Pt to X-ray quick! Doctors there meddle in our work!”

44. Ms A said that she thought the bullying started because “I had turned down his sexual advances after the incident in January 2018”.

45. In his evidence Dr Ali said that in a high-pressured busy Accident and Emergency department, he would need to ensure actions are taken where things needed to be done. He said that whilst the way he may have spoken to colleagues could have been perceived by them in a particular way, in pressured and urgent situations he may sometimes speak to colleagues in an assertive way, but not in a way that was bullying.

46. The Tribunal was mindful of Ms A’s sensitivity to comments made by doctors and by her own admission that she did not like to be told what needed to be done.

47. The Tribunal considered that, given the dictionary definition of bullying, it was the intent behind Dr Ali’s comments and behaviour, rather than the perception of Ms A of the comments and behaviour that determined whether it amounted to bullying.

48. The Tribunal bore in mind that Dr Ali was overall responsible for what happened in the Accident and Emergency department and it would be reasonable for him to ensure specific tasks were completed in the treatment and care of patients.

49. The Tribunal considered each of the matters set out as Schedule 1 of the allegation including the evidence of words, actions and context. It noted that Dr Ali had little or no recollection of matters raised by Ms A. The Tribunal considered that there was scant evidence to support Ms A’s assertions.

50. The Tribunal found that on the balance of probabilities, the matters out in Schedule 1 did not amount to bullying as defined by the parties.

51. The Tribunal therefore found paragraph 4 of the Allegation not proved.

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

52. The Tribunal has determined the facts as follows:

1. On a date in January 2018, whilst working with your colleague, [Ms A], you:
  - a. touched [Ms A] on the shoulder; **Found proved**
  - b. ran your hand down [Ms A's] back along her bra strap until you reached the clasp of her bra; **Found not proved**
  - c. said to [Ms A] 'you can touch me but I'm not allowed to touch you like this' or words to that effect. **Found not proved**
2. On 20 October 2018, whilst working with your colleague [Ms A], you stood in close proximity to Ms A and brushed your trousers against her buttocks. **Found not proved**
3. Your actions as described at paragraph 1 and 2 were sexually motivated. **Found not proved**
4. Between January 2018 and October 2018, you pursued a course of conduct which amounted to the bullying of your colleague, [Ms A], including the incidents referred to in Schedule 1. **Found not proved**

#### Determination on Impairment - 23/07/2021

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Ali's fitness to practise is impaired by reason of misconduct.

#### The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.

#### Submissions on behalf of the GMC

3. Ms Cundy submitted that this single fact at paragraph 1a of the Allegation does not amount to misconduct.

#### Submissions on behalf of Dr Ali

4. Ms Felix QC submitted that given the Tribunal's findings that Dr Ali did touch Ms A on her shoulder and that there was a plausible innocent explanation, these findings do not amount to serious misconduct or of making a finding of impairment.

#### The Relevant Legal Principles

5. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.
6. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct, and then whether the finding of that misconduct which was serious, could lead to a finding of impairment.
7. The Tribunal must determine whether Dr Ali's fitness to practise is impaired today, taking into account Dr Ali's conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

### **The Tribunal's Determination on Impairment**

#### **Misconduct**

8. The Tribunal considered whether touching Ms A on the shoulder could amount to serious misconduct.
9. The Tribunal accepted and was in agreement with the submissions of both parties. It found that the touching of Ms A's shoulder by Dr Ali was capable of innocent explanation and therefore his conduct did not fall so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.
10. The Tribunal has therefore determined that Dr Ali's fitness to practise is not impaired.

**Confirmed**  
**Date** 23 July 2021

Mr Ian Comfort, Chair

SCHEDULE 1

Date	Incident
During January 2018	Told [Ms A] 'Hurry up and push her to have x-ray...quick... you don't know your job. I must tell you your job'.
Between January – April 2018	Told [Ms A] 'You aren't doing your job properly! What did they tell you in handover?' and asked her 'Are you really a nurse?'
On either 20 or 21 April 2018	Told [Ms A] 'Why do you come here to moan? Why don't you go and work in a supermarket?' and said 'did you say fuck, did you say fuck?'. '[Ms A] be professional, be professional' in front of patients and other members of staff. Told another member of staff that [Ms A] 'just comes here to socialise or words to that effect'.
On 19 October 2018	When you saw [Ms A] straightening her bra strap, you came behind her, stuck your head within inches of her chest and said 'why are you touching yourself?'. Following this, you asked [Ms A] 'are you sure you are the corridor nurse?'. On the same date, you queried how [Ms A] had documented her notes after discharging a patient.
Various	Poked your face in [Ms A's] face on more than one occasion
Various	Intentionally bumped into [Ms A] whilst walking round the ward on more than one occasion