

## PUBLIC RECORD

Dates: 28/09/2023

Medical Practitioner's name: Dr Tarun ARYA  
GMC reference number: 4020826  
Primary medical qualification: BChir 1993 University of Cambridge  
Type of case: Outcome on non-compliance  
Review - Non-compliance with a performance assessment: Non-compliance found

**Summary of outcome**

Conditions for 12months  
Review hearing directed

**Tribunal:**

Legally Qualified Chair	Mr Alex Graham
Lay Tribunal Member:	Ms Miriam Karp
Medical Tribunal Member:	Dr Loralie Rodrigues

Tribunal Clerk:	Ms Angela Carney
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**Attendance and Representation:**

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Richard Geering, Counsel, instructed by Clyde & Co
GMC Representative:	Ms Emma Gilsenan, 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 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 consideration of non-compliance 28/09/2023

1. This determination will be read in private. However, as this case concerns Dr Arya's non-compliance a redacted version will be published at the close of the hearing.

## The Outcome of Applications Made during the Impairment Stage

2. At the outset of the hearing, Mr Geering, on behalf of Dr Arya, made an application under Rule 41XXX for proceedings to be held in private in their entirety on the basis that the matters to be determined are XXX. Ms Gilsean, GMC Counsel did not object to this, and considering the circumstances, the Tribunal accepted this application.

3. This is the first review of Dr Arya's case following a Medical Practitioners Tribunal (MPT) Non-compliance hearing which concluded on 15 September 2022.

## Background

4. On 17 December 2020, the GMC received a referral from the Care Quality Commission ('CQC'). The CQC explained that on 1 December 2020 it carried out an inspection at the Queens Bower Surgery ('the Surgery'), where Dr Arya was a GP at the time. Through its inspection process the CQC identified clinical and non-clinical concerns about his practise.

5. The General Medical Council ('GMC') opened an investigation into Dr Arya's fitness to practise following the referral from the CQC. The GMC determined that a performance assessment was required to assess the concerns raised about Dr Arya's practise.

6. On 9 November 2021, Dr Arya was directed under Rule 7(3) and Schedule 1 of the GMC Fitness to Practise Rules 2004 to undertake an assessment of his performance ('the Direction').

7. On 21 December 2021, Dr Arya's representatives sent part 1 of the performance assessment portfolio to the GMC XXX.

8. The GMC could not progress his performance assessment while XXX. On 23 February 2022 and 21 April 2022, the GMC wrote to Dr Arya explaining it could consider non-compliance XXX.

9. XXX.

10. The GMC received Dr Arya's agreement to proceed with the performance assessment, but XXX, with no indication of when he might be able to conduct the performance assessment.

11. Dr Arya was referred to a Medical Practitioners Tribunal in September 2022 (the 2022 Tribunal) for his failure to comply, in full, with the Direction XXX.

### The 2022 Tribunal

12. At the hearing in September 2022, the 2022 Tribunal considered all the evidence provided that, XXX, there was no estimated time-frame provided by which he would be able to comply with the Direction. It found that on that basis, there was no good reason for Dr Arya's failure to comply.

13. In all the circumstances, the 2022 Tribunal determined that Dr Arya had failed to comply with the GMC Direction XXX, he was unable to provide a good reason for his failure to comply. The 2022 Tribunal therefore concluded that non-compliance had been found.

14. The 2022 Tribunal noted that Dr Arya said that he would comply with the requirements of the performance assessment, XXX. However, it determined that in view of its findings on non-compliance, it would be neither sufficient, proportionate nor in the public interest to conclude this case by taking no action.

15. The 2022 Tribunal found that Dr Arya was unable to comply with the previous Direction of the GMC XXX, rather than due to any unwillingness. It noted that as soon as Dr Arya was able to comply, he would do so. The 2022 Tribunal was satisfied that it would be sufficient and proportionate, weighing the interests of the public with Dr Arya's interests, to impose an order of conditions on his registration, for a period of 12 months, which would address all 3 limbs of the overarching objective. The 2022 Tribunal considered that this period was required to allow time for XXX, and to give the GMC time to make arrangements for the performance assessment.

16. The 2022 Tribunal stated that a reviewing Tribunal would be assisted if Dr Arya provided:

- Evidence of undergoing a GMC performance assessment as directed;
- Any other information which he considers would assist the reviewing Tribunal, including information about XXX and evidence of having kept his knowledge and skills up to date.

### The Evidence

17. The Tribunal has taken into account all the evidence received, both oral and documentary.
18. The Tribunal received the following documentary evidence which included but was not limited to:
- Determinations from the previous noncompliance hearing
  - XXX
  - Email from NHS England Midlands to the GMC enclosing Dr Arya's signed conditions imposed by Performers List Decision Panel (PLDP), 26 January 2023
  - Email from Dr T Arya's legal representative to the GMC XXX, 30 January 2023
  - XXX
  - Emails to and from Dr Arya regarding shadowing positions
  - Dr Arya's Continuing Professional Development (CPD)
  - Dr Arya's reflections and learning from CPD October 2022 – August 2023
19. Dr Arya provided his own witness statement dated 28 June 2023.

### Submissions

20. On behalf of the GMC, Miss Gilsenan provided the background to the case and referred the Tribunal to the determinations from the 2022 Tribunal. XXX
21. XXX
22. Ms Gilsenan referred the Tribunal to the information provided by Dr Arya since the previous hearing. She confirmed that on 23 November 2022 the PLDP imposed conditions which mirrored the MPT conditions imposed by the 2022 Tribunal. She said that on the face of it, Dr Arya XXX has been unable to undertake the performance assessment.
23. Ms Gilsenan referred the Tribunal to the timescale for a performance assessment and said it will take between 5 to 6 months to complete from the point Dr Arya returns his portfolio. Ms Gilsenan submitted there has been continued non-compliance of the Direction, XXX since 9 November 2021. She submitted that whilst there is clearly objective evidence of XXX there is no estimated timescale reasonable or not by which Dr Arya could comply with the Direction. She referred to C53 of the non-compliance guidance and invited the Tribunal to find that Dr Arya has continued to fail to comply with the Direction to undergo a performance assessment.
24. On behalf of Dr Arya, Mr Geering, told the Tribunal that Dr Arya accepts that he has not complied with the Direction. Mr Geering conceded that there was no prospect within a reasonable timeframe for the performance assessment to occur. He submitted that there is no culpability for Dr Arya's non-compliance. Mr Geering conceded that there is continued

non-compliance and no good reason under the terms of the guidance. He said that there is no matter in dispute.

25. Mr Geering said that Dr Arya hopes XXX in the foreseeable future to undertake shadowing positions. He said that when Dr Arya is able to undertake shadowing, he is likely with reasonable adjustments to undertake the performance assessment.

### Tribunal's approach

26. In reviewing the Direction made by the 2022 Tribunal to impose conditions on Dr Arya's registration for a period of 12 months, this Tribunal exercised its own independent judgement.

27. The Tribunal had regard to the Non-compliance hearings guidance for medical practitioner tribunals ('the non-compliance guidance') and all the evidence produced in this case when making its decision.

28. The Tribunal has borne in mind paragraph C53 of the Non-compliance guidance (September 2019), namely whether Dr Arya has:

*'a. continued to fail to comply with the direction or request to provide information that led to the non-compliance order being made, and ...'*

### The Tribunal's Determination

29. The Tribunal has borne in mind paragraph XXX of the non-compliance (as above) and paragraphs A17 and XXX, which state:

*A17 There does not need to be culpability on a doctor's part for the tribunal to conclude there is evidence that the doctor has 'failed to comply.' At this stage, the tribunal is simply considering whether there is evidence to show, as a matter of fact, the doctor has not complied with the GMC's direction or request to provide information.*

XXX

30. XXX.

31. The Tribunal is satisfied that there is no culpability on the part of Dr Arya. He has continued to engage with the GMC's investigation and these proceedings.

32. The Tribunal was satisfied, with reference to the non-compliance guidance, that there was no good reason for Dr Arya's failure to comply, given there is no realistic prospect of the doctor participating in the performance assessment in a reasonable timeframe.

33. The Tribunal noted that Dr Arya, through the submissions of Mr Geering, did not dispute his failure to continue to comply with the Direction and there was no realistic timeframe to complete the performance assessment.

34. In all the circumstances, the Tribunal determined that Dr Arya has failed to comply with the Direction to undertake a performance assessment. The Tribunal therefore concluded that non-compliance had been found.

#### Determination on sanction 28/09/2023

35. Having determined that there was non-compliance by reason of Dr Arya's failure to undertake a performance assessment in accordance with Schedule 1 of the Rules; the Tribunal went on to consider what sanction, if any, to impose.

#### Submissions

36. On behalf of the GMC, Ms Gilsenan referred the Tribunal to the non-compliance guidance and to the general principles in the Sanctions Guidance (November 2019) (the SG).

37. Ms Gilsenan submitted that a sanction is both necessary and proportionate in this case but said it is a matter for the Tribunal. She reminded the Tribunal of the overarching objective. She submitted that it is proportionate to extend the order of conditions today.

38. Ms Gilsenan submitted that there are no mitigating factors in this case, as the position has not changed. She said that the aggravating factor is that Dr Arya has not complied with the Direction to undertake a performance assessment but conceded that Dr Arya has been unable to return to work XXX. Ms Gilsenan said that the onus is on Dr Arya to comply with the Direction. She said that this is not a case where the order of conditions should be revoked as Dr Arya has not undertaken the performance assessment. Ms Gilsenan referred the Tribunal to the paragraphs in the non-compliance guidance relevant to conditions, which state:

*'C11 Conditions restrict a doctor's practice or require them to do something. For example, a restriction can limit a doctor to work only in NHS posts, to no longer carry out a particular procedure, or to require the doctor to undergo medical supervision or retraining.*

*C12 Conditions should be appropriate, proportionate, workable and measurable.*

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*C13 Conditions might be appropriate where the doctor has provided some mitigation for their non-compliance that, whilst not sufficient to satisfy the tribunal that the doctor had a good reason for their past non-compliance, does satisfy the tribunal that the doctor will comply in the future and that conditions are sufficient to meet the regulatory purpose of protecting the public.*

*C14 Conditions are unlikely to be appropriate where a doctor has explicitly refused to comply with a direction or request to provide information, or has failed to respond to a direction or request to provide information, and there is no mitigating information available.*

*C15 The objective of any conditions should be made clear so that the doctor knows what is expected of them.*

*C16 The tribunal can impose a condition relating to the assessment or request to provide information with which the doctor has failed to comply. For example, where the tribunal has found that a doctor has failed to comply with a direction to undergo a health assessment, they may direct that the doctor's registration is to be conditional on their compliance with a health assessment.*

*C17 Any condition to undergo an assessment or provide information should stipulate a period of time within which the doctor is required to comply.*

*C18 Further conditions can be imposed in order to achieve the overarching regulatory purpose of protecting the public.'*

39. Ms Gilsean referred the Tribunal to paragraph C21:

*'C21 Conditions may be imposed for up to a maximum of three years, to be reviewed after a period of time considered appropriate by the tribunal, or at the request of the GMC.'*

40. Ms Gilsean proffered no specific period to be imposed stating it is a matter for the Tribunal. She reminded the Tribunal of the email regarding the timeframe for a performance assessment. She said that Dr Arya has continued to fail to comply with the performance assessment albeit XXX. Ms Gilsean referred the Tribunal to paragraph C57, which states:

*'C57 Where a tribunal has found that a doctor has not complied with a requirement imposed on them as a non-compliance condition at the previous hearing, a further order of conditions is unlikely to be sufficient. In such cases an order to direct a suspension is likely to be a proportionate response.'*

41. Ms Gilsean submitted that conditions would be appropriate, proportionate, workable and measurable. She said that suspension would be disproportionate but conceded

that would be a matter for the Tribunal. Ms Gilsean confirmed that Dr Arya has not breached the conditions previously imposed.

42. On behalf of Dr Arya, Mr Geering submitted that Dr Arya agrees with the GMC's submissions to extend the order of conditions. He said that despite Dr Arya's initial position that the conditions could be extended for a period of 6 months, he accepts that it is reasonable and more realistic to extend them for a period of 12 months, given the timeframe for a performance assessment.

43. Mr Geering reminded the Tribunal that this is a non-compliance case and, as such, there are no aggravating factors in this case. He reminded the Tribunal that it is not guided by the principles in the Sanctions Guidance but is conducting a risk assessment only. He reminded the Tribunal that it found there is no culpability on the part of Dr Arya. He said that it was hoped that by now Dr Arya would have completed the performance assessment. XXX. Dr Geering said that Dr Arya XXX hopes to return to the workplace. Dr Geering said that Dr Arya has kept up with his CPD and has been applying for shadowing positions. Mr Geering submitted that Dr Arya's insight has been demonstrated by the steps he has taken. Mr Geering confirmed that Dr Arya has not breached the current conditions and submitted that it would be appropriate and proportionate to extend the current conditions by 12 months.

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

44. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken account of the Sanctions Guidance (November 2019) (the SG). It has borne in mind that the purpose of the sanctions is not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect.

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

### **Revoking the current order**

46. The Tribunal noted that Dr Arya has said that he will comply with the requirements of the performance assessment, XXX. However, the Tribunal determined that in view of its findings on non-compliance, it would be neither sufficient, proportionate nor in the public interest to conclude this case by revoking the order.

### **Conditions**

47. The Tribunal considered whether it would be appropriate to extend the order of conditions on Dr Arya's registration. It has borne in mind that any conditions must be



appropriate, proportionate, workable and measurable. The Tribunal had regard to C13 of the Non-compliance Guidance:

*'C13 Conditions might be appropriate where the doctor has provided some mitigation for their non-compliance that, whilst not sufficient to satisfy the tribunal that the doctor had a good reason for their past non-compliance, does satisfy the tribunal that the doctor will comply in the future and that conditions are sufficient to meet the regulatory purpose of protecting the public.'*

48. The Tribunal determined that there had been non-compliance XXX. Dr Arya has undertaken revalidation, kept his knowledge and skills up to date and taken steps to return to work.

49. The Tribunal noted that Dr Arya has engaged with the GMC and these proceedings. He has indicated that he wishes to undertake the performance assessment, XXX. The Tribunal considered that imposing conditions and ensuring that Dr Arya undertakes the performance assessment, given the concerns about his practice by the CQC, will satisfy the overarching objective. Therefore, the Tribunal considered that varying the conditions to ensure that Dr Arya undertakes the performance assessment would not be disproportionate.

50. The Tribunal has therefore determined that Dr Arya's registration shall be subject to the following varied conditions for a period of twelve months. It considered that this period will allow time for XXX, his return to work and also provide the GMC time to make arrangements for the performance assessment.

51. In all of the circumstances of this case the Tribunal determined to impose the following conditions:

1. He must undertake a performance assessment within 12 months.
2. He must personally ensure the GMC is notified within seven calendar days of the date these conditions become effective:
  - a. of the details of his current post, including:
    - i. His job title;
    - ii. His job location;
    - iii. His responsible officer (or their nominated deputy);
  - b. of the contact details for his employer and any contracting body, including his direct line manager;

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- c. of any organisation where he has practising privileges and/or admitting rights.;
  - d. of any training programmes he is in;
  - e. of the contact details of any locum agency or out-of-hours service he is registered with.
3. He must personally ensure the GMC is notified:
- a. of any post he accepts, before starting it;
  - b. that all relevant people have been notified of his conditions, in accordance with condition 11;
  - c. if any formal disciplinary proceedings against his are started by his employer and/or contracting body, within seven calendar days of being formally notified of such proceedings;
  - d. if any of his posts, practising privileges, or admitting rights have been terminated by his employer before the agreed date, within seven calendar days of being notified of the termination;
  - e. if he applies for a post outside the UK.
4. He must allow the GMC to exchange information with his employer and/or any contracting body for which he provides medical services.
5. He must get the approval of the GMC before working in a non-NHS post or setting.
6. He must only work in a group practice setting where there are a minimum of two GP partners or employed GPs (excluding himself). The GPs must be partners or permanently employed GPs who are on the GP register (this excludes locum staff).
7. He must only work as a salaried GP.
8. a. He must be closely supervised in all of his posts by a clinical supervisor, as defined in the Glossary for undertakings and conditions. His clinical supervisor must be appointed by his responsible officer (or their nominated deputy).

- b. He must not work until:
    - i. his responsible officer (or their nominated deputy) has appointed his clinical supervisor and approved his supervision arrangements
    - ii. he has personally ensured that the GMC has been notified of these arrangements.
  - c. He must provide a report from his clinical supervisor to the tribunal at his at his next review hearing.
9. He must not work out-of-hours.
10. He must not work in any locum post of fixed term contract of less than 8 weeks duration.
11. He must personally ensure that the following persons are notified of the conditions listed at 1 to 10:
- a. his responsible officer (or their nominated deputy)
  - b. the responsible officer of the following organisations:
    - i. his place(s) of work and any prospective place of work (at the time of application);
    - ii. all of his contracting bodies and any prospective contracting body (prior to entering a contract);
    - iii. any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application);
    - iv. any locum or out-of-hours service he is registered with;
    - v. if any organisation listed at i) to iv) does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within the organisation. If he is unable to identify this person, he must contact the GMC for advice before working for that organisation.
  - c. the responsible officer for the medical performers list on which he is included or seeking inclusion (at the time of application).

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d. his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts).

52. The Tribunal considered that an order of suspension was not proportionate in light of the determination on non-compliance that was found XXX, the insight shown and the steps taken by him.

53. The effect of this direction is that, unless Dr Arya exercises his right of appeal, this decision will take effect 28 days from when written notice of this determination is deemed to have been served upon him. A note explaining Dr Arya's right of appeal will be provided to him.

**Review**

54. The Tribunal determined to direct a review of Dr Arya's case. A review hearing will convene shortly before the end of the period of conditions, unless an early review is sought. The reviewing Tribunal would be assisted if Dr Arya provides:

- Evidence of undergoing a GMC performance assessment as directed;
- Any other information which he considers would assist the reviewing Tribunal, including information XXX and evidence of having kept his knowledge and skills up to date.