

PUBLIC RECORD

Date: 27/09/2024

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 12 months
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Dharmesh Patel
Lay Tribunal Member:	Ms Alison Fisher
Medical Tribunal Member:	Mr Ian Crighton
Tribunal Clerk:	Ms Angela Carney

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Chris 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 27/09/2024

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 Non-compliance Stage

2. At the outset of the hearing, Mr Geering, on behalf of Dr Arya, made an application under Rule 41(2) 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 second 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. The GMC could not progress Dr Arya's performance assessment while XXX. On 23 February 2022 and 21 April 2022, the GMC wrote to Dr Arya explaining it could consider non-compliance as a result of XXX.

8. On 18 March 2022 and 8 June 2022, Dr Arya's XXX. The GMC received Dr Arya's agreement to proceed with the performance assessment, but he continued to be XXX, with no indication of when he might be able to conduct the performance assessment.

9. 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

10. At the hearing in September 2022, the 2022 Tribunal considered all the evidence provided and whilst there was objective evidence of 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.

11. The 2022 Tribunal determined that Dr Arya had failed to comply with the GMC Direction and, due to XXX and the uncertainty of the timeline for 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.

12. The 2022 Tribunal noted that Dr Arya said that he would comply with the requirements of the performance assessment, when XXX. It found that Dr Arya was unable to comply with the previous Direction of the GMC due to 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 imposed an order of conditions on Dr Arya's registration, for a period of 12 months, which would address all 3 limbs of the overarching objective and allow time for XXX, and for the GMC to make arrangements for the performance assessment.

13. 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 2023 Tribunal

14. The 2023 Tribunal took account of the objective evidence from XXX and noted that there was no estimated time-frame by which he would be able to comply with the Direction. The 2023 Tribunal was satisfied that there was no culpability on the part of Dr Arya and that he had continued to engage with the GMC's investigation and the proceedings.

15. The 2023 Tribunal was satisfied that there was no good reason for Dr Arya's failure to comply, given there was no realistic prospect of the doctor participating in the performance assessment in a reasonable timeframe. It noted that Dr Arya did not dispute his failure to

continue to comply with the Direction and there was no realistic timeframe to complete the performance assessment.

16. In all the circumstances, the 2023 Tribunal determined that Dr Arya had failed to comply with the Direction to undertake a performance assessment. The 2023 Tribunal therefore concluded that non-compliance had been found.

17. The 2023 Tribunal noted that Dr Arya had engaged with the GMC and the proceedings. Dr Arya had indicated that he wished to undertake the performance assessment, XXX permitting. Given the concerns about Dr Arya's practice from the Care Quality Commission (CQC), the 2023 Tribunal considered that imposing a further period of conditions, varied to include a condition that he undertake a performance assessment, would satisfy the overarching objective and would not be disproportionate. The 2023 Tribunal imposed conditions for a period of 12 months and directed a review.

18. The 2023 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.

Today's Hearing

The Evidence

19. The Tribunal has taken into account all the evidence received, both oral and documentary.

20. The Tribunal received the following documentary evidence which included but was not limited to:

- Determinations from the previous non-compliance hearings 2022 and 2023
- Correspondence between Dr Arya's legal representatives and the GMC
- XXX
- XXX
- Email from NHS England, dated 18 March 2024
- Parts 1 and 2 of Dr Arya's performance portfolio
- Dr Arya's Continuing Professional Development (CPD)

21. Dr Arya provided his own witness statement dated 28 June 2023.

Submissions

22. Ms Gilson submitted that Dr Arya has had sufficient time to comply with the GMC's Direction to undergo a performance assessment. XXX. Ms Gilson submitted that there has been no material change in the factual or legal landscape of this case to evidence compliance with the direction for Dr Arya to undergo a performance assessment. She acknowledged that the GMC recognises that Dr Arya has engaged with the GMC and the performance assessment process by having now completed parts one and two of his performance assessment portfolio.

23. She stated that the performance assessment not having been completed at this juncture Dr Arya accepts non-compliance on the basis of XXX. Ms Gilson referred the Tribunal to the XXX.

24. Ms Gilson referred the Tribunal to the Non-compliance hearings guidance for medical practitioner tribunals ('the non-compliance guidance').

25. Ms Gilson provided the background to the case and referred the Tribunal to the determinations of the 2023 Tribunal and the varied conditions it imposed on Dr Arya's registration for a period of 12 months.

26. Ms Gilson reminded the Tribunal that the GMC has attempted to arrange a number of performance assessments which were not undertaken due to XXX. Ms Gilson acknowledged that Dr Arya has provided the GMC with parts one and two of his performance assessment portfolio.

27. Ms Gilson stated that the GMC decided to cancel the performance assessment scheduled to take place from 12 to 14 August 2024. Ms Gilson submitted that it is perhaps incongruous as a position that someone would be XXX to undertake a performance assessment related to their work spanning a period of three days. She confirmed that once XXX, then it would be able to schedule new dates for an assessment to take place and approach that assessment as a priority.

28. Ms Gilson submitted that Dr Arya has failed to comply with the direction to undergo a performance assessment since 9 November 2021. She submitted that Dr Arya has had sufficient time to engage with the performance assessment in the 12 months since the last review. She acknowledged that there is objective evidence of XXX. However, there is no time frame at all that has been provided, reasonable or not, by which he would be able to comply with the GMC's Direction.

29. On behalf of Dr Arya, Mr Geering, accepted that there has been non-compliance. He referred the Tribunal to paragraph A17 of the non-compliance guidance, which states:

'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 request to provide information.'

30. Mr Geering stated that the reason for Dr Arya's non-compliance is not in any sense because of an unwillingness or a disregard or disrespect for the GMC's processes, but because of the doctor's XXX and other matters in his life that have impacted on those issues. This has simply made it impossible despite his best efforts to comply with the Direction. Mr Geering stated that on that basis, Dr Arya accepts non-compliance because of XXX and conceded that XXX, is not able to give a definitive guideline about when it's likely that that performance assessment can be undertaken in the very near future. He said it is accepted that there is not a realistic time frame to rely on to demonstrate compliance. He stated that there is no culpability and non-compliance is due to XXX.

Tribunal's approach

31. In reviewing the determination made by the 2023 Tribunal to impose conditions on Dr Arya's registration for a period of 12 months, this Tribunal exercised its own independent judgement.

32. The Tribunal had regard to the non-compliance guidance, all the evidence provided and the submissions from parties when making its decision.

33. 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

34. The Tribunal has borne in mind paragraph A24 of the non-compliance (as above) and paragraphs A17 and A30, 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.

A30 To find good reason, the tribunal will need to be presented with objective medical evidence that:

XXX

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b. indicates that there is a realistic prospect of the doctor participating in the assessment or providing the information requested in a reasonable timeframe.'

35. The Tribunal noted the objective evidence from XXX that he has been unable to complete the performance assessment XXX and that there remains no estimated time-frame by which he would be able to comply with the Direction.

36. Dr Arya has continued to engage with the GMC's investigation and these proceedings and the Tribunal was satisfied that there is no culpability on his part.

37. The Tribunal has borne in mind the non-compliance guidance and was satisfied that there was no good reason for Dr Arya's failure to comply, due to the lack of a realistic prospect of him participating in the performance assessment in a reasonable timeframe.

38. The Tribunal noted that Dr Arya accepts non-compliance and that there is no realistic time frame to complete the performance assessment.

39. The Tribunal determined that Dr Arya has breached condition 1:

'1. He must undertake a performance assessment within 12 months.'

40. 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. For the same reasons the Tribunal is also satisfied that there has been a breach of the condition of Dr Arya's registration to undergo a performance assessment.

Determination on Sanction 27/09/2024

41. 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.

42. The Tribunal has considered the submissions made by Ms Gilsenan, Counsel, on behalf of the GMC and the submissions made by Mr Geering, Counsel on Dr Arya's behalf regarding the appropriate sanction, if any, that should be imposed on his registration.

43. On behalf of the GMC, Ms Gilsenan referred the Tribunal to the non-compliance guidance and to the general principles in the Sanctions Guidance (February 2024) (the SG).

44. Ms Gilsenan referred the Tribunal to paragraphs 163 and 164 in the SG, which state:

'163 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.

164 In some misconduct cases it may be self-evident that, following a short suspension, there will be no value in a review hearing. However, in most cases where a period of suspension is imposed, and in all cases where conditions have been imposed, the tribunal will need to be reassured that the doctor is fit to resume practice – either unrestricted or with conditions or further conditions. A review hearing is therefore likely to be necessary, so that the tribunal can consider whether the doctor has shown all of the following (by producing objective evidence):

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

45. Ms Gilsean referred the Tribunal to paragraphs C56 and C57 in the non-compliance guidance:

'C56. In making its decision, the tribunal can decide to:

- a. extend the order*

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.'

46. Ms Gilsean referred the Tribunal to the following paragraphs in the non-compliance guidance:

'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.

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.

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.'

47. Ms Gilsean also 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.'

48. Ms Gilsean did not make a representation about the appropriate period for the order, submitting that was a matter for the Tribunal. She said that a relevant factor in determining the appropriate period, is that there does not appear to be a timeline or anticipated time as to when the doctor will be XXX to undertake a performance assessment and the Tribunal may wish to consider this when considering the duration of any order.

49. Ms Gilsean stated that in light of the Tribunal's findings that Dr Arya has continued to fail to comply with the GMC's direction to undergo a performance assessment XXX that the GMC is not in a position to continue to investigate the doctor's fitness to practice in a proportionate way and to take action in response to the concerns raised, without him having completed a performance assessment. Therefore, given this Tribunal's findings and the clear position of there being no material change in the circumstances of compliance since 2023, she submitted that conditions remain appropriate and proportionate and serve to uphold the three limbs of the overarching objective in this case.

50. Mr Geering endorsed the GMC's position that maintaining the current conditions is appropriate and proportionate in this case. He submitted that a period of 12 months would be appropriate.

51. Mr Geering referred the Tribunal to paragraph C5

'C5 In order to assess the overall seriousness of the risks, the tribunal will carry out a risk assessment. The tribunal will not make any findings of fact, but will decide what action, if any, is needed to protect the public based on all the information available.'

52. Mr Geering submitted that essentially what is conducted here is a risk assessment, not based upon factual findings of anything arising from the CQC assessment, but rather conducting that risk assessment akin to an interim orders tribunal.

53. Mr Geering reminded the Tribunal of XXX. He submitted that Dr Arya has been working hard to keep himself up to date and to prepare for the assessment as soon as XXX to undertake it. He said that Dr Arya is taking that responsibility very seriously, having

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undertaken an appraisal. He reminded the Tribunal of Dr Arya's CPD, which is both in depth and considerably reflective, it is clearly not a mere tick box exercise, but rather a testament to his XXX and a measure of his determination and the seriousness with which he approaches this process. He said that Dr Arya wishes to be able to return to work and to engage with the performance assessment.

54. In respect of Dr Arya's insight Mr Geering submitted that he has engaged constructively with this process and also positively engaged with NHS England.

55. Mr Geering invited the Tribunal, considering those facts, to find there is mitigation which accounts for Dr Arya's non-compliance. He said that it is not an attitudinal issue and there is no culpability in his non-compliance and in those circumstances, it would be appropriate to continue the current conditions and deal with the case in that way.

56. Mr Geering submitted that 12 months is a realistic timespan which would allow sufficient time for the performance assessment to be scheduled and also allow sufficient time prior to that for XXX.

57. The Tribunal is aware that the decision as to the appropriate sanction, if any, to impose on Dr Arya's registration is a matter for this tribunal exercising its independent judgment. In reaching its decision, the tribunal has taken account of the Non-compliance hearings guidance for medical practitioner tribunals (the guidance).

58. Throughout its deliberations, the Tribunal considered its overarching objective and has also borne in mind that the purpose of a sanction is not to punish or discipline doctors, but they may have a punitive effect.

Revoking the current order

59. The Tribunal first considered whether to conclude Dr Arya's case by revoking the current order of conditions.

60. The Tribunal noted that Dr Arya has cooperated fully with the GMC and these proceedings and confirmed he will comply with the direction to undergo a performance assessment, when XXX. However, the Tribunal determined that in view of its findings on non-compliance with the direction to undergo a performance assessment and the concerns raised by the Care Quality Commission (CQC) about Dr Arya's clinical practice, it would be neither sufficient, proportionate nor in the public interest, to conclude this case by revoking the current order of conditions.

Conditions

61. The tribunal next considered whether it would be appropriate to impose a period of conditions on Dr Arya's registration. It has borne in mind that any conditions must be appropriate, proportionate, workable and measurable.

62. The Tribunal noted that Dr Arya has been out of clinical practice for some time, but he has indicated that he wishes to return to work when he XXX, prior to undertaking a performance assessment. The Tribunal was satisfied that there is no culpability on Dr Arya's part and there are no attitudinal concerns. The Tribunal noted that Dr Arya has complied with the current conditions, save for the requirement to undertake a performance assessment, and he is attempting to resolve matters with XXX and personal circumstances.

63. The Tribunal was satisfied that it is sufficient and proportionate, weighing the interests of the public with Dr Arya's interests, to impose conditions on his registration.

64. The Tribunal has therefore determined that Dr Arya's registration shall be subject to conditions for a period of 12 months. The Tribunal considered that 12 months will be sufficient for Dr Arya to address XXX and for him to complete the performance assessment.

65. In all of the circumstances of this case the Tribunal determined to extend the order and maintain the conditions, as follows:

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;
 - 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;

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- 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).
 - 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).

Suspension

66. The Tribunal considered that suspension would not be appropriate in this case given Dr Arya's engagement with the GMC and these proceedings, XXX.

Review

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67. 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 about XXX and evidence of having kept his knowledge and skills up to date.

68. 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. If Dr Arya decides to appeal against this decision the conditions currently imposed on his registration will remain in force until the appeal is determined.

69. That concludes this hearing.