Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

**Dates:** 21/10/2019 - 23/10/2019

**Medical Practitioner’s name:** Dr Al Kamal Muhammad Mahbub MURSHED

**GMC reference number:** 5202141

**Primary medical qualification:** MB BS 1993 Dhaka University

**Type of case**

New - Misconduct  

**Outcome on impairment**

Impaired

**Summary of outcome**

Suspension, 12 months  
Review hearing directed

**Tribunal:**

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<th>Role</th>
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<tr>
<td>Legally Qualified Chair</td>
<td>Mrs Linda Lee (LQC)</td>
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<tr>
<td>Medical Tribunal Member</td>
<td>Dr Ernesto Jones</td>
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<td>Medical Tribunal Member</td>
<td>Dr Andy (Andranick) Petros</td>
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<td>Tribunal Clerk</td>
<td>Ms Zaheda Razvi</td>
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**Attendance and Representation:**

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<tr>
<td>Medical Practitioner</td>
<td>Not present and not represented</td>
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<tr>
<td>Medical Practitioner’s Representative</td>
<td>n/a</td>
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<tr>
<td>GMC Representative</td>
<td>Mr David Birrell, Counsel, instructed by GMC Legal</td>
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**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.
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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 - 22/10/2019

Background

1. The allegations that have led to Dr Murshed’s hearing can be summarised as follows: Dr Murshed failed to attend for his locum shift at the North Cumbria University Hospitals NHS Trust (the Trust) on 2 July 2018; he failed to provide adequate explanation for this and the failure was in breach of a GMC Warning that had been imposed for similar behaviour on 11 September 2017.

2. Mr Birrell provided a background and context to the allegation. He informed the Tribunal that after receiving the warning in 2017, Dr Murshed continued to work and he was registered with a Locum Agency called ‘Locum People’. On or around 20 June 2018, Mr A, Recruitment Consultant at Locum People, offered and Dr Murshed accepted a position at the Trust, which was some distance away from his registered address. However, there was no suggestion from Dr Murshed that geography or travel would be an issue for him.

3. Mr Birrell informed the Tribunal that there is uncertainty as to the start date that Dr Murshed had agreed, with Dr B, Associate Medical Director for Community Services at Cumbria Partnership Foundation Trust, stating that Dr Murshed was due to start on 29 June 2018. According to Dr B, Dr Murshed had said his car had broken down and therefore he could not start on 29 June 2018, but that is not reflected in any of the other evidence, hence the GMC allegation refers to his failing to attend on 2 July 2018. Mr Birrell submitted that there is no doubt that Dr Murshed was due to start his shift on 2 July 2018 and that instructions were sent to him. He said that it is clear from the documentary evidence Dr Murshed had stated that he had booked travel and accommodation and was expected to start work at 9am on 2 July 2019 and patients had been put in his name.

Chronology

4. The Tribunal has taken account of the chronology of events as evidenced by the chain of emails contained in the hearing bundle:

   • On Sunday 1 July 2018 at 19:33, Dr Murshed sent an email to Mr A which is at page 24 of the bundle informing him that he had been ‘struck by severe bouts of hay fever’ and that he wished to start his journey the following day.
On Monday 2 July 2018 at 09:16, Mr A responds to state that hospital were expecting him for 9am and that they have placed patients in his name in expectation of his arrival. Mr A asked Dr Murshed ‘What time today can you get there for?’

At 09:54, Dr Murshed replies to state: ‘If I start journey at 10:30 AM I shall not be able to reach WhiteHaven before 4:30 PM. Then I shall have to put my luggage in accommodation. Therefore, the working hours will be over when the reach the hospital. Please inform the hospital of this and convey my apology if it causes any inconvenience.’

At 10:04, Mr A responds and suggests to Dr Murshed to get to the hospital as soon as he was able and to apologise directly to the medical staffing team. Mr A states ‘this will be in your best interest as the Hospital have put patient’s into your name today and it will cause inconvenience.’

At 10:52, Dr Murshed responds to explain that the train fare was considerable and that he did not have the funds but would have to borrow the money from his wife who had gone out and he did not know when she would return.

At 10:59, Mr A writes: ‘They were expecting you on Wednesday, I managed to move the start date to today. You can imagine how this will look to the Trust considering the GMC warning …’

At 11:20, Dr Murshed writes: ‘I do understand your concern and mine too. Chiefly because of the warning I have been without work since my last job in August last year. This may be another reason why my two referees Dr C and Dr D are not giving references any more though they did give references before. Now if I get another complaint then GMC will launch the whole process again. And I may have to lose my licence to practice. I do understand the situation this time is different than the previous ones. …’

On Tuesday 3 July 2018 at 09:46, Mr A emails Dr Murshed saying ‘If you do not get in contact with me immediately then I cannot help you.’

At 10:09, Dr Murshed responds ‘I could not start journey yesterday XXX But it will explain my situation.’

5. Dr Murshed was referred to the GMC on 5 July 2018, by Dr B, Associate Medical Director for Community Services at Cumbria Partnership Foundation Trust, who stated in his referral: ‘We had booked him in good faith and had a ward with 15 patients who were left without medical care in his absence, we have had to move clinical staff from other planned activity to cover the ward causing disruption to the trust. Dr Murshed has behaved in an unprofessional manner that failed to place the responsibility he had to the
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patients that were waiting for him, he did not make them his main concern, behaved in
a manner that undermines the trust in the profession and by stating several different
reasons for not coming appears to have acted.’

6. Although Dr B suspected dishonesty on the part of Dr Murshed, Mr Birrell
made it clear that the GMC were not alleging dishonesty in this case.

The Outcome of Applications Made during the Facts Stage

7. The Tribunal granted the GMC’s application, made pursuant to Rule 31 of the
General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules”),
that the hearing should proceed in Dr Murshed’s absence. The Tribunal’s full
reasoning on the application is included at Annex A.

8. The Tribunal also granted the GMC’s application for the evidence of Mr A be
heard via telephone under Rule 34(13) of the General Medical Council (‘GMC”)
(Fitness to Practise) Rules 2004, as amended (the Rules). The Tribunal determined
that it would be in the interests of justice to allow Mr A, a busy professional, to give
evidence via telephone.

9. The Tribunal also granted the GMC’s application to admit the witness
statement(s) of Ms E, Agency Team Coordinator for North Cumbria University
Hospitals NHS Trust, dated 31 August 2018. Her revised statement contained the
correct dates of events. The Tribunal noted the GMC’s contention that it would be
relevant to adduce Ms E’s statement as it goes directly to the evidence and would be
fair to the doctor. The Tribunal determined that it would be both fair and relevant to
adduce the hearsay evidence of Ms E.

The Allegation and the Doctor’s Response

10. The Allegation made against Dr Murshed is as follows:

1. On 2 July 2018 you failed to report for your shift at North Cumbria
University Hospitals NHS Trust (the Trust). To Be Determined

2. You failed to give adequate notice that you would not be reporting for
your shift on 2 July 2018, to:

   a. the Trust; To Be Determined
   b. Locum People. To Be Determined

3. Your actions set out in paragraphs 1 and 2 were undertaken when you
were the subject of an active GMC warning in respect of similar
conduct, as outlined in Schedule 1. To Be Determined
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And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. **To Be Determined**

**Factual Witness Evidence**

11. The Tribunal received evidence on behalf of the GMC in the form of witness statements from the following witnesses:

- Ms E, Agency Team Coordinator for North Cumbria University Hospitals NHS Trust, dated 31 August 2018;
- Mr A, Recruitment Consultant at Locum People, dated 18 September 2018; and
- Dr B, Associate Medical Director for Community Services at Cumbria Partnership Foundation Trust, dated 20 February 2019.

12. The Tribunal also received oral evidence on behalf of the GMC from Mr A and Dr B.

**Documentary Evidence**

13. The Tribunal had regard to the documentary evidence provided by the GMC. This evidence included, the chain of email correspondence between the locum agency, the Trust and Dr Murshed.

**The Tribunal’s Approach**

14. 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 Murshed 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.

**The Tribunal’s Analysis of the Evidence and Findings**

15. 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.

16. The Tribunal recognised that there is no evidence adduced on behalf of Dr Murshed, who has not been present at this hearing. The Tribunal reminded itself that the burden of proving the allegations rested on the GMC to the standard of the balance of probabilities. It therefore considered that it would be useful to analyse each witness’ evidence individually and measure it against other witness evidence and independent or unchallenged evidence (where applicable).
Paragraph 1

17. The Tribunal has taken account of the evidence of the witnesses called on behalf of the GMC.

18. Mr A, in his witness statement said that Dr Murshed was offered the position at the Trust approximately two weeks prior to the agreed start date of Wednesday 27 June 2018. ‘Dr Murshed had agreed to accept the position approximately around 20/06/2018. ... I was aware that the contracted start date had been delayed ... however I am unsure of the reason for the delay being agreed and cannot ascertain why from our system. I believe that the shift had been rescheduled to the 02/07/2018. ... My understanding is that ‘the Trust’ contacted us on the 2 July 2018 when Dr Murshed did not appear for work following which I was informed. On the 2 July 2018, I had attempted to contact Dr Murshed numerous times by telephone with no success. I explained in an email to Dr Murshed on the 2 July 2018 that it did not look good that he had not arrived to his shift on time considering his GMC warning.’

19. In his oral evidence, Mr A told the Tribunal that “it was very much a surprise that Dr Murshed had not turned up given the circumstances of his warning for previous similar behaviour – I wouldn’t think he would make the same mistake twice.”

20. Dr B in his witness statement ‘On 2nd July 2018, I was informed by the operations manager that Dr Murshed had not arrived for his scheduled shift and that he had explained to the Agency that this was due to severe bouts of hayfever ...’

21. Ms E, in her statement, stated that Dr Murshed advised the Trust that he had booked his accommodation and travel to start his shift on 2 July 2018. She also stated that Dr B had informed her that he had spoken with Dr Murshed who explained to him that the reason for his non-attendance on 2 July 2018 was due to his car breaking down.

22. The Tribunal is satisfied that Dr Murshed should have worked the shift on 2 July 2018 but failed to do so. It is clear from the evidence from Mr A, Dr B and Ms E and from Dr Murshed’s own emails that he knew himself that he should have worked the shift on 2 July 2018. It is also clear from the evidence that Dr Murshed did not work that shift.

23. Accordingly, paragraph 1 of the Allegation proved.

Paragraph 2(a)

24. Dr B in his witness statement explained that it was on the actual day of 2 July 2018 that he found out that Dr Murshed had failed to attend his shift and that is
when he asked the operations manager to speak to the Trust agency team to plan how the work would be covered that day. Dr B stated ’The ward that Dr Murshed was due to work on is a 15 bed community ward for rehabilitation and palliative care. This ward is covered by one doctor from West Cumberland Hospital. We rely on the doctor who is covering the ward to meet the needs of the patients. The ward is several miles away from the nearest community wards where the trust has medical staff and where we could potentially move staff from, making it particularly vulnerable if there is no medical cover in place. The absence of a doctor means that patients could potentially have unmet needs. On the occasions in question, we were able to move doctors from other areas of the Trust to provide the medical cover required and no direct patient harm came about from Dr Murshed’s absences. There was however the potential for this to occur. The doctors that provided cover had to do their essential duties on the rehabilitation ward as well as their other work. This had the effect of those doctors not being able to undertake other important but non-essential work.

25. In his oral evidence, Dr B was asked questions from the Tribunal regarding the actual medical demand on 2 July 2018. Dr B responded that demand was variable and that he could not give details of what it was on that particular day but stated that Dr Murshed’s absence would and did have an impact on staffing.

26. Dr B said that he had moved staff from non-essential work, he himself had put aside administrative tasks to cover medical care. At that time, although the ward was physically part of an acute hospital, it was in fact a separate entity. The nearest ward was 10 miles away and it was not possible for staff there to provide cover. He said that the post required either a GP or a middle grade doctor, to cover for emergencies and changes in patient demand. He said that there were no nurse clinicians or nurse practitioners on the ward. Dr B said that, ”whilst the staff were long standing and all were competent to provide nursing care, they were not decision makers and were not trained to give medical care.” He also stated that it had taken over a week to find a replacement locum.

27. Dr Murshed did not contact the Trust directly despite being advised to do so by the agency. Dr B only became aware on the day that Dr Murshed had not turned up for his shift, the Tribunal has found that Dr Murshed failed to give adequate notice of his absence to the Trust.

28. Accordingly, the Tribunal has found paragraph 2(a) of the Allegation proved.

**Paragraph 2(b)**

29. The Tribunal has taken account of the oral evidence of Mr Sharif and the chronology of emails as set out earlier in the determination.
30. The Tribunal has noted that the email sent from Dr Murshed informing the Locum agency that he would not be attending the shift on 2 January was sent late on Sunday evening which is clearly outside of working hours. It heard from Mr A that he picked it up on Monday morning and that it came as a surprise to him. The Tribunal further noted that Mr A said on numerous occasions during the email exchanges for Dr Murshed to inform the Trust but he failed to do that.

31. The Tribunal noted the differing explanations given by Dr Murshed at different times for his failure to attend his shift. It also noted the GMC submission that it was "too little too late."

32. The Tribunal concur that Dr Murshed’s emails were too little too late and finds that Dr Murshed failed to give adequate notice to the Locum agency when he sent his email on the Sunday evening, especially as there were no reasons given why he could not have contacted the agency sooner.

33. Accordingly, the Tribunal has found paragraph 2(b) of the Allegation proved.

**Paragraph 3**

34. The Tribunal has been presented with the warning that was issued to Dr Murshed in September 2017 which is attached as a schedule to the allegation. It notes there is no dispute that the warning was issued and it was referred to by the GMC witnesses.

35. The Tribunal also notes that Dr Murshed is clearly aware of the warning as he makes reference to it in his emails to Mr Sharif during the exchange about the shift on 2 July 2019.

36. Accordingly, the Tribunal has found paragraph 2(b) of the Allegation proved.

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

37. The Tribunal has determined the facts as follows:

1. On 2 July 2018 you failed to report for your shift at North Cumbria University Hospitals NHS Trust (the Trust). **Found Proved**

2. You failed to give adequate notice that you would not be reporting for your shift on 2 July 2018, to:
   a. the Trust; **Found Proved**
   b. Locum People. **Found Proved**
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3. Your actions set out in paragraphs 1 and 2 were undertaken when you were the subject of an active GMC warning in respect of similar conduct, as outlined in Schedule 1. **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** - 22/10/2019

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 Murshed’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. No further evidence was adduced at this stage.

**Submissions**

3. On behalf of the GMC, Mr Birrell submitted that Dr Murshed’s fitness to practise was impaired by reason of his misconduct. He referred the Tribunal to the following caselaw:

- *Meadow v GMC* [2006] EWCA CIV 1390;
- *Cohen v GMC* [2008] EWHC 581 (Admin); and
- *Cheatle v GMC* [2009] EWHC 645 (Admin);

4. Mr Birrell submitted that Dr Murshed has now consistently failed to work numerous locum shifts over a protracted period of time. He reminded the Tribunal that Dr Murshed was given a warning in 2017 for exactly the same behaviour and yet despite that warning he has now failed to attend another shift. The warning given referred to his failure to attend shifts arranged by three agencies at five Trusts. Mr Birrell submitted that Dr Murshed’s actions occurred over a prolonged period as in essence it spanned almost two years starting in October 2016 and with the latest failure to attend being in July 2018.

5. Mr Birrell submitted that applying the principle set out at paragraph 62 in Cohen, there is evidence from Dr B that Dr Murshed’s actions had the potential to put patients at risk. He further submitted that Dr Murshed’s actions have now brought the profession into disrepute and a message needs to be sent out to him that it is unacceptable.

6. Mr Birrell submitted that applying the principle set out at paragraph 22 of Cohen, the context of Dr Murshed’s behaviour should be seen in the light of his already having been issued with a formal warning just nine months previously. He
reminded the Tribunal of the evidence of Mr A who said "I was under the impression he wouldn’t make the same mistake again” and submitted that Dr Murshed did indeed make the same mistake again. Mr Birrell submitted that context in this case is important and that the Tribunal will have in mind that it is not dealing with a doctor with an unblemished career.

7. Mr Birrell then referred the Tribunal to Good Medical Practice (2013 Edition) (‘GMP’) and in particular to paragraph 38 which he submitted has been breached by Dr Murshed. He submitted that the Tribunal has found that Dr Murshed gave inadequate notice to both the agency and the Trust that he would not be reporting for his shift on 2 July 2018 and thereby the employer did not have reasonable time to make alternative arrangements.

8. Mr Birrell also referred the Tribunal to the Guidance on Warnings and drew particular attention to paragraphs 11 and 13. He submitted that in 2017 Dr Murshed’s conduct was found to have been just below the threshold of impaired fitness to practise but that nine months after that warning was issued he has repeated exactly the same behaviour and in doing so he has crossed the threshold and can now be found to be impaired.

9. As to insight, remediation and risk of repetition, Mr Birrell submitted that there is simply no evidence before the Tribunal as Dr Murshed has not engaged in the process. He submitted that there is therefore a real risk of repetition and especially in the context of his previous warning which he has breached.

10. Mr Birrell concluded that for all of the above reasons, Dr Murshed’s fitness to practise is impaired by reason of his misconduct.

The Relevant Legal Principles

11. 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.

12. 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 that the misconduct was serious and then whether the finding of that misconduct which was serious could lead to a finding of impairment.

13. The Tribunal must determine whether Dr Murshed’s fitness to practise is impaired today, taking into account Dr Murshed’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 whether there is any likelihood of repetition.
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The Tribunal’s Determination on Impairment

Misconduct

14. The Tribunal first considered whether Dr Murshed’s actions amount to misconduct. Misconduct can be found in circumstances where there have been serious departures from expected standards of conduct and behaviour, which can be identified by reference to Good Medical Practice (2013 Edition) (‘GMP’).

15. With regard to Dr Murshed’s conduct, the Tribunal identified that the following paragraphs of GMP are relevant:

   **38** Patient safety may be affected if there is not enough medical cover. So you must take up any post you have formally accepted, and work your contractual notice period before leaving a job, unless the employer has reasonable time to make other arrangements.

   **65** You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession.

16. The Tribunal has found that Dr Murshed in failing to report for his shift and failing to give adequate notice to the Trust and the agency, has breached the above paragraphs of GMP. By virtue of his repetition of similar conduct he has compromised the public’s trust in the profession.

17. The Tribunal also considered the GMC Guidance on Warnings (2018), referred to it by Mr Birrell and in particular to paragraphs 11 and 13 which state:

   ‘11. Warnings allow the GMC and MPTS tribunals to indicate to a doctor that any given conduct, practice or behaviour represents a departure from the standards expected of members of the profession and should not be repeated. They are a formal response from the GMC and MPTS tribunals in the interests of maintaining good professional standards and public confidence in doctors. The recording of warnings allows the GMC to identify any repetition of the particular conduct, practice or behaviour and to take appropriate action in that event. Breach of a warning may be taken into account by a tribunal in relation to a future case against a doctor, or may itself comprise misconduct serious enough to lead to a finding of impaired fitness to practise.

   13. Although warnings do not restrict a doctor’s practice, they should nonetheless be viewed as a serious response, appropriate for those concerns that fall just below the threshold for a finding of impaired fitness to practise.’

18. The Tribunal has found that Dr Murshed has failed to adhere to the warning that he was given in 2017 by virtue of him repeating the exact same behaviour in July 2018.
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It was of the view that, although patient safety was not actually compromised by his failure to attend his shift on 2 July 2018, the Tribunal heard from Dr B that it took over a week to find a suitable replacement for the post and it therefore had the potential to compromise patient safety. He had a duty to the public and to the medical profession to attend the shift that he had agreed to but failed in this regard.

19. Dr Murshed’s emails to the agency made it clear that he was aware of the warning that had been issued to him and of the potential consequences to himself of his actions were he to behave in a similar manner. However, despite this Dr Murshed chose to once again fail to report for a shift that he had agreed to work. The Tribunal considered that such a course constituted a serious failure on Dr Murshed’s part, especially in the context of his previous warning.

20. The Tribunal considered that his actions were seriously below the standards of behaviour expected of doctors. It therefore concluded that Dr Murshed’s conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

Impairment

21. The Tribunal having determined that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Murshed’s fitness to practise is currently impaired.

22. The Tribunal considered that this type of conduct is remediable and it is possible to develop understanding and insight into this behaviour. However, it noted that from Dr Murshed’s email to the agency, it is apparent that he understood the serious consequences of his actions to himself but he showed a complete lack of insight as to the impact on patients. His insight is therefore limited, and is solely concerned with his own interests.

23. Dr Murshed has not engaged with the process and the Tribunal has no evidence before it that he will not repeat his actions. Further, the Tribunal has no confidence that Dr Murshed will not repeat his behaviour given that he knew what he was doing and the consequences of it but still went ahead and repeated his behaviour by failing to attend his shift. This was despite having a formal warning on his record for the same behaviour.

24. The Tribunal notes that although Dr Murshed submitted an application for Voluntary Erasure this was returned to him as it was incomplete. The Tribunal heard nothing further about this and has not placed any weight on this at this stage of the proceedings.

25. The Tribunal finds it unacceptable for Dr Murshed to have behaved in the way he did, breaching his warning and potentially putting patients at risks. Undermining
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...of the public’s trust in the profession is inherently serious in that it undermines public confidence in the medical profession and the GMC’s efforts to promote and maintain proper professional standards and conduct.

26. In these circumstances, the Tribunal is of the view that, a finding of impairment is necessary 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 the profession.

27. The Tribunal has therefore determined that Dr Murshed’s fitness to practice is impaired by reason of misconduct.

Determination on Sanction - 23/10/2019

1. Having determined that Dr Murshed’s fitness to practise is impaired by reason of his misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules what action, if any, it should take with regard to his registration.

The Evidence

2. The Tribunal has taken into account the background to the case and the evidence received during the earlier stage of the hearing where relevant, to reach a decision on sanction.

Submissions

3. On behalf of the GMC, Mr Birrell submitted that the appropriate and proportionate sanction in this case is a period of suspension. He reminded the Tribunal of the seriousness of the case and referred it to the impairment determination where the Tribunal described Dr Murshed’s actions as unacceptable, potentially putting patients at risk and undermining the trust in the profession.

4. Mr Birrell referred the Tribunal to the Sanctions Guidance (February 2018) (the SG). He invited the Tribunal to take account of the aggravating and mitigating factors and to bear in mind paragraphs 51-53 of the SG. Mr Birrell submitted that a lack of insight, as found by the Tribunal, is an aggravating factor in Dr Murshed’s case and that his breach of a formal warning should also be regarded as an aggravating factor.

5. Mr Birrell submitted that there are no mitigating factors to consider as Dr Murshed has not adduced any evidence of remediation undertaken, nor has he adduced any references or testimonials. He further submitted that Dr Murshed has not expressed any regret or remorse for his actions nor has there been a meaningful apology.
6. Mr Birrell reminded the Tribunal that any sanction imposed should be proportionate, weighing the interests of the public against Dr Murshed’s interests. He then addressed the Tribunal as to the range of sanctions available to the Tribunal, starting with taking no action. Mr Birrell submitted that to take no action following a finding of impaired fitness to practise would only apply in exceptional circumstances. He submitted that there are no exceptional circumstances in this case and that it would not be sufficient, proportionate, nor in the public interest to conclude this case by taking no action.

7. As to the imposition of conditions, Mr Birrell submitted that this sanction would not be appropriate given the seriousness of this case and would not be workable. He referred the Tribunal to paragraph 80 of the SG which sets out purpose of sanction and submitted that this case does not fall into any of the categories set out at paragraph 81. He also referred to paragraph 84 and reminded the Tribunal of its finding that it had no confidence that Dr Murshed will not repeat his behaviour and therefore given the real risk of repetition conditions are not appropriate. Mr Birrell submitted that conditions are not workable as Dr Murshed does not have insight; retraining is not an issue in this case; he is a locum doctor and therefore supervision will be inherently difficult and given his breach of warning the Tribunal cannot be satisfied he will abide by any conditions imposed. Mr Birrell submitted therefore that conditions are neither appropriate nor workable in Dr Murshed’s case.

8. In relation to suspension Mr Birrell, submitted that a robust response is required to send a message to Dr Murshed and the profession that this behaviour is unacceptable. He referred the Tribunal to paragraphs 91 and 92 of the SG which state:

‘91. Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbecoming a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.

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 more 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).’
9. Mr Birrell submitted that the Tribunal has found that Dr Murshed has undermined public confidence in the profession and therefore suspension is the appropriate response. He submitted that it is also the proportionate response as in reality the Tribunal know that Dr Murshed has stated that he does not wish to practise and it is also aware of the incomplete application for voluntary erasure that was made recently. He submitted that the effect of suspension therefore would not be so great on this doctor.

10. Mr Birrell concluded his submissions by re-iterating that a period of suspension is the appropriate sanction in this case.

**The Tribunal’s Approach**

11. The Tribunal has borne in mind the overarching objectives. The Tribunal is of the view that the misconduct committed by Dr Murshed was serious, involving his failure to attend a shift on 2 July 2018 and failing to give adequate notice of this to the Trust and to the agency, which the Tribunal found had the potential of putting patients at risk. It also found that he had repeated the behaviour for which he had been given a formal warning only nine months earlier.

**Aggravating and Mitigating Factors**

12. The Tribunal considered the following to be aggravating factors to the already serious misconduct:

- Lack of insight into the implications of his actions; and
- No evidence of any remediation, regret, remorse, or apology for his failure to attend the shift on 2 July 2018.

13. The Tribunal noted that there was some evidence of personal difficulties alluded to in the emails sent from Dr Murshed to the agency, but the Tribunal has not been presented with any detail regarding these and consequently could give little weight to these factors.

**The Tribunal’s Determination**

14. 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 (February 2018) (the SG). It has borne in mind that the purpose of sanctions is not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect.

15. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Murshed’s interests with the public interest. The public interest includes, amongst other things, the protection of patients, the maintenance
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of public confidence in the profession, and promoting and maintaining proper standards of conduct and behaviour.

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

No Action

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

18. The Tribunal considered that there are no exceptional circumstances in which it might be justified in taking no action against Dr Murshed’s registration. The Tribunal determined that in view of the serious nature of the Tribunal’s findings on impairment, it would be neither sufficient, proportionate nor in the public interest, to conclude this case by taking no action.

Conditions

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

20. The Tribunal is of the opinion that a period of conditional registration would not adequately reflect the serious nature of Dr Murshed’s misconduct; nor can conditions be formulated that would be workable to address the concerns raised in this hearing. The Tribunal has, therefore, determined that it would not be sufficient or appropriate to direct the imposition of conditions on Dr Murshed’s registration.

Suspension

21. The Tribunal then went on to consider whether suspending Dr Murshed’s registration would be appropriate and proportionate.

22. The Tribunal noted that Dr Murshed was found to have behaved in a similar manner previously and was issued with a formal GMC warning in 2017. Despite this warning, he repeated the exact same behaviour and failed to attend a shift on 2 July 2018. The Tribunal was satisfied that Dr Murshed’s misconduct was so serious that action must be taken to maintain public confidence in the profession.

23. The Tribunal noted that whilst there was a serious breach of the principles in GMP, it was satisfied that suspension, in principle, could be sufficient to maintain confidence in the profession.
24. The Tribunal did consider whether erasure was an appropriate sanction but determined that given the circumstances of this case erasure would be disproportionate. The Tribunal was satisfied that a reasonable person in possession of the full facts of this case would not consider that Dr Murshed’s misconduct was fundamentally incompatible with continued registration.

25. In light of the Tribunal’s assessment of this case and the need to promote and maintain public confidence in the profession and to uphold and maintain proper standards of conduct, it was satisfied for all of the reasons set out above that in this particular case suspension is the appropriate and proportionate sanction. The Tribunal determined to suspend Dr Murshed’s registration for a period of 12 months.

26. In deciding on the period of 12 months the Tribunal considered that in imposing the maximum suspension it will allow Dr Murshed to develop full insight into his misconduct. The Tribunal also considered that 12 months suspension will send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor.

**Review**

27. The Tribunal determined to direct a review of Dr Murshed’s case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Murshed to demonstrate how he has remediated his misconduct. It therefore may assist the reviewing Tribunal if Dr Murshed provides:

- Evidence he has fully remediated his misconduct, which can include, but is not limited to a reflective statement which addresses the misconduct and an appreciation of the impact of his actions; and
- Evidence he has kept his clinical skills and knowledge up to date.

28. Dr Murshed will also be able to provide any other information that he considers will assist.

**Determination on Immediate Order - 23/10/2019**

1. Having determined to suspend Dr Murshed’s registration, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

**Submissions**

2. On behalf of the GMC, Mr Birrell submitted that he had no instructions to seek an immediate order of suspension given the facts of this case.
The Tribunal’s Determination

3. In reaching its decision the tribunal referred to the relevant paragraphs of the SG. It exercised its own judgement and had regard to the principle of proportionality.

4. The Tribunal noted that the GMC submissions and concluded that it was not necessary to impose an immediate order of suspension on Dr Murshed’s registration to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor.

5. This means that the substantive 12 month period of suspension will take effect on Dr Murshed’s registration 28 days from when notice is deemed to have been served unless an appeal is made in the interim.

Confirmed
Date 23 October 2019

Mrs Linda Lee, Chair
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ANNEX A - Service and proceeding in absence – 21/10/2019

Service

1. Dr Murshed is neither present nor represented today. The Tribunal has considered whether notice of this hearing has been properly served upon Dr Murshed in accordance with Rules 20 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) (the Rules), and Schedule 4, Paragraph 8 of the Medical Act 1983 (as amended). In so doing, the Tribunal has taken into account all the information placed before it, together with Mr Birrell’s submissions on behalf of the General Medical Council (GMC).

2. The Tribunal has been provided with a service bundle, containing a copy of the Notice of Hearing dated 13 September 2019, sent to Dr Murshed’s registered address. It has also taken into account the postal certificate of service, which states that the letter was delivered back to sender on 3 October 2019. Having considered all the information, the Tribunal is satisfied that notice of this hearing had been properly served upon Dr Murshed.

3. The Tribunal has determined that notice of this hearing has been served in accordance with Rule 40 of the General Medical Council (Fitness to Practise) Rules 2004 (‘the Rules’).

Proceeding in absence

4. The Tribunal has already determined that service is effective and as such is satisfied that all reasonable efforts have been made to serve notice of this hearing on Dr Murshed. The Tribunal then considered, in accordance with Rule 31 of the Rules, on whether to proceed with the case in Dr Murshed’s absence. The Tribunal has borne in mind that the discretion to proceed in the absence of the practitioner should be exercised with utmost care and caution and with regard to the overall fairness of the proceedings.

5. Mr Birrell submitted that there has been no request for an adjournment and no indication that Dr Murshed would attend were the hearing to be adjourned. He further submitted that delay is a relevant consideration as the allegation dates back to June 2018. Mr Birrell submitted that Dr Murshed is plainly aware of the severity of the allegations as he himself has noted in documents which are contained in the hearing bundle. Further, he stated that Dr Murshed has recently submitted an application for voluntary erasure but that it was returned to him as it was incomplete.

6. The Tribunal has balanced Dr Murshed’s interests with the public interest in deciding whether to proceed in his absence. In doing so, it took account of the submissions of Mr Birrell who referred it to the judgment in the case of R v Jones
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[2001] 2CR.App.R.11. He submitted that the Tribunal has discretion to proceed with the case in the doctor’s absence, though this discretion is to be exercised with caution with the overall fairness of the proceedings in mind.

7. The Tribunal had regard to the following cases: R v Hayward, Jones and Purvis (2001) 2CR. App. R.11, R v Jones (2002) UKHL 5, GMC v Adeogba: GMC v Visvardis (2016) EWCA Civ 162. It noted in particular the following:

- The nature and circumstances of the doctor’s behaviour in absenting himself.
- In particular, whether the behaviour was voluntary and therefore that he waived the right to be present;
- Whether an adjournment would result in the doctor attending on a subsequent occasion;
- Whether the doctor, although absent, wished to be represented, or whether he had waived his right to be represented.

8. On the basis of the information provided, the Tribunal is satisfied that Dr Murshed has voluntarily waived his right to be present and represented at this hearing; and that he has deliberately absented himself, and that he should have been aware that the hearing can proceed in his absence. He has not requested an adjournment, and the Tribunal considers that were it to adjourn today, it is very unlikely that Dr Murshed would attend.

9. The Tribunal was satisfied that Dr Murshed has voluntarily absented himself from these proceedings. The Tribunal was satisfied that the issues raised regarding Dr Murshed’s conduct mean that it is in the public interest that the hearing proceeds today.

10. Therefore, in accordance with Rule 31, the Tribunal has determined to proceed in Dr Murshed’s absence.
Warning imposed by the GMC on 11 September 2017

‘Over the period October 2016 to April 2017 while registered with three locum agencies Dr Murshed agreed to undertake locum posts at five NHS trusts: he failed to attend for the agreed scheduled shifts; he failed to provide adequate notice for not attending work; he failed to provide an adequate explanation for his absence from work. This conduct does not meet with the standards required of a doctor. It risks bringing the profession into disrepute and it must not be repeated. The required standards are set out in Good medical practice and associated guidance. In this case, paragraph 38 of Good medical practice is particularly relevant: 38 Patient safety may be affected if there is not enough medical cover. So you must take up any post you have formally accepted, and work your contractual notice period before leaving a job, unless the employer has reasonable time to make other arrangements. Whilst this failing in itself is not so serious as to require any restriction on Dr Murshed’s registration, it is necessary in response to issue this formal warning. This warning will be published on the List of Registered Medical Practitioners (LRMP) for a period of five years and will be disclosed to any person enquiring about Dr Murshed’s fitness to practise history. After five years, the warning will cease to be published on the LRMP however it will be kept on record and disclosed to employers on request.’