

PUBLIC RECORD**Dates:** 13/03/2025 - 14/03/2025**Doctor:** Dr Dharmesh SHAH**GMC reference number:** 3664069**Primary medical qualification:** MB ChB 1992 University of Leeds**Type of case** **Outcome on impairment**

Review - Misconduct Impaired

Summary of outcome

Suspension, 6 months.

Immediate order imposed

Tribunal:

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| Legally Qualified Chair | Mr Nathan Moxon |
| Registrant Tribunal Member: | Dr Andy Cohen |
| Registrant Tribunal Member: | Dr Neil Smart |

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

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| Doctor: | Present, not represented |
| GMC Representative: | Mr Charles Garside, KC |

Attendance of Press / Public

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

Overarching Objective

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

Determination on Impairment - 13/03/2025

1. This determination will be read in private. However, as this case concerns Dr Shah's misconduct a redacted version will be published at the close of the hearing.
2. At this review hearing the Tribunal now has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr Shah's fitness to practise is impaired by reason of misconduct.

The Outcome of Applications Made during the Impairment Stage

3. The Tribunal granted the GMC's application, made pursuant to Rule 31 the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that, service has been effective and to proceed in Dr Shah's absence. The Tribunal's full decision on the application is included at Annex A.

Background

4. Dr Shah qualified as a doctor from the University of Leeds in 1992 and, prior to the events which were the subject of his Medical Practitioners Tribunal (MPT) hearing in 2018, he worked as a General Practitioner ('GP') partner at the Brentfield Medical Centre for 15 years. Dr Shah stopped working as a GP in 2011 but returned to work in 2014 at The Old Courthouse Surgery ('the Surgery') in Barnet as part of the GP Returner's Scheme. He had worked in this role for approximately three to four months prior to the events which led to the 2018 hearing.

5. There is a lengthy history to the case and a summary of the key issues is set out below.

The 2018 Tribunal

6. At the initial MPT hearing which concluded in June 2018 (the 2018 Tribunal), Dr Shah admitted all paragraphs of the Allegation. He admitted that in or around 4 December 2014, he consulted with Patient A and conducted a breast examination which was not clinically

indicated. He admitted that he failed to explain the reasons for conducting the examination, explain the examination process, or offer her a chaperone for the examination. Dr Shah admitted that he failed to record any discussions regarding the combined oral contraceptive pill, that he had conducted a breast examination, or that he had obtained Patient A's consent to carry out the breast examination. Dr Shah also admitted that, on 2 December 2014, he consulted with Patient B and requested to conduct a breast examination and listen to Patient B's chest when neither were clinically indicated. He admitted that he had advised Patient B that a breast examination was required so that the combined oral contraceptive pill could be prescribed. Dr Shah further admitted that he had failed to prescribe the combined oral contraceptive pill to Patient B and that he had failed to record his request to perform a breast examination and Patient B's refusal of it.

7. The 2018 Tribunal found certain aspects of the treatment of those patients amounted to serious misconduct. It found that Dr Shah had only demonstrated partial insight, his conduct fell short of the standards expected and that his clinical skills were out of date, such that his fitness to practise was impaired by reason of his misconduct. It determined that 18 months conditional registration was an appropriate length of time for Dr Shah to develop his insight, obtain a substantive clinical post, and bring his clinical practice up to date.

The 2019 Tribunal

8. Dr Shah's case was reviewed and concluded in December 2019 (the 2019 Tribunal). The 2019 Tribunal noted that, as Dr Shah had not been working in a clinical setting, no workplace supervisor reports had been provided. The 2019 Tribunal was concerned that no reflective statement had been provided by Dr Shah to address his insight and detail the development of his clinical practice since the initial 2018 hearing. The 2019 Tribunal noted that Dr Shah had not provided the majority of the documentation that the 2018 Tribunal had suggested would be helpful for the next review. The 2019 Tribunal was concerned that Dr Shah had not demonstrated that he had remediated and addressed the concern that his medical practice was out of date.

9. The 2019 Tribunal determined that Dr Shah's fitness to practise remained impaired by reason of his misconduct. A further period of conditions was imposed for 12 months with a view to Dr Shah returning to clinical practice in the near future.

The 2021 Tribunal

10. Dr Shah's case was reviewed and concluded in January 2021 (the 2021 Tribunal). The 2021 Tribunal acknowledged that Dr Shah had made some progress since the 2019 hearing, in that he had completed an abundance of CPD relevant to general practice. However, it was concerned that Dr Shah had not undertaken any CPD relevant to the concerns of the 2018 and 2019 Tribunals. Further, although he had undertaken a significant amount of CPD, the 2021 Tribunal was concerned that he had provided no reflections upon his learning. The 2021 Tribunal concluded that Dr Shah's progress since the 2019 Tribunal hearing had been very

limited. He had produced no evidence of reflection, insight or remediation in relation to his misconduct.

11. The 2021 Tribunal determined that Dr Shah’s fitness to practise remained impaired by reason of his misconduct. It had concerns about the appropriateness of a further order of conditional registration. The 2021 Tribunal determined that an order of suspension was the minimum sanction required to uphold the overarching objective, therefore it imposed a 12-month suspension order on Dr Shah’s registration instead.

The 2022 Tribunal

12. Dr Shah’s case was reviewed and concluded in April 2022 (the 2022 Tribunal). The 2022 Tribunal acknowledged that some progress had been made on the part of Dr Shah since the 2021 hearing. However, it noted that Dr Shah’s Personal Development Plan had only been produced in the weeks leading up to the April 2022 hearing. The 2022 Tribunal was concerned with Dr Shah’s minimal efforts as regards his PDP but accepted that his actions in obtaining a mentor were a positive step forward. The 2022 Tribunal considered Dr Shah could have been more proactive in taking proper steps to remediate his misconduct despite having increased personal obligations. It concluded his attitude towards remediating his misconduct remained at best “passive”. It was concerned that there was a risk of repetition of the failures originally found due to the lack of evidence of developed insight and remediation.

13. The 2022 Tribunal concluded that Dr Shah’s fitness to practise remained impaired by reason of his misconduct. In determining what sanction to impose, the 2022 Tribunal noted that Dr Shah had a mentor who was prepared to continue to help with his aim of returning to work. As a result, the 2022 Tribunal considered that a period of conditions, working under direct supervision, would be the only way to satisfy the overarching objective. Therefore, it imposed a 4-month order of conditions on Dr Shah’s registration.

The January 2023 Tribunal

14. Dr Shah’s case was reviewed and concluded in January 2023 (the January 2023 Tribunal). The January 2023 Tribunal received documentary evidence that Dr Shah had been involved with clinical work when shadowing his mentor. The GMC had not been informed about this, contrary to Condition 2 of the conditions on Dr Shah’s registration. A GMC Registrar investigated for any breach of conditions and concluded that the work undertaken by Dr Shah fell within the clinical attachment guidance and did not require Dr Shah to have a licence to practise and no further action would be taken. Taking all of the relevant evidence into account, the January 2023 Tribunal was satisfied that this breach of a condition was: a) a relatively minor matter; and b) was an innocent oversight. As such, it did not adversely affect its assessment of ongoing impairment and could be disregarded.

15. The January 2023 Tribunal considered that Dr Shah’s efforts in pursuing mentorship and supervised clinical attachment work were particularly positive. It was of the view that he

had sufficient insight into the misconduct, and that he had clearly set out in his reflections what he had done wrong and what he would do differently in the future. That Tribunal was satisfied that Dr Shah had now resolved all the elements raised in both the original 2018 Tribunal hearing in terms of the past impairment and ongoing concerns of the last Tribunal in 2021. This January 2023 Tribunal was satisfied there was nothing more that was required in order to demonstrate remediation.

16. The January 2023 Tribunal took into account Mr Jenkins' submissions on impairment in which it was conceded that Dr Shah's fitness to practise remained currently impaired. Mr Jenkins submitted that given the period of time that had elapsed, and that Dr Shah was removed from the NHS Performers List, he was now in something of a "Catch-22 situation", where he was unable to gain clinical experience in order to return to work. The January 2023 Tribunal noted that Dr Shah had not treated patients since 2014 and heard from him about his realistic assessment of where he was currently at in terms of a return to practise and XXX. The January 2023 Tribunal was of the view that Dr Shah had shown insight into the potential pitfalls in a return to practise after such a long period away from practice. Such insight was reassuring, and the January 2023 Tribunal had confidence that Dr Shah understood his limitations such that he would have a realistic plan and parameters for a return to work.

17. The question of whether Dr Shah's fitness to practise was currently impaired was a finely balanced one between permitting a rehabilitated doctor, lacking up to date clinical experience, to resume practice versus the wider public interest in relation to patient safety and public confidence. Overall, the January 2023 Tribunal considered a finding of impairment was required in order to satisfy the overarching objective in these circumstances. The January 2023 Tribunal was satisfied that it was appropriate, necessary and proportionate to impose conditions on Dr Shah's registration. It determined to remove the previous requirement for a PDP and reduced the level of supervision from 'direct' to 'supervised'. Therefore, it imposed a 7-month order of conditions on Dr Shah's registration.

The September 2023 Tribunal

18. Dr Shah's case was reviewed and concluded in September 2023 (the September 2023 Tribunal). The September 2023 Tribunal accepted that Dr Shah had provided some evidence of ongoing additional CPD. While it considered this to be a sufficient amount of work, the CPD lacked context as to why it had been undertaken. Further, it had not received any evidence from Dr Shah of his reflections of what he has learnt from his CPD, how he would apply the learning in the future, or link it back to his PDP.

19. The September 2023 Tribunal was aware of the positive conclusions of Dr Shah's insight and remediation from the January 2023 Tribunal. It credited Dr Shah for having engaged with the last Tribunal in January 2023, and for engaging with the current review. However, the September 2023 Tribunal did not consider that the progress recorded by the January 2023 Tribunal had continued. The September 2023 Tribunal accepted that Dr Shah had insight into the original failings, however it was disappointed that he had not followed the list of recommendations provided at the last review, which was to provide an updated

PDP. There was not a comprehensive review of all the learning he had done in terms of CPD or subsequent reflections. Neither was there any progress on attempts at revalidation, to complete his appraisal, or to ensure that he continued to have access to a mentor. Even if he felt he needed a RO to have a mentor, he could have at least maintained the existing supportive conversations with Dr C.

20. The September 2023 Tribunal noted that the January 2023 Tribunal had revised Dr Shah's conditions by reducing supervision requirements. It considered that the less onerous conditions would assist Dr Shah to find work in a patient-focused environment in order to update his skills. However, the September 2023 Tribunal received no such evidence of this and accordingly it was unable to move beyond the conclusions of the January 2023 Tribunal on impairment.

21. The September 2023 Tribunal heard evidence from Dr Shah that he had misunderstood that his mentor had to be approved by a Responsible Officer, but he did not take any proactive action to seek action on what he could do. It was aware that Dr Shah had not spoken to the Deanery.

22. The September 2023 Tribunal noted that previous Tribunals had described Dr Shah as 'passive' in relation to the allegations against him and the remediation required of him. It was mindful that views were reversed at the January 2023 Tribunal, whereby it concluded that *"there was nothing more that was required in order to demonstrate remediation. As such, the Tribunal had given serious consideration as to whether there was current impairment at all."* This September 2023 Tribunal, like others before it, considered that Dr Shah's misconduct was remediable, and it accepted that he had provided evidence of remediation. However, it considered that Dr Shah had reverted to his 'passive' approach with intermittent efforts to pursue his journey back to full clinical practice. The recommendations of the January 2023 Tribunal, which were intended to assist both him and this Tribunal, had not been followed.

23. The September 2023 Tribunal took into account that Dr Shah has been out of clinical practice for approximately nine years and that his clinical skills may have deteriorated with the passage of time. The September 2023 Tribunal acknowledged that this was partly by virtue of the conditions imposed which may have put Dr Shah at a disadvantage in securing relevant clinical work and this may have reduced the opportunity for him to maintain his clinical skills. However, it also considered that part of the problem was Dr Shah's intermittent and passive approach to his own progression. By his own admission, Dr Shah recognised he needed to be more proactive.

24. The September 2023 Tribunal was of the view that Dr Shah was fully cognisant of what he needs to do. It considered that Dr Shah appeared to become disheartened at the first barrier put in front of him, and this stopped him from trying to progress. The September 2023 Tribunal was concerned that the longer Dr Shah prolongs his progress, the harder it will be for him to return to unrestricted practice, and he needed to be proactive in his commitment.

25. The September 2023 Tribunal was satisfied that since the last hearing in January 2023, Dr Shah had taken the appropriate steps to fulfil some of the recommendations proposed by previous Tribunals. Nonetheless, before the September 2023 Tribunal, there was limited evidence of any reflections on his learning since the last hearing.

26. Dr Shah told the September 2023 Tribunal that he has a support network. The Tribunal considered that Dr Shah would benefit from utilising his support network more to help him progress.

27. The September 2023 Tribunal reminded itself that there is a persuasive burden on Dr Shah to show that he is no longer impaired. In the absence of sufficient evidence to demonstrate continued clinical improvement since the last hearing, the September 2023 Tribunal concluded that a finding of impairment was necessary in order to satisfy the overarching objective. The September 2023 Tribunal took into account the wider public interest in relation to patient safety and public confidence in the profession.

28. The September 2023 Tribunal considered that reasonable and fully informed members of the public would not expect Dr Shah to be able to return to unrestricted practice in these circumstances.

29. The September 2023 Tribunal determined that Dr Shah's fitness to practise was impaired by reason of misconduct.

30. The September 2023 Tribunal considered that there were no exceptional circumstances to justify taking no action in this case. It determined that it would be neither sufficient, proportionate nor in the public interest, to conclude this case by taking no action.

31. The September 2023 Tribunal was satisfied that it was appropriate, necessary and proportionate to impose conditions on Dr Shah's registration. It considered that these conditions continued to be appropriate for Dr Shah with the addition of the requirement for a PDP.

32. The September 2023 Tribunal was cognisant that that was the fifth review of Dr Shah's case. It bore in mind its concerns at the impairment stage, in which it considered that *"the longer Dr Shah prolongs his progress, the harder it will be for him to return to unrestricted practice, and he needed to be proactive in his commitment."*

33. The September 2023 Tribunal determined to impose the conditions for a period of 18 months and directed a review. The September 2023 Tribunal clarified that at the review hearing, the onus will be on Dr Shah to demonstrate how he has kept his practice up to date. It considered that a future Tribunal reviewing this matter would be assisted by:

- An up-to-date PDP showing his pathway to remediation over time with evidence of learning and reflection;
- Evidence of ongoing CPD;

- Any evidence that he may have submitted in respect of his revalidation and/or his appraisal;
- Any other development actions or progress updates that Dr Shah or his mentor considers to be appropriate.

34. Dr Shah was also informed that he would be able to provide any other information that he considers would assist.

Today's Review hearing

The Evidence

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

- Record of Determinations 2018, 2019, 2021, 2022 and January and September 2023
- Correspondence from the GMC to Dr Shah between October 2023 and January 2025
- Telephone note of a conversation between the GMC and Dr Shah dated 12 March 2025

Submissions

36. On behalf of the GMC, Mr Garside, KC, referred the Tribunal to the September 2023 Tribunal's determinations and the finding that Dr Shah's fitness to practice was still impaired, and submitted that the findings are even more relevant today than they were on that occasion. He reminded the Tribunal that the only engagement Dr Shah has had with the GMC since the imposition of conditions in September 2023 is that he has relinquished his licence to practice. He said that there is no indication that Dr Shah has been in practice or training, there is no CPD and there is no program of personal development, despite the fact that he had been told what the appropriate course of conduct by him might be.

37. Mr Garside said that Dr Shah has done nothing. Mr Garside conceded that this may well be because of things other than a reluctance to cooperate with the GMC in remedying the defects in his knowledge and skills. He said that for whatever the reason and bearing in mind that this hearing is about the protection of the public, there is nothing before the Tribunal that demonstrates that Dr Shah has done anything to improve his knowledge and skills.

38. Mr Garside referred the Tribunal to the September 2023 Tribunal's determination on sanction and stated that that Tribunal determined that it was appropriate to impose an order of conditions in the hope that Dr Shah would show that he is fit to practise. Mr Garside submitted that this is not a case where the Tribunal was concerned that the impairing effect of the original Allegations might indicate that it was not appropriate to allow him to return to

practice. He said that this is a case where the Tribunal was concerned that he did not have sufficient up to date knowledge and skills to enable him to return to practice in a way that was safe so far as the public is concerned.

39. Mr Garside drew the Tribunal's attention to condition 5 relating to the provision of a Personal Development Plan (PDP) and said that there has been none provided by Dr Shah. He submitted that there is no allegation of a failure to observe conditions, and the GMC do not consider Dr Shah to be in breach of the conditions, however he highlighted the combination of Dr Shah's failure to heed what his conditions were and what he was told he needed to do by the last Tribunal. Mr Garside said that there is no evidence that he either has or is intending to learn the necessary skills to practice in a modern setting.

40. Mr Garside reminded the Tribunal that it was suggested that Dr Shah could provide any other information that he considers would assist. He said that Dr Shah was present at that hearing and made submissions, so he must have known that a review hearing had been directed and that the decision of the Tribunal was to impose an order of conditions. The September 2023 Tribunal gave Dr Shah a firm steer about what he needed to do in order to demonstrate that he is fit to practice.

41. Mr Garside submitted that in the absence of any of the suggested evidence and any demonstration of the observance of condition 5, bearing in mind that it is for the practitioner to show that he is fit to practise and not for the GMC to demonstrate that he is not, this Tribunal ought to, at least for the protection of the public, conclude that Dr Shah is still unfit to practice.

42. Mr Garside reminded the Tribunal that in the intervening period, Dr Shah has relinquished his licence to practise and had said in the telephone call to the GMC that he does not wish to return to practise.

43. He submitted that the evidence is entirely consistent with the finding that Dr Shah's fitness to practise is still impaired.

The Relevant Legal Principles

44. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. As noted above, the September 2023 Tribunal set out the matters that a future Tribunal may be assisted by. Dr Shah has the persuasive burden of showing that his fitness practice is no longer impaired.

45. This Tribunal must determine whether Dr Shah's fitness to practise is impaired today, taking into account his conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

The Tribunal's Determination on Impairment

Misconduct

46. The Tribunal reminded itself that there is a persuasive burden on Dr Shah to satisfy it that his fitness to practise is no longer impaired. The Tribunal noted condition 5 which states:

- '5 a *He must design a personal development plan (PDP), with specific aims to address the deficiencies in the following areas of his practice.*
- *Contemporary Contraceptive Practice*
 - *Informed Consent*
 - *Record Keeping*
- b *His PDP must be approved by his responsible officer (or their nominated deputy)*
- c *He must give the GMC a copy of his approved PDP on request.*
- d *He must meet with his responsible officer (or their nominated deputy), as required, to discuss his achievements against the aims of his PDP.'*

47. Dr Shah has not provided any of the information suggested by the September 2023 and in particular a PDP in compliance with condition 5. The Tribunal noted the GMC's position that it considered this was due to a lack of engagement rather than a positive breach of conditions by Dr Shah.

48. The Tribunal noted that Dr Shah attended that hearing so he must have known what was expected of him.

49. The Tribunal considered the telephone note dated 12 March 2025 in which Dr Shah stated:

'... he hasn't been able to deal with his correspondence as he has been [XXX]...'

He said he is very sorry that he has only picked up at this late stage that the hearing is going forward, and he apologises to the panel. [XXX]. He is sorry he can't attend the hearing tomorrow [XXX]. He will not[XXX] attend either day of the hearing.'

50. The Tribunal has not received any objective evidence of XXX.

51. The Tribunal took note that Dr Shah had relinquished his licence to practise in June 2024 and further considered that his progress towards a return to clinical practise identified by a previous Tribunal, had not only stalled but had receded since the hearing in September 2023.

52. In the absence of any evidence to demonstrate that Dr Shah has kept his clinical knowledge and skills up to date the Tribunal concluded that a finding of impairment was necessary in order to satisfy the overarching objective.

53. The Tribunal noted that Dr Shah has not practised medicine in over 10 years and undoubtedly remains deskilled. The Tribunal considered that it is not in the public interest for Dr Shah to return to unrestricted practise as a deskilled doctor poses a risk to members of the public that he treats.

54. The Tribunal was satisfied that Dr Shah's lack of remediation and failure to keep his medical knowledge and skills up to date was liable to undermine the public's trust in the profession. The Tribunal determined that public confidence in the profession would be undermined, and proper standards and conduct for members of the profession would not be maintained, if a finding of impairment were not made. Further, a reasonable and fully informed members of the public and the medical profession would be surprised if a finding of impairment was not made in these circumstances, particularly given Dr Shah's apparent inactivity since the September 2023 review.

55. The Tribunal has therefore determined that Dr Shah's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 21/03/2025

56. Having determined that Dr Shah's fitness to practise is impaired by reason of misconduct the Tribunal now has to decide in accordance with Rule 22(1)(h) of the Rules what action, if any, it should take with regard to their registration.

The Evidence

57. 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 reaching a decision on what action, if any, it should take with regard to Dr Shah's registration.

Submissions

58. On behalf of the GMC, Mr Garside said that the history of this case is that the index allegations from 2014 arose when Dr Shah was in a 'Return to practice' scheme. He had been out of practice for some time before joining that scheme. Mr Garside said that it has never been contested that it was for reasons to do with XXX. However, at that stage there was not, and there has never since been, any XXX or formal medical evidence provided by Dr Shah.

59. Mr Garside confirmed that the present regulatory proceedings have always been on account of misconduct XXX. He acknowledged that until this hearing, Dr Shah has made submissions on his own behalf and gave oral evidence about XXX. Mr Garside said that this

may be a factor that should lead this Tribunal not to impose the permanent sanction of erasure. He submitted that it would be wrong to stray into the train of thought that because XXX, the only appropriate sanction would be erasure. He submitted that the focus of the Tribunal should be on his fitness of fitness to practise in the sense of being properly skilled.

60. Mr Garside said that there was XXX. He said that the reality is that on every occasion when Dr Shah has been before a Tribunal, he has accepted that he had not been energetic in preparing himself to return to practise but said each time it will be different. He submitted that the Tribunal may consider XXX by way of mitigation. However, he stated that Dr Shah obviously knows how to contact the GMC if he needs to do so but has not done so since the September 2023 review, until the day before the present review.

61. Mr Garside submitted that the appropriate sanction in this case is one of suspension. He said that it is clear that Dr Shah's fitness to practise is impaired and that something needs to be done to protect the public from doctors that have become deskilled.

62. In relation to conditions Mr Garside said that the history in Dr Shah's case is that the imposition of conditions appears to have had no impact on Dr Shah's efforts to render himself fit for practise. He said that with every passing year since 2014, the danger Dr Shah presents to the public because of the deskilling gets greater. Dr Shah's failure to observe the conditions means that he has not worked and therefore has not enabled himself to learn and appreciate modern methods. Mr Garside said that the public would expect Dr Shah to demonstrate to a Tribunal that he had got up to date with his knowledge and skills before he is allowed to practise. Mr Garside said that Dr Shah has theoretically been able to practise with conditions for most of the periods since the finding of misconduct but appears to have done nothing about meeting the conditions.

63. Mr Garside submitted that suspension is the appropriate sanction to ensure that Dr Shah does not practice. The suspension should be for a period which will give him another opportunity to take action to put himself in a position where he is fit to practise.

64. Mr Garside submitted that erasure is too drastic a measure at this stage. He said that it may well be that the jolt of a suspension will shake Dr Shah into doing the retraining that he ought to be doing.

The Tribunal's Determination

65. 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 SG and the over-arching objective. It has borne in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although it may have a punitive effect.

66. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Shah'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.

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

Aggravating and Mitigating factors

68. The Tribunal first considered the aggravating and mitigating factors present and referred itself to its findings on impairment. It referred to paragraphs 25-49 of for mitigating factors and paragraphs 50-56 for aggravating factors in the Sanctions Guidance (February 2024) (the SG).

69. The Tribunal considered the main aggravating factor is Dr Shah's several years of limited engagement, highlighted by previous Tribunals, and a marked lack of engagement since the September 2023 hearing. The Tribunal noted that in the past Dr Shah has failed to respond satisfactorily when given deadlines and only engaged with the GMC yesterday since his hearing in September 2023. Dr Shah has failed to provide any information regarding progress since the September 2023 Tribunal or made any efforts to comply with that Tribunal's suggestions. He has particularly failed to provide a PDP in compliance with condition 5. The Tribunal found that Dr Shah has been out of clinical practice for over ten years and has become deskilled.

70. Having identified the aggravating factors in the case, the Tribunal identified that Dr Shah had previously demonstrated insight into his original failings and there had been some remediation of the original concerns in his case, albeit there has been no further progress since the September 2023 review. The Tribunal noted that Dr Shah had been open and honest about his limitations.

No action

71. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Shah's case, the Tribunal first considered whether to conclude the case by taking no action. Taking no action would only be appropriate in exceptional circumstances.

72. The Tribunal found Dr Shah's fitness to practise remained impaired and due to his deskilling may pose a risk to the public. The Tribunal considered that there were no exceptional circumstances in this case. Therefore, the Tribunal concluded that it would not be appropriate or proportionate nor would it serve the public interest to take no further action.

Conditions

73. The Tribunal next considered whether imposing an order of conditions on Dr Shah's registration would be appropriate. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

74. The Tribunal noted that Dr Shah has not been working and relinquished his licence to practice in June 2024. He has failed to engage with the current conditions on his registration. The Tribunal was not satisfied that he would comply with conditional registration in the future.

75. The Tribunal is of the opinion that a further period of conditional registration would not adequately protect the public given the extensive level of deskilling that will have inevitably resulted from Dr Shah's absence from medical practice for over a decade. Further, conditions would not maintain public confidence in the medical profession or professional standards given Dr Shah's failure to engage and the lack of progress in updating his skills and knowledge for a safe return to work since the previous review hearing in September 2023. The Tribunal considered, given the history of this case, it could not formulate workable conditions that would protect the public interest and maintain public confidence in the medical profession.

76. The Tribunal has, therefore, determined that it would not be sufficient to direct the imposition of conditions on Dr Shah's registration.

Suspension

77. The Tribunal then went on to consider whether suspending Dr Shah's registration would be appropriate and proportionate. The Tribunal considered paragraph 97 of the SG which states:

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

a A serious departure from Good medical practice, but where the misconduct is not so difficult to remediate that complete removal from the register is in the public interest. However, the departure is serious enough that a sanction lower than a suspension would not be sufficient to protect the public.

b In cases involving deficient performance where there is a risk to patient safety if the doctor's registration is not suspended and where the doctor demonstrates potential for remediation or retraining.

c...

d...

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.

f...

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.'

78. The Tribunal noted that Dr Shah's original hearing was in 2018. Whilst previous Tribunals found that Dr Shah had made some progress towards a safe return to clinical practise, this Tribunal found that his progress had not only stalled but had receded. Dr Shah provided no evidence to demonstrate that he has kept his clinical knowledge and skills up to date. He has not practised medicine in over 10 years and is undoubtedly deskilled.

79. Whilst the GMC did not submit that Dr Shah had breached the current conditions on his registration, the Tribunal was of the view that he failed to engage with those conditions and also with the suggestions made by the previous Tribunal.

80. The Tribunal determined that it is not in the public interest for Dr Shah to return to unrestricted practise as a deskilled doctor poses a risk to members of the public that he treats.

81. The Tribunal considered that Dr Shah's lack of engagement with his Regulator and these proceedings, together with his failure to demonstrate he has kept his medical skills and knowledge up to date, is unacceptable and would undermine the public's trust in the profession. Further, public confidence in the profession would be undermined, and proper standards and conduct for members of the profession would not be maintained, if he was allowed to return to clinical practice.

82. Accordingly, the Tribunal have directed to suspend Dr Shah's registration for a period of six months. The Tribunal bore in mind that it considered that 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, namely lack of progress to remediate, unbefitting a registered doctor. It considered that a suspension for period of six months is sufficient to give Dr Shah the opportunity to demonstrate his commitment to a safe return to clinical practise. In agreement with the January 2021 Tribunal's view, it considered that the imposition of a suspension would not of itself be an obstacle to Dr Shah embarking on steps to remediate his practice, as steps such as a PDP, a plan to return to clinical practice and undertaking reflective and online learning do not require active registration.

Erasure

83. The Tribunal considered that an order erasing Dr Shah from the medical register may have been appropriate in light of the fact that Dr Shah has failed to show sufficient and

ongoing progress in the almost seven years since his misconduct was found proved. This was the sixth review hearing. On each occasion there has been limited and, latterly, no progress made by Dr Shah despite being given clear and achievable guidance from the review Tribunals.

84. This Tribunal considered that, notwithstanding the submissions on behalf of the GMC, erasure today could be justified to protect the public, given the absence of Dr Shah from medical practice for over ten years. Further, erasure would give a clear message to the public and medical professionals that, where a doctor fails to demonstrate adequate progress during periods of suspension and conditions, he will not be given unlimited chances and, at some point, a Tribunal will consider erasure as the only appropriate course of action.

85. Dr Shah should understand that this Tribunal came extremely close to ordering his erasure from the medical register and it is only upon careful deliberation and consideration that it concluded that it could just, albeit only just, step back from that course of action.

86. In coming to the conclusion that a suspension order should be preferred over erasure, despite both sanctions being appropriate in all of the circumstances, the Tribunal took into account its reasoning in paragraph 27. It also took into account the fact that Dr Shah, upon reading this determination, cannot be left in any doubt that a failure to take significant action to re-engage with proceedings by showing development of his skills and knowledge will likely result in the next review Tribunal considering that he has been given all reasonable opportunities to do so and should be erased from the register.

87. The Tribunal considered that the order of suspension, as opposed to erasure, will protect the public as Dr Shah shall be unable to practise until he has shown that he is safe to do so. Giving this further, and potentially final, opportunity to adequately engage maintains public confidence in the medical profession and proper professional standards given the Tribunal's clear indication that Dr Shah cannot expect these proceedings to continue indefinitely with insufficient progress made.

88. In light of the length of time these proceedings have taken, and the lack of progress during that period, the Tribunal considered that a suspension of six months would be appropriate and allow sufficient time for Dr Shah to re-engage with the regulatory proceedings.

89. The Tribunal has borne in mind that at a review hearing, where there has been a change in sanction from conditions to suspension it has the power to impose an immediate order of suspension under s38(1) of the Act.

Review

90. The Tribunal determined to direct a review of Dr Shah's case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Shah to demonstrate how he has updated

his medical skills and knowledge. It therefore may assist the reviewing Tribunal if Dr Shah provided:

- An up-to-date PDP showing his pathway to remediation over time with
 - evidence of learning and reflection;
 - Evidence of ongoing CPD;
 - Any evidence that he may have submitted in respect of his revalidation
 - and/or his appraisal;
 - Any other development actions or progress updates that Dr Shah or his mentor considers to be appropriate.
- Dr Shah's attendance at the future review.

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

91. The Tribunal considered it to be fair and in Dr Shah's best interests to again make the observation that, if he fails to show adequate progress by the next review hearing, he will be at significant risk of being erased from the medical register.

92. This Tribunal does not seek to bind any future Tribunal, which shall exercise its own discretion.

93. The MPTS will send Dr Shah a letter informing him of his right of appeal and when the direction and the new sanction will come into effect.

Determination on Immediate Order - 14/03/2025

94. Having determined that an order of suspension is appropriate, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Shah's registration should be subject to an immediate order. Where there is a change in sanction from conditions to suspension in a review hearing the Tribunal has the power to impose an immediate order of suspension under s38(1) of the Act.

Submissions

95. On behalf of the GMC, Mr Garside, KC, referred the Tribunal to the Sanctions Guidance. Mr Garside did not suggest that an immediate order was necessary in Dr Shah's interest. He submitted that the public interest requires an immediate order.

The Tribunal's Determination

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96. Dr Shah has not been in clinical practice for over ten years. The Tribunal determined that it was not in the public interest for Dr Shah to return to unrestricted practice prior to the substantive order of suspension taking effect, as a deskilled doctor poses a risk to members of the public.

97. Accordingly, the Tribunal determined that an immediate order of suspension was necessary and appropriate for the protection of the public and to not impose an immediate order would be inconsistent with the Tribunal's findings.

98. This means that Dr Shah's registration will be suspended from the date on which notification of this decision is deemed to have been served upon him. The substantive direction, as already announced, will take effect 28 days from that date, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

99. That concludes this case.

ANNEX A – 13/03/2025

Application on service and proceeding in absence

100. This determination will be read in private. However, as this case concerns Dr Shah's misconduct a redacted version will be published at the close of the hearing.

101. Dr Shah is neither present nor legally represented at this hearing.

102. The Tribunal was provided with a copy of a service bundle from the General Medical Council (GMC). The bundle included:

- A screen shot of Dr Shah's registered postal and email address;
- GMC Notice of Allegation letter and the draft hearing bundle, dated 31 January 2025 sent via Special Delivery;
- Information from Royal Mail regarding attempted delivery of GMC Notice of Allegation letter and the draft hearing bundle;
- GMC chaser letter enclosing GMC Notice of Allegation letter, dated 13 February 2025;
- MPTS Notice of Hearing letter (the NoH), dated 4 February 2025;
- Royal Mail proof of Delivery of MPTS Notice of Hearing letter, dated 12 March 2025;
- MPTS Notice of Hearing letter, dated 4 February 2025;
- GMC chaser letter dated 3 March 2025 enclosing GMC Notice of Allegation letter; and
- Telephone note of conversation between Dr Shah and GMC legal dated 12 March 2025.

103. Mr Charles Garside, KC, on behalf of the GMC, referred the Tribunal to the documents in the service bundle. He acknowledged that there was difficulty in receiving proof of delivery of the GMC Notice of Allegation letter, draft hearing bundle and MPTS notice of hearing. He stated that the explanation for this is in the telephone note. Mr Garside submitted that service has been effective in accordance with Rule 31 the General Medical Council (Fitness to Practise Rules) (the Rules).

104. The Tribunal took account of the telephone note dated 12 March 2025 in which Dr Shah confirmed that he had received the NOH and was aware of today's hearing. It was satisfied that the NoH had been served on Dr Shah in accordance with Rule 40 of the GMC's (Fitness to Practise) Rules 2004, as amended, ('the Rules'), and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.

Proceeding in Absence

105. Mr Garside invited the Tribunal to proceed with the hearing in Dr Shah's absence in accordance with Rule 31 of the Rules. He submitted that fairness, proportionality and justice depend not only on justice to the doctor but also in the public interest.

106. Mr Garside referred the Tribunal to the telephone note in which Dr Shah explained the reason for his non-attendance and stated that he had relinquished his licence to practice on 12 June 2024. Whilst Dr Shah has said that he has XXX, Mr Garside said that the Tribunal has no evidence XXX and whether it has XXX from complying with the conditions which were imposed upon him at the hearing in September 2023.

107. Mr Garside acknowledged that Dr Shah has engaged with the review hearing to the limited extent of having had the telephone conversation on 12 March 2025. There is nothing that appears in the telephone conversation, in correspondence or elsewhere that indicates that he intends to fulfill the September 2023 Tribunal's suggestions as to how he may demonstrate developing insight and remediation into his misconduct. Mr Garside submitted that there is no evidential basis which could justify an adjournment on the normal principles.

108. Mr Garside submitted that should Dr Shah decide to engage with the process and attempt to demonstrate that he is fit to practise, he could make an application for an early review of any restriction on his practice that falls short of erasure.

109. Mr Garside submitted that should the Tribunal find that Dr Shah's fitness to practise is impaired, the GMC would seek a period of suspension at the sanction stage and that he is not instructed to ask for a final order of erasure. He said that Dr Shah will still be in the system and can begin, if he wishes, to rehabilitate himself. Mr Garside acknowledged that sanction is a matter for the Tribunal. Mr Garside said that it appears that Dr Shah's intention at the moment is to not resume his practice. As such, there is nothing to be gained by an adjournment and the public interest clearly requires that the public should be protected. Mr Garside submitted that the Tribunal should proceed in Dr Shah's absence.

The Tribunal's decision

110. The Tribunal considered whether it would be appropriate to proceed with this hearing in Dr Shah's absence pursuant to Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with the appropriate care and caution, balancing the interests of the doctor with the wider public interest.

111. In deciding whether to proceed with this hearing in Dr Shah's absence, the Tribunal carefully considered all the information before it. It considered the telephone note in which Dr Shah stated:

*'He said he hasn't been able to deal with his correspondence as he has been [XXX], for the same reasons won't be attending hearing...
He said he is very sorry that he has only picked up at this late stage that the*

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hearing is going forward, and he apologises to the panel. [XXX]. He is sorry he can't attend the hearing tomorrow and XXX...

He mentions he has relinquished his licence to practise...'

112. The Tribunal noted that Dr Shah's reason for his non-attendance is not supported by any XXX evidence. It also noted that Dr Shah expected the hearing to proceed in his absence.

113. In the circumstances, the Tribunal determined that it was appropriate to proceed in Dr Shah's absence because he has voluntarily absented himself from proceedings. It considered that there was no evidence to suggest an adjournment would result in Dr Shah's participation in any future hearing. The Tribunal was satisfied that it was in the public interest for this hearing to proceed in Dr Shah's absence and without unnecessary delay.