

PUBLIC RECORD

Dates: 23/09/2024 -30/09/2024
10/03/2025 - 17/03/2025

Doctor: Dr Mili SHAH

GMC reference number: 6075526

Primary medical qualification: BM BS 2003 University of Nottingham

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Impaired
XXX	XXX	XXX

Summary of outcome

Suspension – 4 months
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Lindsay Irvine
Lay Tribunal Member:	Mr Stephen Downing
Registrant Tribunal Member:	Dr Gillian Livesey

Tribunal Clerk:	Mr Josh Dayco 23/09/24 -30/09/25 Ms Fiona Johnston 10/03/25 – 17/03/25
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Attendance and Representation:

Doctor:	Present, represented
Doctor's Representative:	Mr Stephen Brassington Counsel, instructed by MDDUS
GMC Representative:	Mr Christopher Hamlet, Counsel

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 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 Facts - 27/09/2024

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

Background

1. Dr Shah qualified in 2003 from University of Nottingham Medical School. Prior to the events which are the subject of the hearing Dr Shah worked in various medical posts in Derby, Nottingham, Portsmouth and South Yorkshire. From September 2012 to April 2013, Dr Shah became a Locum Consultant Dermatologist at Royal Liverpool and Broadgreen University Hospitals NHS Trust. Since May 2023 and at the time of the events Dr Shah was practising as a Consultant Dermatologist at Liverpool University Hospitals NHS Foundation Trust ('the Trust').

2. The Allegation that has led to Dr Shah's hearing can be summarised as follows.

3. Between 19 April 2021 and 19 May 2022, Dr Shah failed to complete 10 patient letters within an appropriate time frame. Dr Shah said that her last day prior to a lengthy period of sick leave and annual leave was 15 October 2021. When Dr Shah returned to work, she became aware that no colleague had covered her patients whilst she was on leave and therefore the letters had not been written. Dr Shah said that she felt frustrated that she had let her patients down by not being there. She also said that she accepts that it is best practice to dictate letters following each patient encounter on the same day. However, Dr Shah said that, in reality, she and her colleagues would complete patient letters within a few days of the appointment given their workload. Dr Shah said that she was constantly playing catch up with her workload as she did not have sufficient proportionate administrative time.

4. Between 12 July 2021 and 26 July 2021, Dr Shah failed to provide good clinical care to three patients.

5. In relation to Patient A, Dr Shah accepted the responsibility for the omission of not submitting the excision request electronically. She expressed deep regret for her action and the inconvenience, delay and anxiety that the patient suffered as a result.

6. In relation to Patient B, Dr Shah explained that she had taken informal steps to arrange a biopsy of Patient B's lesions. However, those did not materialise. Dr Shah said that she assumes that she became sidetracked and did not put the request through on the computer system. Dr Shah said that it was her responsibility to follow this through and she failed in this regard. She apologised for her actions and the delay caused for the patient in receiving an appropriate treatment.

7. In relation to Patient C, Dr Shah apologised for the delay in advising the results of their skin biopsy. She indicated that she had a long list of patient results and was working under time pressure. Dr Shah said that she missed Patient C's result when checking. She also said that she was relieved that Patient C was the only adverse result she missed, given the pressure she was under and XXX.

8. On 30 September 2021, it is alleged that, Dr Shah behaved inappropriately and made an antisemitic comment to Ms D regarding a colleague, Mr E. It is also alleged that, her conduct in relation to this paragraph of the Allegation amounted to harassment as defined in Section 26(1) of the Equality Act 2010. It is alleged that Dr Shah engaged in unwanted conduct related to religion which had the purpose or effect of violating dignity, creating an intimidating, hostile, degrading, humiliating or offensive environment for

- i. Ms D;
- ii. Mr E.

The Outcome of Applications Made during the Facts Stage

9. At the outset of the hearing, the Tribunal, on its own volition, raised whether the hearing should be held in private and invited submissions from both Counsel. Mr Brassington, on behalf of Dr Shah, submitted that given the manner in which the Allegation is drafted, the hearing should be heard in private. He said that the evidence to be heard in this case will mostly relate back to XXX. Mr Hamlet, on behalf of the GMC, opposed the submissions made by Mr Brassington. He submitted that this is a case where factual allegations and background can be divided from XXX.

10. The Tribunal considered the application and determined that the hearing should sit both in private and in public. The Tribunal determined that, whenever the hearing is being asked to consider the evidence relating to XXX, the Tribunal shall sit in private. At all other times, the hearing will be in public. It was not persuaded that any anticipated difficulties switching between public and private session were such as to outweigh the public interest in holding the hearing in public, where possible.

11. The Tribunal raised a typographical error within paragraph 1(d) of the Allegation. Both Counsel agreed that the typographical error should be corrected. In accordance with Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), the Tribunal determined to amend paragraph 1(d) of the Allegation, as follows.

'd. on 26 July 2021 consulted with Patient C, following which, the patient's skin biopsy was reported on 2 August 2021 and you did not refer patient C for surgery within an appropriate time frame and not until 18 October 2021'

12. Prior to handing down its determination on facts, the Tribunal raised with parties whether paragraph 2 of the Allegation should be amended due to the use of the words 'racial harassment' given that the unwanted conduct alleged relates to religion. Mr Hamlet submitted that he does not have any instruction from the GMC to amend the Allegation. However, he submitted that the Tribunal can, in its own volition, amend paragraph 2 of the Allegation and replace the word 'racial' to 'religion' or 'belief'. Mr Brassington submitted that the Tribunal could amend paragraph 2 of the Allegation and delete the word 'racial'. He submitted that removing the word 'racial' does not take away the gravamen of the Allegation. He said that removing the word 'racial' would be the simplest and easiest way to deal with this issue.

13. Having considered the submissions made by both Counsel and the wording of the heading to Section 26 of the Equality Act 2010, the Tribunal determined to amend paragraph 2 of the Allegation and remove the word 'racial'. It noted that the amendment would more accurately reflect the wording of the Allegation and that such amendment can be made without causing injustice. Therefore, in accordance with Rule 17(6) of the Rules, the Tribunal determined to amend the stem of paragraph 2 of the Allegation, as follows.

2 Your conduct as set out in paragraph 1.e amounted to racial harassment as defined in Section 26(1) of the Equality Act 2010 in that you engaged in unwanted conduct related to religion which had the purpose or effect of violating dignity, creating an intimidating, hostile, degrading, humiliating or offensive environment for:

The Allegation and the Doctor's Response

14. The Allegation made against Dr Shah is as follows:

That being registered under the Medical Act 1983 (as amended):

1. While working at Liverpool University Hospital NHS Foundation Trust ('the Trust'):
 - a. between 19 April 2021 and 19 May 2022, you failed to complete patient letters within an appropriate time frame, as set out in Schedule 1;
Admitted and found proved
 - b. on 12 July 2021 consulted with Patient A, following which you failed to arrange the excision of Patient A's lesion;
Admitted and found proved
 - c. on 26 July 2021 consulted with Patient B, following which you failed to arrange biopsy of Patient B's lesions;
Admitted and found proved

- d. on 26 July 2021 consulted with Patient C, following which, the patient's skin biopsy was reported on 2 August 2021 and you did not refer patient C for surgery within an appropriate time frame and not until 18 October 2021;

Amended under Rule 17(6)
Admitted and found proved

- e. on 30 September 2021, you behaved inappropriately in that you made an antisemitic comment to Ms D regarding a colleague Mr E, as set out in Schedule 2.

To be determined

2. Your conduct as set out in paragraph 1.e amounted to racial harassment as defined in Section 26(1) of the Equality Act 2010 in that you engaged in unwanted conduct related to religion which had the purpose or effect of violating dignity, creating an intimidating, hostile, degrading, humiliating or offensive environment for:

Amender under Rule 17(6)

- i. Ms D;
To be determined
- ii. Mr E.
To be determined

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. **To be determined**

The Admitted Facts

15. At the outset of these proceedings, Mr Brassington, Counsel, on behalf of Dr Shah, made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

Witness Evidence

16. The Tribunal also received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Ms D, Medical Secretary at the Trust.

17. Dr Shah provided her own witness statement dated 3 June 2024 and gave oral evidence at the hearing.

Expert Witness Evidence

18. The Tribunal also received written evidence from one expert witness, namely, Dr F Consultant Dermatologist, instructed on behalf of the GMC. He provided an expert report dated 20 February 2023.

Documentary Evidence

19. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:

- XXX;
- Various exhibits provided by Ms D;
- Various exhibits provided by Dr Shah;
- XXX;
- Various medical records of Dr Shah's patients.

The Tribunal's Approach

20. 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 Shah does not need to prove anything. Under rule 34(2), 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. When considering the standard required to prove an allegation, the Tribunal had regard to the case of *Byrne v General Medical Council [2021] EWHC 2237 (Admin) (10 August 2021)* which states:

'(1) There is only one civil standard of proof in all civil cases, and that is proof that the fact in issue more probably occurred than not.

(2) There is no heightened civil standard of proof in particular classes of case. In particular, it is not correct that the more serious the nature of the allegation made, the higher the standard of proof required.

*(3) Following the case of *Re B [2008] UKHL 35* The inherent probability or improbability of an event is a matter which can be taken into account when weighing the probabilities and in deciding whether the event occurred. Where an event is inherently improbable, it may take better evidence to persuade the judge that it has happened. This goes to the quality of evidence.*

(4) However, it does not follow, as a rule of law, that the more serious the allegation, the less likely it is to have occurred. So whilst the court may take account of inherent probabilities, there is no logical or necessary connection between seriousness and probability. Thus, it is not the case that "the more serious the allegation the more cogent the evidence need to prove it."

21. The Tribunal noted that it must reach its decision on the facts only on the evidence before it. It was entitled to draw reasonable inferences from what it has heard but must not speculate. When drawing inferences, it must be able to safely exclude, as less than probable, any other possible explanations.

22. The Tribunal noted that each allegation not currently found proved had to be considered in turn and reasons given for the finding in respect of each of them. The Tribunal looked at the entirety of the evidence written and oral and gave it the appropriate weight taking into account factors including contemporaneity. The LQC advised that submissions by counsel may be taken into account but should not be considered as evidence.

23. In considering the oral evidence, the Tribunal noted that any attempt to assess a witness's credibility largely, if not exclusively, on that witness's demeanour when giving evidence was described by the High Court, in the case of *Dutta v The General Medical Council [2020] EWCA 1974 (Admin)* ('Dutta'), as a '*discredited method of judicial decision-making*'.

24. The Tribunal therefore sought to base factual findings on the inferences drawn from the documentary evidence and known or probable facts and use the oral evidence to subject the documentary records to critical scrutiny, and to consider the witness's personality and motivation. The Tribunal noted it should assess the evidence in the round and that witnesses' veracity should be tested by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case.

25. This position is confirmed in the case of *Khan v General Medical Council [2021] EWHC 374 (Admin)* which also states that Tribunals should not assess a witness's credibility exclusively on their demeanour when giving evidence. The Tribunal should consider all of the evidence before them before coming to a conclusion about the witness' credibility.

26. Dr Shah is of good character, and she has no previous regulatory matters against her. Her good character is relevant to the Tribunal's consideration in two ways. Firstly, in relation to credibility, the Tribunal should take into account her good character when considering whether it accepts her evidence. Secondly, in relation to propensity, the fact that the doctor has not acted in this way in the past may make it less likely that she acted as is now alleged.

27. Dr Shah's good character is not a defence to the allegations; it is one factor to take into account when considering all of the evidence in the round. What weight should be given to the doctor's good character and the extent to which it assists on the facts of this particular case is a matter for the Tribunal to decide.

28. The Tribunal also had regard to section 26 of the Equality Act 2010 so far as it was relevant to consideration of the Allegation:

'Harassment'

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

...

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

...

(5) The relevant protected characteristics are—

...

- religion or belief;

The Tribunal's Analysis of the Evidence and Findings

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

Paragraph 1(e) of the Allegation

30. The Tribunal considered whether, on 30 September 2021, whilst working at the Trust, Dr Shah behaved inappropriately in that she made an antisemitic comment to Ms D regarding a colleague, Mr E.

31. The Tribunal first considered the antisemitic comment, which is allegedly made by Dr Shah.

'All this antisemitism...if Hitler was around today I would support him as he got rid of horrible fuckers like him'

32. The Tribunal noted paragraph 36 of Good Medical Practice (2013) in force at the time:

36 You must treat colleagues fairly and with respect.

33. It found that such a comment was not in accordance with the above principle. It was clearly inappropriate under any circumstances and was antisemitic, which was a matter conceded in Mr Brassington's submission. However, the Tribunal then needs to determine whether Dr Shah did make this comment to Ms D regarding Mr E.

34. The Tribunal then considered the evidence of Ms D. In her witness statement dated 18 November 2022, she stated the following:

'I have provided my recollection of the interaction with Dr Shah on 30 September 2021, and I can confirm that my recollection of the words is 100% correct. I believe I have recounted it word-for-word. I cannot forget that interaction, it is seared into my memory and when I think of it now, I am back in that room and able to recall it all.'

Dr Shah paused before she spoke and her tone changed. I would describe her tone as nasty and venomous as she said 'all this antisemitism...if Hitler was around today I would support him as he got rid of horrible fuckers like him'. She pointed aggressively as she referred to 'him' and she was pointing in the direction of Mr E's office which was down the hallway, so Dr Shah was kind-of pointing through the wall in that direction.

I was concerned about being implicated in Dr Shah's views and that's partly what drove me to report it.'

35. The Tribunal also considered the Trust's investigation meeting notes dated 12 April 2022 where under questioning, Ms D provided the following answers:

'I said 'I have no issues with either of them and like them both'. Her demeanour changed, she sat back in her chair. She said 'all this anti-Semitism... if Hitler was around today I would support him as he got rid of horrible little [fuckers] like him' and pointed towards [Mr E]'s office... On my way home, the words were going over and over again in my mind and I'll never forget them. I was upset and spoke to my husband when I got home; I've never experienced anything like this. I felt I needed to tell my manager, one because of the severity of what she said and two because I didn't want to be implicated in any conversation like that and I felt uncomfortable as it was just me and her in her office and no other witnesses...'

There was lots going on in my head... My thinking was quite irrational afterwards. It has caused me a lot of stress and anxiety. Every time I thought about it I knew I had to say something... I had a panic attack about it all on one of my days off. I felt out of my depth...'

36. Further, the Tribunal considered the notes from Ms D. Within her supplemental witness statement dated 19 February 2024, Ms D confirmed that the note was made directly

on her phone and was advised by her manager to record what was said. Within Ms D's note made on her phone, she stated the following:

'All this antisemitism, I would support Hitler today because he got rid of horrible little fuckers like him...'

'I was shocked and upset that she made that comment. I was upset for Mr E'

37. The Tribunal noted that Ms D's evidence and her recollection of the events were consistent. Ms D's evidence was unchallenged. In addition, it observed she had a contemporaneous note of what was said during her encounter with Dr Shah.

38. In addition, the Tribunal noted within Ms D's evidence, the preamble to and context of the comments being made. She gave an account in her first witness statement of her being confronted by Dr Shah over a delayed letter and Dr Shah's reaction.

'She became very animated, punching the air and was saying in a loud voice she was going to make a complaint against Mr E.. '

39. The Tribunal also noted that Dr Shah pointed aggressively towards the direction of Mr E's office when she made the alleged antisemitic comment. Thus, the Tribunal determined on the balance of probabilities that the alleged comments made by Dr Shah were aimed at a colleague, Mr E.

40. In Dr Shah's witness statement, she stated the following:

'I have no recollection of this conversation with Secretary Ms D...'

'What I am able to say, is that on reading what is alleged to have been said by me, then I am completely horrified. I absolutely do not recognise myself as someone who would use those words. Remarks of that nature are abhorrent to me, and do not in any way reflect my personality, my belief systems, or in any way my character. I wish to convey my sincere apologies to Mr E for this alleged remark as I abhor antisemitism and racism.'

41. In her oral evidence, Dr Shah accepted that Ms D was a woman of integrity. In addition, the Tribunal took account of Mr Brassington's submission that Dr Shah has no reason to doubt the accuracy and veracity of Ms D's evidence.

42. In all of the circumstances, the Tribunal determined that Ms D was a credible witness, and her evidence was consistent, accurate and unchallenged. Notwithstanding the fact that Dr Shah is of good character, which may suggest it is less likely she may act in the manner alleged in this paragraph, on the balance of probabilities it found that it was more likely than not that Dr Shah had behaved inappropriately and made an antisemitic comment to Ms Dr regarding Mr E. Accordingly, paragraph 1(e) of the Allegation was found proved.

Paragraph 2(i) and 2(ii) of the Allegation

43. The Tribunal considered whether Dr Shah's conduct as set out in paragraph 1(e) of the Allegation amounted to harassment as defined in Section 26(1) of the Equality Act 2010 in that she engaged in unwanted conduct related to religion which had the purpose or effect of violating dignity, creating an intimidating, hostile, degrading, humiliating or offensive environment for

- i. Ms D;
- ii. Mr E.

44. The Tribunal considered again its findings in relation to paragraph 1e and the evidence of Ms D (as quoted above). It noted that due to the antisemitic comment Dr Shah had made, Ms D felt uncomfortable, upset and was placed in a difficult situation. The Tribunal also noted the effect of Dr Shah's actions was the cause of Ms D's panic attack, stress and anxiety.

45. The Tribunal also considered the surrounding events leading up to the incident where Dr Shah made the antisemitic comment. Within the Trust's investigation meeting notes dated 12 April 2022, Ms D stated the following:

[Dr Shah] started to punch the air and clicking her heels... [Dr Shah] said something to the effect of 'I'm under investigation for not doing my work and this has been sat in his tray for weeks. I'm going to make a complaint because my work is being scrutinised. She then went into her office, but kept coming back into ours, she was like a dog with a bone coming in back and forth.

It was about the letter, she kept coming in saying she was going to do a DATIX or make a complaint. I told the girls that I was going on my lunch, because it was making me feel uncomfortable, her behaviour. I put my coat on and was on my way out and walking past, her office. The door was open and she shouted '[Ms D] here' and was pointing at her screen. She said 'this is the email I'm going to copy you in because you're working for him' [Mr E]. I said I would look when I'm back from lunch. As I got to the door, she called me again she, was calm and asked what I thought of [Mr E]. I said that I liked him. She then asked what he was like to work for. I said 'fine, and that I get on with him'. She then asked me does he try to get out of doing work?' I replied 'No'. [Dr Shah] then said come on [Ms D], you work for... and him which one do you like the best?' I said, I have no issues with either or them and like them both'. Her demeanour then changed, she sat back in her chair. She said 'all this anti-Semitism... if Hitler was around today I would support him as he got rid of horrible little f-ers like him' and pointed towards [Mr E]'s office. I said '[Dr Shah]' (in a shocked way) and left the office.'

46. XXX

47. It noted that there seems to be a challenging working relationship between Dr Shah and Mr E, especially when Dr Shah has explicitly told Ms D that she would do a DATIX or make a complaint prior to making the antisemitic comment.

48. The Tribunal considered Dr Shah's witness statement. She stated:

'I accept that I engaged in unwanted conduct and acknowledge that this was unprofessional of me. There was no conscious negative intent or purpose behind my words. If I did make this comment, I feel it was borne out of frustration and my negative mindset at that time. Antisemitism is abhorrent. I am truly sorry and have taken multiple steps to reflect and learn from this. I once again apologise wholeheartedly to both Ms. D, Mr. E and anyone who has been affected both directly and indirectly by my words and conduct if I did make this comment.'

49. In Mr Brassington's submissions, he said that Dr Shah does not dispute that the words used had the effect of violating the dignity of both Ms D and Mr E, whether there is evidence of it or not, and that it created a hostile and offensive environment for Ms D and for Mr E. However, Dr Shah cannot recall the incident and cannot assist. Mr Brassington also said that it is more likely that the words spoken were spoken by Dr Shah when she was not acting rationally, not acting in accordance with her beliefs and not intending to cause offence because she was in a disassociated state.

50. XXX

51. XXX

52. XXX

53. As indicated by its earlier finding in relation to paragraph 1(e), it was clear to the Tribunal that Dr Shah had made the antisemitic comment to Ms D regarding Mr E. However, due to Dr Shah's account that she does not have any recollection or memory of making that antisemitic comment, and in the light of Mr Brassington's submission set out above, the Tribunal considered carefully XXX.

54. XXX

55. XXX

56. In relation to Ms D, the Tribunal noted again her evidence on how upset she had been at Dr Shah's conduct and the comments and, for the purposes of Section 26 of the Equality Act, concluded that objectively, it was reasonable for her to have that reaction given the nature of the comment. However, it preferred Mr Hamlet's submission that on the evidence it was less probable that Dr Shah intended the comments to violate Ms D's dignity and therefore determined that the antisemitic comment made by Dr Shah had the effect of

violating Ms D's dignity, creating an intimidating, hostile, degrading, humiliating or offensive environment.

57. In relation to Mr E, the Tribunal considered the difficult working relationship and working environment described by Ms D, which was present at the time of the events. This was accepted by Dr Shah in her oral evidence. It reminded itself of the build up to the comments including the context and her own admission to Dr G and in her oral evidence that she was frustrated and vexed at the situation. It determined that the only reasonable inference to be drawn from the evidence is that Dr Shah made the antisemitic comment regarding Mr E with the purpose of violating his dignity, creating an intimidating, hostile, degrading, humiliating or offensive environment.

58. Therefore, on the balance of probabilities, the Tribunal found the GMC had discharged its burden of proof and found paragraph 2(i) proved in relation to the effect it had on Ms D and found paragraph 2(ii) proved in relation to the purpose of Dr Shah in making the antisemitic comment regarding Mr E.

59. Accordingly, the Tribunal found the entirety of paragraph 2 of the Allegation proved.

The Tribunal's Overall Determination on the Facts

60. The Tribunal has determined the facts as follows:

That being registered under the Medical Act 1983 (as amended):

1. While working at Liverpool University Hospital NHS Foundation Trust ('the Trust'):
 - a. between 19 April 2021 and 19 May 2022, you failed to complete patient letters within an appropriate time frame, as set out in Schedule 1;
Admitted and found proved
 - b. on 12 July 2021 consulted with Patient A, following which you failed to arrange the excision of Patient A's lesion;
Admitted and found proved
 - c. on 26 July 2021 consulted with Patient B, following which you failed to arrange biopsy of Patient B's lesions;
Admitted and found proved
 - d. on 26 July 2021 consulted with Patient C, following which, the patient's skin biopsy was reported on 2 August 2021 and you did not refer patient C for surgery within an appropriate time frame and not until 18 October 2021;
Amended under Rule 17(6)
Admitted and found proved

- e. on 30 September 2021, you behaved inappropriately in that you made an antisemitic comment to Ms D regarding a colleague Mr E, as set out in Schedule 2.

Found proved

2. Your conduct as set out in paragraph 1.e amounted to racial harassment as defined in Section 26(1) of the Equality Act 2010 in that you engaged in unwanted conduct related to religion which had the purpose or effect of violating dignity, creating an intimidating, hostile, degrading, humiliating or offensive environment for:

Amended under Rule 17(6)

- i. Ms D;
Found proved
- ii. Mr E.
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 - 14/03/2025

61. This determination will be handed down in private. However, as this case concerns Dr Shah's misconduct, a redacted version will be published at the close of the hearing with those matters relating to XXX removed.

Background

62. The Tribunal had already considered and handed down a written determination on facts in relation to Dr Shah's misconduct allegations. As a result of granting the Joinder Application made by the GMC on 10 March 2024, the Tribunal considered the consolidated Allegation provided by the GMC. Therefore, this determination on facts will refer to the consolidated Allegation, including the allegations concerning XXX.

63. XXX

The Allegation and the Doctor's Response

64. The consolidated Allegation made against Dr Shah is as follows:

That being registered under the Medical Act 1983 (as amended):

1. While working at Liverpool University Hospital NHS Foundation Trust ('the Trust'):
 - a. between 19 April 2021 and 19 May 2022, you failed to complete patient letters within an appropriate time frame, as set out in Schedule 1; **Admitted and found proved**
 - b. on 12 July 2021 consulted with Patient A, following which you failed to arrange the excision of Patient A's lesion; **Admitted and found proved**
 - c. on 26 July 2021 consulted with Patient B, following which you failed to arrange biopsy of Patient B's lesions; **Admitted and found proved**
 - d. on 26 July 2021 consulted with Patient C, following which, the patient's skin biopsy was reported on 2 August 2021 and you did not refer patient C for surgery within an appropriate time frame and not until 18 October 2021; **Admitted and found proved**
 - e. on 30 September 2021, you behaved inappropriately in that you made an antisemitic comment to Ms D regarding a colleague Mr E, as set out in Schedule 2. **Found proved**
2. Your conduct as set out in paragraph 1.e amounted to harassment as defined in Section 26(1) of the Equality Act 2010 in that you engaged in unwanted conduct related to religion which had the purpose or effect of violating dignity, creating an intimidating, hostile, degrading, humiliating or offensive environment for:
 - i. Ms D; **Found proved**
 - ii. Mr E; **Found proved**
3. XXX
4. XXX

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct XXX.

The Admitted Facts

65. On 23 September 2024, through her Counsel, Mr Brassington, Dr Shah made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in

accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

66. XXX

Determination on impairment

67. In light of Dr Shah's admissions to the Allegation, the Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts found proved, Dr Shah's fitness to practise is impaired by reason of misconduct XXX.

The Outcome of Applications Made during the Impairment Stage

68. On 10 March 2025, the Tribunal granted the GMC's joinder application made pursuant to Rule 32 of the Rules. (Annex B)

The Evidence

69. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence as follows.

- GMC's Joinder Application, submissions and proposed consolidated Allegation;
- Testimonials
- Workplace reports
- XXX
- XXX

Submissions

Submissions on behalf of the GMC

70. Mr Christopher Hamlet, Counsel, submitted that Dr Shah's fitness to practise is impaired by reason of her misconduct XXX. He referred the Tribunal to the relevant case law. Mr Hamlet also directed the Tribunal to the relevant paragraphs of Good Medical Practice (GMP).

71. XXX

72. XXX

73. XXX

74. Mr Hamlet submitted that the admitted failures by Dr Shah in respect of the delayed clinic letters, delayed referrals and the anti-Semitic comments which the tribunal found proved and which it concluded amounted to harassment, amounted to misconduct.

75. With regard to the production of letters and referrals, Mr Hamlet submitted that it is suggested that because of XXX at the time she failed to complete those letters in a timely fashion. However, he observed that, in Dr Shah's own oral evidence in this hearing, she highlighted her failure to complete the letters for patients on the 15 October 2021 was the product of her being absent on sickness leave.

76. In respect of the other preceding letters that are subject to the admitted charges, Dr Shah said that they were the product of a deliberate decision to prioritize other higher priority clinical matters over the production of those letters. Though her failures in respect to those letters were made in the context of XXX and personal problems. Mr Hamlet submitted that her own evidence points away from those being failures directly as a result of XXX.

77. He submitted that the GMC say those letters were of sufficient importance in terms of patient care and the delay in producing them was significant enough as to amount to serious misconduct. He referred to paragraph 19 of GMP which states that documents doctors make, including clinical records, to formally record their work, must be clear, accurate and legible. Doctors should make records at the same time as the events they are recording, or as soon as possible afterwards.

78. XXX

79. Mr Hamlet submitted that it is a matter for the Tribunal to consider whether those failures, taking account of XXX and personal issues that were present at the time, were serious enough as to amount to misconduct.

80. With regards to the anti-Semitic comment which the Tribunal found proved, he observed that XXX. However, he submitted that XXX and noted that the Tribunal had indeed determined that Dr Shah had intended to harass Mr E. XXX.

81. He submitted that the GMC say it was a very offensive remark and a deliberate and therefore a serious act, one for which Dr Shah should be held responsible, and so serious as to amount to misconduct.

82. In relation to impairment he submitted that it is a question for the judgement of the Tribunal as to whether those clinical failures or the offensive remark are easily remediable, if it concludes that they amount to misconduct, notwithstanding the evidence and accepted XXX context in which they occurred.

83. Mr Hamlet submitted that if the Tribunal concludes that Dr Shah XXX, then she is not currently at high risk of repeating her conduct.

84. He submitted that the Tribunal would take account of the defence bundle, which contains evidence of her reflections, and of her efforts to address the clinical failures and the anti-Semitic remark as well as relevant courses and positive testimonials from her friends and colleagues. He submitted that the Tribunal may conclude from that material that as a whole, she has done much towards remedying her conduct and is unlikely to repeat it. However, the Tribunal will have to consider not only the risk of her repeating the misconduct, but also the impact of her behaviour on public trust and confidence and maintenance of professional standards.

85. He further submitted that in determining whether a practitioner's practice is impaired by misconduct, the Tribunal should generally consider not only whether the practitioner presents a risk, but also whether the need to uphold professional standards and public confidence in the profession requires a finding of impairment.

86. He submitted that delays in the clinic letters and the referrals, were unacceptable. They had the potential to impact on patient safety. He submitted that Dr Shah's comments about Mr E were plainly unacceptable. He submitted that the fact they occurred in the context of a difficult environment do not represent a defence to it.

87. He submitted that the workplace reports [in her new role] show that Dr Shah remains subject to clinical and educational supervision and is subject to formal reviews every two

months. He submitted that steps have been taken in direct response to the clinical concerns brought up before this case and shows she is making towards addressing those issues. However, it may also reflect the fact that they have not been fully addressed.

88. He submitted that the Tribunal may consider the lack of a reasonable explanation in respect of the anti-Semitic comments about Mr E, notwithstanding the fact that it was isolated and not repeated, meant that taking no action would undermine public confidence.

89. He submitted that that the GMC invite the Tribunal to conclude that Dr Shah remains impaired not only as XXX but also as a product of her misconduct. He submitted that there is an ongoing potential risk of repetition and potential risks to patient safety and a finding of impairment was necessary to maintain confidence in the medical profession.

Submissions on behalf of Dr Shah

90. Mr Brassington submitted that Dr Shah concedes that her practice is currently impaired by reason of XXX misconduct XXX.

91. He submitted that the clinical failures in this case were serious and below the standard expected. He submitted that it is plainly misconduct in relation to the anti-Semitic comment that was made by Dr Shah.

92. In respect of impairment he submitted that the Tribunal would not have difficulty determining the clinical issues putting patients at risk were seriously below the standard. He submitted that her reflections show that Dr Shah accepts that. In terms of the anti-Semitic comments, he accepted on her behalf that those brought the profession into disrepute and breached fundamental tenets of clinical practice.

93. With regards to the risk of repetition, he submitted that there is a vanishing possibility of Dr Shah ever uttering these words again. She was at a complete loss and remains at a complete loss to explain how she came to make those comments. He said that Dr Shah is opposed to discrimination in any form, whether it be religious or racial. He said Dr Shah, herself, had experienced discrimination throughout her life and her career. He submitted that Dr Shah has taken steps to address her misconduct. He observed that the reflections that she had written, expressed profound regret and abhorrence. He referred to her interactions with Rabbi K together with the testimonial letter that he wrote on her behalf as indicating someone appropriately and properly reflecting upon what had happened.

94. In terms of the clinical issues, he submitted that it is plain that there was a direct link between her inability to cope with the stresses of a busy consultant job and XXX. XXX. He submitted that the failure to be able to cope with the clinical issues is XXX.

95. XXX

96. XXX

97. He submitted that Dr Shah did not work for a significant period of time following the events at the hospital. However, she has now found work on a six month contract, which she hopes to be extended. He submitted that she has been provided a clinical supervisor, educational supervisor, coach and mentors. There are no issues relating to her current work.

98. He submitted that it is difficult to describe the impact that these proceedings has had on Dr Shah and the investigation at trust level has had a profound effect on her. He said that it is testament to her ability to attempt to correct and overcome problems of the past that she is now gainfully employed and providing useful service to NHS patients.

The Relevant Legal Principles

99. 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.

100. In approaching its 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.

101. The Tribunal reminded itself of the statutory overarching objective 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.

102. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in *CHRE v NMC and Paula Grant* [2011] EWHC 297 Admin. In particular, the Tribunal considered whether its findings of fact showed that Dr Shah's fitness to practise is impaired in the sense that she:

- a. *Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. *Has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. *Has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

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

The Tribunal's Determination

Misconduct

Clinical failures

104. In determining whether Dr Shah's fitness to practise is impaired by reason of misconduct the Tribunal first considered whether the facts admitted by Dr Shah amount to misconduct.

105. The Tribunal referred to *Good Medical Practice 2013* ('GMP'), and had regard to the paragraphs 15, 18, and 19:

- 15. *You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must ...*
- b promptly provide or arrange suitable advice, investigations or treatment where necessary.*
- 18. *You must make good use of the resources available to you.*

19 Documents you make (including clinical records) to formally record your work must be clear, accurate and legible. You should make records at the same time as the events you are recording or as soon as possible afterwards.

106. Dr Shah has admitted that she failed to send the letters out between the appropriate timeframe between 19th April 2021 and 6th August 2021.

'To avoid the entire test being re-done, resulting in inconvenience and further delay to the patients, I went ahead with the appointments on Friday 15th October 2021 [XXX]. However, I was unable to dictate the patient letters on Friday 15th October 2021. I had planned to complete any residual return to work until 3rd April 2022. I was therefore not able to complete the patient letters as I would usually have done the week after seeing and X. On my return to work I became aware that no colleague had covered these patients whilst I was on sick leave. This meant that clinical letters had not been written for and I therefore completed these letters on 3rd April 2022, when I returned. I felt frustrated that I had let my patients down by not being there.'

107. It also noted the opinion of GMC expert, Dr F, who stated:

'If the Tribunal finds that the delay in typing the 10 delayed letters was caused by the failure of Dr Shah to dictate or sign them, then in my opinion that was seriously below the standard expected.'

108. The Tribunal noted that Dr Shah went on sick leave on 15 October 2021 then had a month of annual leave immediately after seeing Patient I and K. Dr Shah did not return to work until 3 April 2022. At that point she did complete the letters, nearly 5 months after the initial consultation. It also noted there was no evidence from Dr Shah that she had let a colleague know about the patients when she was absent.

109. The Tribunal noted that in his report, the GMC expert found such delay in completing the letters to be serious and below the standard.

110. The Tribunal noted again the mandate in the paragraphs of GMP quoted above, the opinion of the GMC expert and Dr Shah's own concession set out above. It considered that taking these into account, Dr Shah should have ensured both the letters were completed and sent out on time. It noted that whilst patient safety was not put at risk, waiting 5 months for a letter after the consultation would have caused the patients anxiety. Having regard to those

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factors, it considered that members of the public and fellow practitioners would conclude Dr Shah's conduct to be so unacceptable as to amount to serious misconduct.

111. XXX

112. The Tribunal then considered Dr Shah's failings to arrange the excision of Patient A's lesion, failing to arrange Patient B's biopsy and failing to refer patient C for surgery. The Tribunal noted Dr Shah's admissions to her multiple failures relating to the three patients:

'Patient A

I admit this allegation fully and deeply regret this. I accept responsibility for the omission of not submitting the excision request electronically. I began to arrange the excision of Patient A's by completing the paper patient outcome form. However, this was not followed up electronically. Fortunately, this was picked up by the skin cancer pathway co-ordinator as the patient remained on the skin cancer tracking pathway and the excision of Patient's A lesion did materialise. The patient did not suffer any harm. I express deep regret for my action and the inconvenience, delay and anxiety that the patient suffered as a result.

.....

Patient B

I recall that I contacted the relevant staff to see if the patient's biopsies could be done that day due to the patient's anxiety. As I was not able to arrange this, I therefore phoned the surgical waiting list coordinator for a potential acceptable date, after which I would have put the electronic request through. I was promised a call back by the coordinator; however this did not materialise.'

.....

Patient C

I admit this allegation and again accept responsibility. However, to clarify, I did not refer Patient C for surgery on 18th October 2021. I was on a period of sick leave with my last day of work being Friday 15th October 2021. I did not return until 3rd April 2022. Monday 18th October 2021 was during my sick leave.'

113. The Tribunal noted there was no adverse clinical outcome apart from the patient's own anxiety, which Dr Shah recognises. However, it was certainly the case that the delay had the potential to cause patient harm. The Tribunal noted that the GMC expert stated in his

report that he considered the delay in respect of all three patients was seriously below the expected standard of care. It also observed Mr Brassington's concession in respect of these failings that they amounted to serious misconduct.

114. The Tribunal noted that Mr Brassington had not sought in his submissions to advance XXX as a defence or excuse for her conduct. However, based on the XXX evidence before it, the Tribunal accept his contention that it may have played a part in her clinical failings. However, even taking this mitigation into account, it considered that these clinical failings amounted to misconduct which was serious, and which fellow practitioners would consider completely unacceptable, and had the potential to affect the public's confidence in the medical profession and pose a risk to patient safety.

Anti-Semitic remarks

115. The Tribunal considered that the following paragraphs of GMP were engaged and had been breached by Dr Shah in her actions:

35 You must work collaboratively with colleagues, respecting their skills and contributions.

36 You must treat colleagues fairly and with respect.

37 You must be aware of how your behaviour may influence others within and outside the team.

59 You must not unfairly discriminate against patients or colleagues by allowing your personal views to affect your professional relationships...'

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

116. The Tribunal noted that Dr Shah had not admitted making such comments, and had claimed she could not remember saying such things:

'I have no recollection of this conversation with Secretary Ms D on 30 September 2021. I have thought very carefully and a great deal about this extremely distressing allegation over the past 3 years however, I am afraid that I cannot recall it at all. It is

therefore very difficult for me to comment on the accuracy of what has been said regarding my discussion with Ms D in relation to Co-Clinical Lead, Mr E. I have no negative feelings or intent towards the Jewish community.'

117. The Tribunal also noted the effect it had on Ms D:

'There was lots going on in my head... My thinking was quite irrational afterwards. It has caused me a lot of stress and anxiety. Every time I thought about it I knew I had to say something... I had a panic attack about it all on one of my days off. I felt out of my depth...'

118. The Tribunal recalled again from its determination, its acceptance that XXX at the time of the index events and that it has accepted this as a mitigating factor in her clinical failings. The Tribunal noted again from Mr Brassington's submission that this had not been advanced as a defence to the allegations nor as a factor which removed culpability. The Tribunal concluded from this that whilst XXX was not a causative factor in her behaviour, it accepted that it contributed to her conduct including the harassment of Mr E.

119. Nevertheless, the Tribunal concluded that the comments made were overtly discriminatory and offensive. They represented unacceptable language from a medical practitioner in any context, and particularly so in the workplace. Dr Shah's actions caused a hostile working environment and breached fundamental tenets of the medical profession to treat others fairly, equally and without discrimination.

120. The Tribunal concluded that there was no doubt the content of the remarks was deplorable and even taken account of XXX, would be regarded as such by any right-thinking medical practitioner or member of the public. The Tribunal concluded therefore that the misconduct in this case was serious.

Impairment by reason of misconduct

Impairment

121. Having found that the facts found proved amounted to misconduct which was serious, the Tribunal went on to consider whether, as a result of this, Dr Shah's fitness to practise is currently impaired by reason of her misconduct.

122. In determining whether a finding of current impairment of fitness to practise is necessary, the Tribunal looked for evidence of insight, remediation and the likelihood of repetition, bearing in mind the three elements of the overarching statutory objective. It considered that insight and remediation are important in order for a doctor to recognise areas of their practice and behaviour that require improvement, and to take appropriate and relevant steps to address them, thus reducing the likelihood of repetition.

123. The Tribunal first considered evidence of Dr Shah's insight. It noted that in relation to clinical failures, Dr Shah made admissions in her statement for this hearing and at the hearing itself through formal admissions and in her oral evidence. In relation to the events as a whole, the aftermath and subsequent investigation, the Tribunal noted that Dr Shah has clearly reflected often and deeply as evidenced in her statement.

'My professional shortcomings regarding delays in patient administration also needs addressing very much. This can also be explained but not excused by my stress and [XXX]. I was unable to multi-task effectively as needed and was cognitively overloaded by my workload. [XXX]. Again, I should have alerted my colleagues that I was unable to function as expected in my role professionally and sought appropriate help at the time. [XXX], and this led to a direct compromise of patient safety. I have subsequently become much better at asking for help.'

.....

Additionally, I acknowledge that the delays in clinical administration should have never occurred. As a healthcare professional, it is my responsibility to provide timely and efficient care to patients. I put you all in a compromising situation, making your jobs even more challenging. By not adhering to the expected standards, I jeopardised patient well-being and compromised the department's reputation.

I remain committed to good patient care delivery and I accept full responsibility for failing in this area. I am truly sorry for the adverse impact this had on patients, their families, and the department.'

124. The Tribunal considered that in relation to her clinical failings, Dr Shah had shown good and effective insight into her failures over an extensive period and that she has put in practice behaviours and actions to address that conduct to ensure it does not happen again.

125. The Tribunal considered that Dr Shah's clinical failings were capable of remediation and noted that she has completed targeted CPD, including courses in record keeping,

workload and time management and courses aimed at improving her resilience in the face of challenging workloads.

126. The Tribunal again reminded itself of written and oral evidence provided at an earlier stage in the hearing about Dr Shah's good character. It noted again the extensive testimonial evidence which demonstrated the high esteem in which she is held by her colleagues. It observed that the matters before this Tribunal stemmed from a series of incidents in a confined period of time in an otherwise unblemished career, arising from what the Tribunal had found to be difficult and stressful circumstances XXX. It noted that Dr Shah has been working under restrictions since the index event, and that there has been no repetition of the misconduct.

127. With regards to the anti-Semitic comments, the Tribunal noted that Dr Shah had not admitted using such comments throughout the period of the Trust and GMC investigations. XXX. However, the Tribunal noted that Dr Shah had started to develop a degree of insight. In her detailed reflective statement, she states:

'First and foremost, while I unfortunately do not recollect making the comment, if I did, I am profoundly sorry about the hurtful, offensive and racist comment made about my colleague. I am horrified that I could have said such a thing and to this day, I remain shocked that those words could have ever left my mouth. If I made an antisemitic remark, then that was completely wrong of me. XXX. I accept full responsibility for my conduct and recognise that such behaviour is inexcusable.'

128. The Tribunal considered that such conduct is harder to remediate but noted that she has undertaken a number of courses and counselling relevant to her behaviour including engagement with Rabbi K, an army Chaplain, who appeared impressed with her sincerity in seeking to self-reflect about her conduct.

129. It noted and accepted that her contact with Rabbi K was a genuine attempt to explore her behaviour and went beyond the standard steps of demonstrating insight. However, it remained concerned that as she cannot remember making the remark, Dr Shah can offer no explanation why it was said. While the remediation efforts she has undertaken may reduce the possibility of repetition, the Tribunal are concerned that the inability to remember and thus lack of any explanation together with XXX, make it difficult to exclude the possibility of repetition. The Tribunal has accepted XXX at the time as a contributing factor and considers that resolving this issue would be important in reducing the likelihood of repetition.

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130. The Tribunal again noted the impressive remediation and insight into clinical failings and that there has been no recurrence during the work she is currently undertaking. However, it also notes that this work is being undertaken under conditions of close supervision. Having regard to the factors set out in *Grant*, it recalled it had found that such clinical failings amounted to breaches of fundamental tenets of the medical profession and notwithstanding the considerable remediation and insight, the Tribunal considered that there was a residual risk to patient safety from the ongoing medical issues, and therefore it cannot rule out the possibility of reoccurrence.

131. In relation to the anti-Semitic comments, whilst again noting her developing insight and steps taken to remediate, together with her previous excellent character, it considered that the remarks were so abhorrent that the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances of this case. In relation to the clinical failings, again the Tribunal noted the remediative steps taken, but in view of its residual concerns about, XXX, it considered that a finding of impairment is necessary in order to protect and promote the health, safety and wellbeing of the public, to promote and maintain public confidence in the profession, and to promote and maintain proper professional standards and conduct for members of the profession.

XXX

132. XXX

133. XXX

134. XXX

135. XXX

136. XXX

137. XXX

138. XXX

139. XXX

140. XXX

141. Taking into account all of the above, the Tribunal determined that a finding of impairment is necessary in relation to each of the three limbs of the Overarching Objective:

- a. *to protect and promote the health, safety and wellbeing of the public;*
- b. *to promote and maintain public confidence in the medical profession; and*
- c. *to promote and maintain proper professional standards and conduct for members of that profession.*

142. Therefore, the Tribunal determined that Dr Shah's fitness to practise is currently impaired by reason of XXX her misconduct.

Determination on Sanction - 17/03/2025

143. Having determined that Dr Shah's fitness to practise is impaired by reason of misconduct XXX, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

Submissions

Submissions on behalf of the GMC

144. Mr Hamlet submitted that the appropriate sanction in Dr Shah's case was one of suspension.

145. Mr Hamlet referred to a number of extracts from the Tribunal's impairment determination. He submitted that there were significant and important breaches of GMP.

146. XXX

147. XXX

148. He submitted that conditions might also be deemed appropriate in responding to the clinical misconduct given the good insight developed by Dr Shah, and that she has made positive strides towards addressing those issues.

149. However, he submitted conditions were not appropriate by way of a sanction in response to the anti-Semitic remarks that Dr Shah cannot recall and cannot explain and thus

has not fully addressed. He submitted that the Tribunal have been unable to exclude the possibility of repetition of that or similar conduct.

150. He submitted that she has shown some insight into it by acknowledging, in principle, the inappropriateness of that comment. But if there remains a need to respond to it by way of a sanction to uphold standards and to restore public trust and confidence, then there are no conditional restrictions that could practically mitigate or address a repetition of that conduct, so it follows that a suspension would be necessary.

151. He referred the Tribunal to paragraph 91 of the Sanctions Guidance ('SG') which provides guidance on suspension. He submitted that suspension is a sanction that embodies a deterrent, not just to Dr Shah personally, but to the wider profession, and it serves to provide reassurance to the public that the behaviour was unbefitting for a registered doctor. He submitted that is precisely the situation the Tribunal have in relation to the comment here.

152. With regards to erasure, he submitted that it would be wholly unnecessary and disproportionate in view of the mitigating features of the case, including Dr Shah's admissions, her concessions, and her extensive remediation.

153. Mr Hamlet invited the Tribunal to consider a nominal period of suspension as the most appropriate and proportionate response here.

Submissions on behalf of Dr Shah

154. Mr Brassington submitted that the most appropriate sanction in Dr Shah's case was one of conditions. He submitted that a sanction of suspension (or higher) was not warranted in the context of this case.

155. With regards to the anti-Semitic comment, he reminded the Tribunal of Dr Shah's witness statement, where she clearly accepts the comment is abhorrent and that no defence is offered to that.

156. XXX

157. XXX

158. XXX

159. He submitted that XXX began before the appalling anti-Semitic comment was made. He submitted that it is plain that this otherwise excellent clinician who had been a consultant for nearly ten years, at that point could not cope. He submitted that Dr Shah recognised she was not coping with her working arrangements at that time. Dr Shah made attempts to change those working arrangements but there were some pushbacks and that led to XXX.

160. XXX

161. He submitted that Dr Shah felt a pervasive sense of failure and it extended to her clinical work. The standards of clinical practice, relationships with colleagues and trainees, also suffered XXX.

162. With regards to the failure to complete letters, he submitted there is a significant and major reason for the shortfalls and XXX. He submitted that this is not an excuse, especially for the comment that she made, XXX.

163. He submitted that Dr Shah is not an anti -Semite. XXX. He submitted that those that know her personally and professionally speak to their genuine shock that the remarks were attributable to her.

164. Mr Brassington referred the Tribunal to the positive testimonials and submitted that the conclusion is that she is not anti-Semitic and that the performance issues are related to XXX.

165. He submitted that the Tribunal has a right to be concerned over the insight demonstrated in respect of the anti-Semitic comment. However, she has undertaken the appropriate courses in respect of her behaviour towards colleagues and sought counselling from Rabbi K. He also reminded the Tribunal of Dr Shah's reflections and the apology which she offered to her colleagues at the Trust in relation to the anti-Semitic remark.

166. XXX

167. He submitted that she has done her best to XXX and to avoid repetition of either the clinical failures or the other misconduct in this case. With regards to the sanction of suspension, he submitted that Dr Shah has lost her good character. There is now a finding against her of serious professional misconduct. She has been through a Trust investigation and had been issued with a final warning by the Trust as a consequence of the anti-Semitic comment. He submitted that alone will indicate to the public and to the profession that any anti-Semitic comment is wholly unacceptable.

168. With regards to the mitigating factors, he submitted that Dr Shah understands the problem and has insight into her misconduct. Dr Shah understands the impact and inappropriateness of the comment even though she does not remember saying it.

169. He submitted that the Tribunal now have evidence that she is adhering to all important principles of GMP, and it can take comfort from the fact that she has not repeated any of these mistakes and is working well.

170. He submitted that the discriminatory remark is an aggravating feature. However, having regard to the factors that are set out in indicative SG, conditions are appropriate and proportionate in this case.

171. He submitted that suspending Dr Shah will have a devastating impact upon her and XXX. It may result in a significant impact upon XXX, it may result in further de-skilling.

172. He submitted that a period of conditional registration with a review will protect public interest, protect patients and maintain confidence in the profession.

The Tribunal's Determination on Sanction

173. The decision as to the appropriate sanction, if any, is a matter for this Tribunal, exercising its own judgment. The Tribunal has taken account of the *SG (February 2024)* and the statutory overarching objective.

174. Throughout its deliberations the Tribunal has applied the principle of proportionality, balancing Dr Shah's interests with the public interest. The Tribunal was aware that, if a sanction is required, it should be the least restrictive needed to protect the public and wider public interest.

175. The Tribunal should take account of all relevant evidence and submissions, as well as its earlier findings in relation to facts and impairment. It sought to identify and balance any aggravating and mitigating factors.

176. The Tribunal accepted the Legally Qualified Chair's advice. There were no comments on it by counsel.

Aggravating and mitigating factors

The Tribunal identified the following aggravating factors in this case:

- The lack of any explanation for the abhorrent comments arising from her being unable to remember them;
- Dr Shah's actions amounted to discrimination on the basis of religion against a colleague;
- Dr Shah did not immediately accept or apologise;
- Dr Shah's misconduct toward Mr E and Ms D created a hostile and difficult working environment.

177. The Tribunal identified the following mitigating factors in this case:

- Dr Shah has effective insight into her clinical failings and developing insight into her anti-Semitic remarks;
- She has developed an understanding of her misconduct and has taken steps to remedy it;

- There are no previous fitness to practise concerns that the Tribunal need to take into consideration;
- Dr Shah had a previously unblemished and well-regarded career as evidence by many positive testimonials;
- The Tribunal noted that there has been a lapse of time since the misconduct occurred;
- Dr Shah has made positive remediation steps, XXX. Dr Shah has acknowledged and appreciated the impact of her misconduct on the patients, Mr E and Ms D the public and the profession.
- No patient came to any significant clinical harm;
- Dr Shah has apologised and shown remorse for her conduct, the potential impact on patients, colleagues and the medical profession;
- XXX

No action

178. 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.

179. The Tribunal determined that, in view of its findings on impairment, it would be neither proportionate nor appropriate to conclude this case by taking no action. It was unable to identify any exceptional circumstances that would justify a decision to take no action in Dr Shah's case.

Conditions

180. The Tribunal next considered whether conditions would be appropriate and proportionate.

181. The Tribunal had regard to the relevant paragraphs of the SG. It considered the following to be particularly relevant in this case:

XXX

82 *Conditions are likely to be workable where:*

a *the doctor has insight*

b *a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings*

c *the tribunal is satisfied the doctor will comply with them*

d the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised....

84 Depending on the type of case (eg health, language, performance or misconduct), some or all of the following factors being present (this list is not exhaustive) would indicate that conditions may be appropriate:

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

...

c willing to respond positively to retraining, with evidence that they are committed to keeping their knowledge and skills up to date throughout their working life, improving the quality of their work and promoting patient safety (Good medical practice, paragraphs 7–13 on knowledge, skills and performance and paragraphs 22–23 on safety and quality)

...

XXX

85 Conditions should be appropriate, proportionate, workable and measurable.

182. The Tribunal accepted Mr Brassington’s submission that Dr Shah has insight and would most likely respond positively to conditions. It was encouraged by her progress to date in that she had accepted the gravity of her misconduct, had some insight XXX and showed genuine remorse on numerous occasions. She had demonstrated in her reflective statements that she has an understanding of how her actions could impact her patients’ and colleagues’ trust and confidence in her as a doctor.

183. However, having regard to mitigating and aggravating factors, whilst it would be able to formulate conditions to deal with impairment on the grounds of clinical failure XXX, the Tribunal considered it would not be able to do so in relation to the anti-Semitic remark. The Tribunal recalled its finding that XXX and the pressures of work may have contributed to the misconduct but considered that they could not sufficiently mitigate the abhorrent nature of the language used.

184. The Tribunal had regard to the Chapter of SG concerning ‘*Cases that indicate more serious action is likely to be required*’: specifically, the following paragraphs.

138 More serious outcomes are likely to be appropriate if there are serious findings that involve:

d unlawful discrimination

139 Doctors must treat their colleagues and patients fairly, whatever their life choices and beliefs. The guidance is set out in paragraphs 48, 54 and 57 of Good medical practice.

140 Discrimination undermines public confidence in doctors and has the potential to pose a serious risk to patient safety. This includes views about a patient's or colleague's lifestyle, culture, or their social or economic status, as well as the characteristics covered by equality legislation²⁹

141 More serious outcomes are likely to be appropriate where a case involves discrimination (as defined by equality legislation) against patients, colleagues or other people who share protected characteristics, either within or outside their professional life. This does not affect a doctor's right to opt out of providing a particular procedure because of their personal beliefs or values, as long as this does not result in direct or indirect discrimination against, or harassment of, individual patients or groups of patients (see the explanatory guidance)

185. It was of the view that, in the circumstances, it would not be possible to formulate conditions that would be workable. Further, it considered that conditions would not address the gravamen of the comment made in this case and therefore would not be appropriate in order to satisfy the overarching objective. It considered that conditions would not be sufficient, in light of its findings on impairment, to promote or maintain public confidence in the medical profession or to uphold proper professional standards.

Suspension

186. Having determined that the imposition of conditions would not be appropriate, the Tribunal considered whether to suspend Dr Shah's registration. It considered the following paragraphs of the SG were relevant:

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 unbefitting 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).

93 *Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions (see paragraphs 24–49).*

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.

...

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 No evidence of repetition of similar behaviour since incident.

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

187. The Tribunal considered that Dr Shah's misconduct, in particular her misconduct involving anti-Semitic comments, was serious and amounted to significant departures from fundamental tenets of GMP. It noted and accepted the GMC concession that in all the circumstances, Dr Shah's misconduct was not fundamentally incompatible with continued registration but that it was serious enough that no sanction lower than suspension would be appropriate or proportionate. It considered Dr Shah has demonstrated positive evidence of developing insight and has taken positive steps towards remediation. The Tribunal also noted that she has made significant admissions at the outset of the hearing and accepted significant aspects of her misconduct. It further noted that Dr Shah has demonstrated remorse in her detailed reflective statements and apologised to her colleagues.

188. The Tribunal reminded itself of the positive testimonial evidence referred to in its impairment determination, and that she had had a long and previously unblemished career. It reminded itself that there was a significant public interest in keeping a good doctor in practice. The Tribunal was also influenced in its decision by its finding at the impairment stage, that whilst not a defence to misconduct, XXX contributed to her behaviour.

189. The Tribunal therefore determined that a period of suspension would be an appropriate and proportionate sanction which would protect public confidence in the profession and would promote and maintain proper standards of conduct and behaviour.

Erasure

190. Whilst the Tribunal was satisfied that the above paragraphs of the SG indicated that suspension may be appropriate, the Tribunal needed to be satisfied that Dr Shah's actions were not fundamentally incompatible with continued registration, as per paragraph 92 of the SG, above.

191. In doing so the Tribunal considered the guidance contained within the SG.

109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).

a A particularly serious departure from the principles set out in Good medical practice where the behaviour is difficult to remediate.

...

192. The Tribunal was satisfied that she had undertaken an adequate amount of remediation and had demonstrated a significant level of insight into her clinical failings and a reasonable level of insight into the anti-Semitic comments suggesting there is not a high risk of repetition. The principal purpose of any sanction would be to mark the seriousness of Dr Shah's misconduct, to send a message to both the public and members of the profession that such behaviour is wholly unacceptable and to maintain confidence in the profession. It therefore concluded that a period of suspension was sufficient to uphold the overarching objective, and that erasure would be wholly disproportionate in all the circumstances.

Duration of suspension

193. In determining the duration of suspension, the Tribunal had reference to the SG and in particular paragraphs 100(a) and (b) of the SG, which state:

100 The following factors will be relevant when determining the length of suspension:

a the risk to patient safety/public protection

b the seriousness of the findings and any mitigating or aggravating factors

...

194. The Tribunal had regard again to the aggravating and mitigating factors in this case. It noted that in the light of her insight and remediation in relation to her clinical failings, Dr Shah posed a low risk to patient safety or public protection. In relation to the anti-Semitic

comments, again it noted the steps she had taken to remediate this significant misconduct and gain insight into how she could have uttered the remarks. It had regard again to the significant mitigating factors in the case including XXX and personal circumstances but nevertheless took the view that the misconduct and the anti-Semitic remark itself was serious. It also had regard to the public interest in it not being deprived of the services of a good doctor for a disproportionate period of time.

195. In all the circumstances, the Tribunal determined that a period of four months suspension would uphold the overarching objective with regards to the maintenance of public confidence and professional standards. It would also allow time for her to reflect further on her conduct and gain further insight, towards which she has made significant progress. XXX.

Review Hearing

196. XXX. Notwithstanding the relatively short period of suspension, the Tribunal determined to direct a review of Dr Shah's case XXX. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought either by Dr Shah or the GMC.

197. The Tribunal wishes to clarify that at the review hearing the onus will be on Dr Shah to demonstrate further insight XXX, and the steps she has taken to improve it. A reviewing tribunal may be assisted by the following:

- XXX
- Evidence that Dr Shah is keeping her medical skills up to date including production of certificates of any courses undertaken;
- Any other information that Dr Shah considers would assist a reviewing tribunal.

Determination on Immediate - 17/03/2025

Having determined that Dr Shah's registration should be subject to a period of suspension, 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.

Submissions

198. On behalf of the GMC, Mr Hamlet submitted that an immediate order is a necessary response to the anti-Semitic comments. He submitted that this was not on public safety grounds, but the Tribunal may consider that it would be undesirable not to make an order given the public interest and the need to maintain public confidence and uphold proper professional standards.

3. In addition to that, the Tribunal might consider it is in Dr Shah's own interests XXX.

199. On behalf of Dr Shah, Mr Brassington submitted that an immediate order on public interest grounds and for the doctor's own interests, was not necessary.

5. He submitted that public interest has been dealt with by the imposition of a period of suspension. The public interest does not require in those circumstances for there to be an additional period of suspension to protect the public interest.

6 Secondly, in respect of the doctors' own interests he submitted that the doctor has not been the subject of an interim order to date at any point during these proceedings, there has been no restriction upon her ability to practise medicine, XXX.

7 He submitted that XXX and, considering all the circumstances does not require to be suspended immediately.

The Tribunal's Determination

200. In reaching its decision, the Tribunal has exercised its own judgement, taking into account all the circumstances. The Tribunal has borne in mind the guidance given in paragraphs 172 - 178 of the SG, in particular:

172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.

173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.

...

178 Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.

201. The Tribunal bore in mind that the basis of her suspension in this case was not on patient safety grounds and that Dr Shah is currently practising without any restrictions or conditions imposed by the Regulator.

10. The Tribunal accepted Mr Brassington's submission that it was not in Dr Shah's interest for there to be an immediate order. Whilst acknowledging the seriousness of the case, noting the factors which had led to the period of suspension including her remediation and insight, the Tribunal determined that an immediate order was not necessary in this case to protect members of the public or otherwise in the public interest.

11. This means that Dr Shah's registration will be suspended 28 days from the date on which written notification of this decision is deemed to have been served, unless she lodges an appeal. If Dr Shah does lodge an appeal, she will remain free to practise unrestricted until the outcome of any appeal is known.

ANNEX A – 30/09/2024

Application to adjourn XXX

202. At the impairment stage of these proceedings, prior to the submissions from parties at stage two, Mr Brassington made an application for the hearing to be adjourned XXX.

203. XXX

204. XXX

205. On behalf of the GMC, Mr Hamlet submitted that the GMC does not resist the application made by Mr Brassington. XXX

The Tribunal's Approach

206. The Tribunal had regard to XXX of the Rules and the submissions made by both Counsel including the case law which had been cited. XXX

207. XXX

208. XXX

209. XXX

210. XXX

211. XXX

212. XXX

213. XXX

214. XXX

215. XXX

216. XXX

The Tribunal's Decision

217. The Tribunal appreciated that any adjournment would result in delay, and it needed to balance fairness to Dr Shah with the interest of the public in dealing with hearings expeditiously. It took into account that the GMC does not oppose this application XXX.

218. Having considered and balanced all the factors set out above in its approach, the Tribunal determined that it was necessary, appropriate and proportionate to allow this application XXX.

219. Accordingly, the Tribunal granted the application XXX to adjourn proceedings XXX.

220. XXX

221. The Tribunal considered that it will require five days to conclude this case. The Tribunal was of the view that the hearing should be relisted from 10, 11, 14, 17 and 18 March 2025.

XXX

Non confidential schedule

Schedule 1

Patient	Date of Consultation	Date on which letter was typed
Patient F	19 April 2021	2 September 2021
Patient G	7 June 2021	24 August 2021

**Record of Determinations –
Medical Practitioners Tribunal**

Patient H	12 July 2021	24 August 2021
Patient A	12 July 2021	2 September 2021
Patient I	12 July 2021	11 September 2021
Patient C	26 July 2021	19 May 2022
Patient B	26 July 2021	4 September 2021
Patient J	6 August 2021	14 April 2022
Patient I	15 October 2021	3 April 2022
Patient K	15 October 2021	3 April 2022