

# Public Minutes of the Investigation Committee

General  
Medical  
Council

Date of hearing: 17 January 2020

Name of Doctor	Dr Shaista Khan
Doctor's UID	6075465

Committee Members	Mr John Anderson
	Dr Zahir Mohammed
	Mr David Hull

Legal Assessor	Mr Richard Barraclough QC
Panel Secretary	Ms Gemma Wolstenholme

## Attendance and Representation

GMC Representative	Ms Sarah Barlow
Doctor's representative	Miss Fiona Neale

Outcome	Warning
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## Determination

Dr Shaista Khan,

- 1 At today's hearing the Investigation Committee carefully considered all the material before it including the submissions made by **Miss Fiona Neale** on your behalf, and those made on behalf of the GMC by **Ms Sarah Barlow**. It has accepted the advice of the Legal Assessor.

## Background

- 2 On 01 May 2019, the GMC received a referral from NHS England advising that on the 31 January 2019, NHS England (NHSE) received a letter from a GP practice alleging that you were using the clinical system 'SystmOne', which has an internal messaging service function within the practice, inappropriately. The messages sent by you showed disregard to patients, specifically vulnerable patients.
- 3 On the 17<sup>th</sup> April 2019, a Performance Advisory Group (PAG) reviewed the case and found that since you had shown significant remorse and regret, your case could be closed with no further action in this regard. However, the PAG agreed that due to the number and content of messages sent using an NHS IT system it would serve public confidence to refer you to the GMC.
- 4 On 12 August 2019, the GMC informed you that they had completed their investigation and invited you to provide comments on the allegations, before deciding on the outcome of the case. You did so comment, and based on the information available, the Case Examiners then felt that this case could be concluded with a warning in accordance with Rule 11(2).
- 5 On the 20<sup>th</sup> September 2019, the GMC received a Rule 7 response from Radcliffes LeBrasseur on your behalf indicating that you did not wish to accept a warning. You provided evidence of remediation and reflection and it was proposed that your case be reconsidered, or if the matter was not reconsidered, a referral be made to the Investigation Committee in accordance with Rule 11(3).

## **GMC Submissions**

- 6 Ms Barlow took the Committee through the background of the case as outlined above and submitted that there has been a clear and specific breach of paragraphs 36, 37 and 65 of Good Medical Practice (GMP).

*'You must treat colleagues fairly and with respect.'* (36)

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

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

- 7 Ms Barlow submitted that in your Rule 7 response, you denied the allegations and that you stated the messages shown were incomplete, taken out of context, misunderstood and not excessive in number. You suggested that you were unaware the messages could be audited and that they were private messages between you and a colleague, never intended to be read by others. You claimed that the messages were not intended to be disparaging or derogatory.

- 8** Ms Barlow submitted that the content of the messages, both individually and taken together, make it plain that each of the categories of inappropriate behaviour is engaged as set out at allegations put to you at the Rule 7 stage. Ms Barlow submitted that the messages evidenced an ongoing course of conduct, and that you continued to engage with Doctor A and participated in conversations with Doctor A, where the latter used wholly inappropriate language and comments about both patients and colleagues. The documents provided demonstrated that you frequently requested Doctor A to look at entries you had made, and that you responded to requests to look at entries that Doctor A had made in order to amuse you both. This is evidenced by the frequent use of 'lol' which the Committee understand to mean laugh out loud.
- 9** Ms Barlow submitted that your conduct was in breach of the Practice's policy '*Computer, Internet and Email Usage Policy*', specifically in regard to the SystemOne Instant Messaging (IM) software where the policy states:

*'IM's (both internal and external) must not contain unsuitable information for example, defamatory, discriminatory, bullying or harassing material or comments', and*

*'IM content may be monitored to ensure compliance with the policy.'*

Ms Barlow submitted that a Doctor would be aware of her own practice's policies and that you are expected to keep yourself up to date with policy changes.

- 10** Ms Barlow directed the Committee's attention to the PAG review and their documented decision that the messages indicated behaviour that showed disrespect to patients and that such behaviour could have considerable impact by eroding trust in the doctor-patient relationship, and potentially lead to adverse publicity damaging the reputation of the profession. Ms Barlow submitted that the GMC echo the PAG's concerns.
- 11** Whilst you acknowledged the content of the messages and offered clear and comprehensive reflection on your behaviour, Ms Barlow submits it is of note that you rely upon the fact you believed the messages to be "private" when the content and tone of these messages would be '*wholly unacceptable*' even in a private conversation.
- 12** Ms Barlow directed the Committee's attention to the test for issuing a warning at paragraph 16 of the GMC's Guidance on Warnings and submitted that a warning is appropriate when there has been a significant departure from GMP and that a formal response by way of a warning is an appropriate mechanism for the GMC to declare and uphold standards of behaviour expected from doctors and maintain the public's trust in the profession.
- 13** Ms Barlow submitted that, in all of the circumstances of this case and notwithstanding any mitigation present, a warning is necessary and proportionate. Your conduct did not meet the standards expected of a doctor and a warning would serve to maintain

the public's confidence in the profession, promote the standards expected of a doctor and send a message to the wider profession that this conduct is not acceptable.

## Defence Submissions

- 14** Miss Neale drew the Committee's attention to the detailed and comprehensive response that was given by you to NHSE on the 14 March 2019. She submitted that there has been no suggestion from anyone, the Practice, NHSE or the GMC that your account is factually incorrect demonstrating that there is no dishonesty present in this case.
- 15** Miss Neale submitted that as you have attested from the start you were unaware of the Practice's policy '*Computer, Internet and Email Usage Policy*', you could not be in breach of the policy as it did not exist at the time of the relevant conduct and it was not disseminated to you by the Practice. There is no evidence that the Practice circulated this document to you or any other Doctor at the Practice. Miss Neale therefore submitted you were not in breach of the policy as you were not bound by it by reasons of the matters above.
- 16** Miss Neale submitted it is fair that you are only liable for your own actions and not those of Doctor A, furthermore that the allegations put to you regard your conduct only. It is not defined what is an inappropriate and excessive number of messages, indeed this is documented by the PAG review and in this case many messages were sent by Doctor A. In this regard, Miss Neale submitted that the number of messages does not evidence the inappropriateness of those messages and that there are no regulations against Doctors making jokes with each other in private.
- 17** Miss Neale submitted that your conduct did not constitute a patient safety issue, did not result in a loss of resources and that there was no evidence it impacted on your practice, and thus invited the Committee to consider how your conduct had any discernible impact. Miss Neale drew the Committee's attention to the referral letter dated 31 January 2019 which evidenced that if you had not raised a grievance with the practice, this matter would likely have been dealt with at a local level.
- 18** Miss Neale submitted that NHSE incorrectly graded the risk in relation to your conduct, that the consequences arm of the risk assessment should have been categorised as negligible and that it 'defied belief' to have categorised your behaviour as major as it did not fit in with the descriptors present. Miss Neale submitted that, were the risk to be categorised properly, again this matter would not have been referred to the GMC.
- 19** Thirdly, Miss Neale submitted that the GMC did not seek all of the evidence prior to sending out the letter dated 12 August 2019, namely the appendices as highlighted in your initial response to NHSE.

- 20** Miss Neale submitted that the practice reported you to the GMC only when learning of your grievance and plan to leave and that it was not impartial in the evidence it has provided to NHSE. Miss Neale directed the Committee's attention to the glowing testimonials provided by patients and colleagues at the practice who describe your competence and professionalism.
- 21** Miss Neale submitted that a warning is viewed as a serious response for those who fall just short of a finding of impairment which is disclosable indefinitely to employers. She submitted that there is no definition of significant in the Guidance on Warnings and invited the Committee to look at some examples of the conduct that would meet the test for a warning. Miss Neale submitted that your conduct was not significant and did not meet the threshold for a warning, furthermore to impose a warning today would be inappropriate and disproportionate.

### **Committee Determination**

- 22** The Committee is aware that it must have in mind the GMC's role of protecting the public, which includes:
- a. Protecting, promoting and maintaining the health, safety and well-being of the public
  - b. Promoting and maintaining public confidence in the medical professions, and
  - c. Promoting and maintaining proper professional standards and conduct for members of that profession.
- 23** The Committee agreed that there is no definition of inappropriate and no defined measure of excessive in relation to the number of messages sent. However, it determined that you did make inappropriate and unprofessional comments using inappropriate language, partially acknowledged by you in your responses. The Committee determined that your conduct in relation to messages exchanged between you and Doctor A between January 2017 and December 2018, represented a clear and specific breach of paragraphs 37 and 65 of Good Medical Practice (GMP). The Committee restricted itself to the messages before them today and did not consider you to have made inappropriate and unprofessional comments about your colleagues. Therefore, the Committee determined your conduct in this respect did not represent a clear and specific breach of paragraph 36.
- 24** The Committee saw before it no evidence that you had accessed patient records when you had no clinical reason for doing so. It agreed that whilst your messages might be said to be in breach of the '*Computer, Internet and Email Usage Policy*', there is no evidence before it today of a policy that predates May 2018 and there is nothing to contradict your explanation that you had not been made aware of any such policy.
- 25** The Committee acknowledges that there is no definition of 'significant' in the Medical Act 1983 or in the Fitness to Practise Rules 2004. The Committee considered your

messages, whether said in public or private, would serve to erode public trust and confidence. In your own view, you acknowledged that if they were to be shared with the patients it would indeed '*cause upset*' and that had you been aware they could be read, you would have been more mindful and careful. Given your work as a GP, the Committee considered that the content and context of these messages sent during work hours constituted a significant departure from Good Medical Practice.

- 26** The Committee must be satisfied that the particular conduct, behaviour or performance approaches, but falls just short of, the threshold for the realistic prospect test. The realistic prospect test requires a genuine possibility of a finding of impaired fitness to practise, justifying action on the doctor's registration. The Committee is satisfied that the concerns displayed in this case are sufficiently serious that if there were repetition, they would likely result in a finding of impairment. Repetition of your behaviour could affect patient and public confidence in the profession and the reputation of the profession. Therefore, for reasons above, the test for issuing a warning is met.
- 27** In deciding whether to issue a warning the Committee must apply the principle of proportionality, and balance the interests of the public with those of the practitioner.
- 28** The Committee agreed that as the messages were sent over a prolonged period, this constituted a pattern of behaviour, this was not a one-off incident and demonstrated your everyday demeanour. The Committee determined that you should be aware that the repetitive nature of messages that are unprofessional and inappropriate does not fit with the standards expected of a Doctor.
- 29** The patient testimonials show how well you treat your patients face to face, however the language used by you in private gives the impression of disdain towards some of them and whilst the Committee accepts the glowing testimonials provided by your patients, had they been made aware of the messages, they would have caused them a great deal of upset as they clearly trust you as a good Doctor.
- 30** The Committee took into account the comprehensive response given by you and your representatives in relation to the conduct described in this case and whilst the risk of repetition is low, the Committee considered your insight, as demonstrated by your response to the GMC, is not fully developed and even though the Committee does not hold you to account for Doctor A's behaviour, you should be leading by example as a senior Doctor. The Committee determined that there would be minimal impact on your career as a warning would not adversely affect your current position.
- 31** The language used and the context in which it was used was completely unacceptable and thus the Committee determined, on balance, the aggravating features of this case outweigh the mitigation provided. Your conduct did not meet the standards expected of a doctor and a warning would serve to maintain the public's confidence in the profession, promote the standards expected of a doctor and send a message to the wider profession that this conduct is not acceptable. In conclusion,

the Committee have determined that a warning is both necessary and proportionate in this case.

- 32** As the Committee have determined that there has been no clear and specific breach of paragraph 36, the number of messages were not excessive, nor did you make disparaging comments towards your colleagues, the warning will be documented with the following amendments as follows:

*'Between January 2017 and December 2018, you sent a number of messages to a GP colleague via your Practice's SystemOne IT platform, some of which included inappropriate disparaging comments about patients you had seen or were due to see.'*

*Your conduct as outlined above does not meet with the standards required of a doctor. It risks bringing the profession into disrepute and it must not be repeated.*

*The required standards are set out in Good medical practice and associated guidance:*

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

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

*Whilst these failings in themselves are not so serious as to require any restriction on your registration, it is necessary in response to issue this formal warning.*

*This warning will be published on the List of Registered Medical Practitioners (LRMP) in line with our publication and disclosure policy, which can be found at [www.gmcuk.org/disclosurepolicy](http://www.gmcuk.org/disclosurepolicy).*

- 33** You will be notified of this decision in writing within the next two working days.

That concludes the determination of the Investigation Committee in this case.