

## PUBLIC RECORD

Dates: 01/02/2021 - 04/02/2021

Medical Practitioner's name: Dr Adrian MARSDEN

GMC reference number: 2980146

Primary medical qualification: MB BS 1984 University of London

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

## Summary of outcome

Erasure

Immediate order imposed

## Tribunal:

Legally Qualified Chair	Ms Margaret Obi
Lay Tribunal Member:	Mrs Valerie Blessington
Medical Tribunal Member:	Dr Janet Nicholls
Tribunal Clerk:	Hollie Middleton

## Attendance and Representation:

Medical Practitioner:	Present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Carlo Breen, 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 partly in private.

## Overarching Objective

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

## Determination on Facts - 03/02/2021

### Background

1. Dr Marsden qualified in 1984 from the University of London where he obtained an MBBS. Prior to the events which are the subject of this hearing, Dr Marsden was practising as a Consultant Child and Adolescent Psychiatrist at Pebble Lodge in Bournemouth, a specialist unit providing treatment for children and young people with mental health issues.
2. On 9 January 2020, Dr A, Medical Director at Dorset Healthcare NHS Foundation Trust, referred concerns regarding Dr Marsden to the GMC. The concerns related to an allegation that Dr Marsden had been in possession of sexualised images of children. The General Medical Council's (GMC) Allegation against Dr Marsden relates to his subsequent convictions.
3. The GMC alleges that on 7 May 2020, at Poole Magistrates' Court, Dr Marsden was convicted of making indecent photographs of children and being in possession of 42 prohibited images of children between May 2010 and January 2020. It is further alleged that on 4 June 2020, Dr Marsden was sentenced to a Community Order with a rehabilitation activity requirement, a Sexual Harm Prevention Order until 3 June 2025, a fine of £2500 and a notification requirement to register with the Police for five years from 7 May 2020.

### The Outcome of Applications Made during the Facts Stage

4. On Day 1, at the outset of the hearing, Dr Marsden made an application under Rule 41 of the General Medical Council ('Fitness to Practise') Rules 2004 (as amended) ('the Rules') for these proceedings to be conducted in private. The Tribunal determined that the press and public should not be excluded from the entirety of this hearing. The Tribunal's determination can be found at Annex A.
5. On Day 1, on behalf of the GMC, Mr Breen made an application pursuant to Rule 34(1) of the Rules for the transcript of Dr Marsden's police interview to be admitted into evidence. The Tribunal granted this application. The Tribunal's determination is set out at Annex B.

### The Allegation and the Doctor's Response

6. The Allegation made against Dr Marsden is as follows:

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

1. On 7 May 2020 at Poole Magistrates' Court you were convicted of offences namely:
  - a. between 25 May 2010 - 8 January 2020 at Bournemouth in Dorset you made indecent photographs, namely 1982 Category C images as per categorization reports RS/1 and SF/99, of children, contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978; **Admitted and found proved**
  - b. between 21 May 2010 - 8 January 2020 at Bournemouth in Dorset you were in possession of 42 prohibited images of children as per categorization reports SF/99 and RS/1, contrary to sections 62(2) and 66(2) of the Coroners and Justice Act 2009. **Admitted and found proved**
2. On 4 June 2020 you were sentenced to a:
  - a. Community Order with a rehabilitation activity requirement; **Admitted and found proved**
  - b. Sexual Harm Prevention Order until 3 June 2025; **Admitted and found proved**
  - c. fine of £2500; **Admitted and found proved**
  - d. notification requirement to register with the Police from 7 May 2020 for 5 years, in accordance with the Sexual Offences Act 2003. **Admitted and found proved**

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

### The Admitted Facts

7. On Day 1, Dr Marsden made admissions to paragraphs 1 (a) and (b); and paragraphs 2(a), (b), (c) and (d) of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules').

8. 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.

### Impairment

9. With no facts remaining in dispute, the Tribunal went on to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts admitted and found proved, Dr Marsden’s fitness to practise is impaired by reason of his conviction.

### Documentary Evidence

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

- Correspondence from Dorset Healthcare NHS Foundation Trust, various dates;
- Correspondence from Dorset Police, various dates;
- Certificate of Conviction from Poole Magistrates’ Court, dated 4 June 2020;
- Transcript of Dr Marsden’s Police Interview, dated 8 January 2020;
- Email correspondence from Dr Marsden relating to the Police Interview transcripts, dated between December 2020 and January 2021;
- Email correspondence from Dr Marsden relating to his Voluntary Erasure Application, dated 22 January 2021
- Email correspondence from Dr Marsden, dated 2 February 2021.

### Submissions

11. On behalf of the GMC, Mr Breen, Counsel, submitted that Dr Marsden’s fitness to practise is impaired by reason of his convictions. He submitted that Dr Marsden’s actions had brought the profession into disrepute and had breached fundamental tenets of the profession. He further submitted that Dr Marsden’s conduct would be considered deplorable by fellow practitioners. Mr Breen invited the Tribunal to conclude that Dr Marsden’s conduct was so egregious that he was not currently fit to practise medicine.

12. Dr Marsden did not make formal submissions in relation to whether his fitness to practise is currently impaired as he chose not to attend the hearing on Day 2. However, he stated in his email to the Tribunal, dated 2 February 2021:

*“I should never work as a doctor again and completely agree with the inevitable outcome of this MPTS Final Hearing that will invoke its ultimate sanction of advising the GMC to erase me permanently from the Medical Register. This is why I have voluntarily twice formally requested to the GMC, through its VERL system, that I be erased from the Medical Register. I fully accept this sanction of the MPTS and GMC.”*

### The Relevant Legal Principles

13. 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 independent judgement.

14. The Tribunal must determine whether Dr Marsden’s fitness to practise is currently impaired, taking into account Dr Marsden’s conduct which led to his convictions and relevant factors such as insight and remediation.

15. The Tribunal took into account the observations of Dame Janet Smith in the fifth report of the Shipman inquiry which have been approved in cases such as CHRE v NMC & Grant [2011] EWHC 927 (Admin) with regard to the features, which are likely to be present when impairment is found. The features relevant to this case are as follows:

- *The doctor has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- *The doctor has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession.*

### The Tribunal’s Determination on Impairment

16. The Tribunal considered whether Dr Marsden’s fitness to practise is currently impaired by reason of his conviction.

17. The Tribunal had regard to paragraph 65 of Good Medical Practice (2013 edition) (‘GMP’) which states:

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

18. The Tribunal determined that the conduct which underlies Dr Marsden’s conviction demonstrates a significant departure from the principles set out in GMP. These principles include the expectation that medical practitioners will adhere to high standards of behaviour in their personal lives as well as their professional lives.

19. The Tribunal had regard to the contents of the transcript of Dr Marsden’s police interview and his email correspondence. The Tribunal noted that Dr Marsden made full admissions during the police interview in January 2020, pleaded guilty during the criminal proceedings, and has repeatedly expressed regret and remorse. Dr Marsden, in his most recent email, dated 2 February 2021, stated:

*“I am guilty of the crimes I was rightly convicted of at the criminal court in May 2020.*

*I have complete insight into the nature of my crimes and their impact upon my children, my wife, our extended families, our friends, my former professional colleagues in medicine and its associated professions, and the public’s trust in the medical profession as a whole. I am deeply ashamed and remorseful for my crimes and their impacts upon others.”*

20. The Tribunal noted that Dr Marsden’s criminal behaviour related to his private life and that there was no evidence that he presents a risk to patients. Furthermore, the sexualised images of children fell within Category C; the lowest category in terms of seriousness. The Tribunal also noted that it is difficult to demonstrate remediation following conviction for a sex offence particularly, as in this case, when the underlying conduct relates to children and has persisted for a significant period of time. Although there was no evidence that Dr Marsden’s behaviour has been remediated the Tribunal took the view that Dr Marsden has demonstrated insight into his actions. The Tribunal concluded that he fully understands the seriousness of his criminal convictions and the impact of his convictions on his professional colleagues, the wider profession, the public and his family. Furthermore, the Tribunal took the view that his expressions of regret and remorse are genuine.

21. The Tribunal, in considering the public interest, had regard to the overarching objective and the need to promote and maintain trust and confidence in the profession and declare and uphold proper standards of conduct and behaviour.

22. The Tribunal noted that doctors occupy a position of trust and that their professional role necessarily requires high standards of personal conduct at all times. The public have a legitimate expectation that a doctor will abide by the law and avoid any involvement in behaviour which contributes, or may contribute, to the cause of harm to others. Dr Marsden’s conduct fell far below the standard expected of a registered medical practitioner. His conduct breached a fundamental tenet of the profession, in that his behaviour undermines his professional standing, and has brought the profession into disrepute. The Tribunal was mindful that Dr Marsden is subject to a Sexual Harm Prevention Order until June 2025 and will be a registered sex offender until May 2025. The Tribunal concluded that a reasonable and well-informed member of the public would be extremely concerned by Dr Marsden’s convictions and the underlying behaviour. Notwithstanding Dr Marsden’s high degree of remorse and reflection, the Tribunal concluded that public confidence in the profession would be seriously undermined if a finding of fitness to practise was not made.

23. Accordingly, the Tribunal determined that Dr Marsden’s fitness to practise is currently impaired by reason of his conviction.

#### **Determination on Sanction - 04/02/2021**

1. Having determined that Dr Marsden’s fitness to practise is impaired by reason of his conviction, the Tribunal went on to determine in accordance with Rule 17(2)(n) of the Rules the appropriate sanction, if any, to impose.

#### **The Evidence**

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing, where relevant, in reaching a decision on sanction. The Tribunal received no further evidence at this stage from the GMC or Dr Marsden.

## Submissions

3. Mr Breen, on behalf of the GMC, referred the Tribunal to the Sanctions Guidance and reminded the Tribunal of the overarching objective which includes promoting and maintaining public confidence in the medical profession and promoting and maintaining proper professional standards and conduct for the members of the profession. He also drew the Tribunal's attention to the paragraphs within the Sanctions Guidance which indicate that serious action may be required.

4. Mr Breen submitted that given the gravity of Dr Marsden's criminal offences, the Tribunal may take the view that there was no mitigation in this case. He further submitted that the underlying behaviour, which led to Dr Marsden's convictions, cannot be remediated as it undermines the fundamental principles of medical professionalism.

5. Mr Breen submitted that it would not be appropriate for the Tribunal to conclude the case with no action or with conditions. He submitted that a period of suspension would also be inappropriate in view of the nature and seriousness of Dr Marsden's conduct. Mr Breen invited the Tribunal to conclude that Dr Marsden's convictions are fundamentally incompatible with continued registration and that as a consequence erasure is inevitable.

6. Dr Marsden did not make formal submissions in relation to sanction as he chose not to attend the hearing on Day 3. However, the Tribunal noted that Dr Marsden had made two unsuccessful applications for voluntary erasure shortly before the commencement of this hearing. The Tribunal also noted that the contents of Dr Marsden's email correspondence including the email he sent on 2 February 2021, in which he stated that he 'should never work as a doctor again'. In that email Dr Marsden went on to state:

*"I would be extremely grateful if the MPTS Final Hearing could proceed apace and recommend that I am erased from the Medical Register at the earliest convenience of the GMC."*

30. Whilst the Tribunal was in camera deliberating on sanction Dr Marsden submitted a further email, dated 3 February 2021. He referred to "made indecent photographs" which is an extract from one of the criminal charges. He informed the Tribunal that this relates to downloading existing images from the internet as opposed to taking actual photographs of children. The Tribunal noted that Dr Marsden stated in his email dated 16 December 2020 that he had "*never taken inappropriate photographs of any child [he has] met*". In his most recent email, Dr Marsden also went on to outline the rehabilitative steps he has taken as part of his rehabilitation activity requirement and the significant additional actions he has taken since his convictions.

## The Tribunal's Determination on Sanction

31. The decision as to the appropriate sanction, if any, is a matter for this Tribunal exercising its own judgment. In reaching its decision, the Tribunal has taken account of the

Sanctions Guidance (November 2020) and the statutory overarching objective. The Tribunal recognises that the purpose of a sanction is not to be punitive, although it may have a punitive effect.

32. Throughout its deliberations the Tribunal applied the principle of proportionality, balancing Dr Marsden's interests with the public interest. It reminded itself that it should impose the minimum sanction necessary to achieve the overarching objective. In deciding what sanction, if any, to impose the Tribunal considered each of the sanctions available, starting with the least restrictive.

33. The Tribunal also considered whether there are any mitigating and aggravating factors and the weight, if any, that should be attached to these features. The Tribunal was mindful that mitigating factors are likely to carry much less weight than they do in other jurisdictions.

#### Aggravating Factors

34. The Tribunal noted that the Allegations are based on the criminal charges as set out in the Memorandum of Conviction. The wording includes reference to the number of indecent and prohibited images on Dr Marsden's electronic devices, the category of those images (category C) and the relevant time periods (25 May 2010 - 8 January 2020 and 21 May 10 - 8 January 2020). The Allegation also sets out the sentence imposed which includes a Sexual Harm Prevention Order and registration on the sex offender's register until 2025. In these circumstances, the Tribunal concluded that the nature and gravity of Dr Marsden's convictions are fully reflected in the wording of the Allegation and there are no additional aggravating features which materially increase the seriousness of his behaviour.

#### Mitigating Factors

35. The Tribunal considered the following to be mitigating factors in this case:

- Dr Marsden has shown insight into his actions, as identified in the Tribunal's determination at the impairment stage of these proceedings;
- Dr Marsden has expressed genuine remorse;
- Dr Marsden admitted the criminal offences at the earliest opportunity; and
- Dr Marsden is undertaking rehabilitative steps as part of his sentence and on his own initiative.

#### **No action**

36. The Tribunal first considered whether to conclude the case by taking no further action.

37. The Tribunal concluded that, in view of the nature and seriousness of the convictions and its findings on impairment, it would be insufficient and inappropriate to take no further

action. The Tribunal was unable to identify any exceptional circumstances which would justify no action being taken on Dr Marsden’s registration. Furthermore, taking no action would undermine rather than promote and maintain public confidence and proper professional standards in the profession.

### Conditions

38. The Tribunal went on to consider whether to impose conditions on Dr Marsden’s registration.

39. The Tribunal concluded that it would not be possible to formulate any conditions which would adequately address Dr Marsden’s convictions as his underlying behaviour completely undermines trust and confidence in him as a doctor and the profession as a whole. Therefore, the Tribunal determined that it would be neither sufficient nor appropriate to direct the imposition of conditions on Dr Marsden’s registration. The Tribunal concluded that an order of conditions would not adequately maintain trust and confidence in the medical profession.

### Suspension

40. The Tribunal then went on to consider whether to impose a period of suspension on Dr Marsden’s registration.

41. The Tribunal noted that paragraph 97 sets out a non-exhaustive list of factors which may indicate that a suspension order would be the appropriate sanction. The relevant factors are as follows

*a A serious breach of Good medical practice, but where the doctor’s misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.*

...

*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.”*

42. The Tribunal noted, in its determination on impairment, that convictions involving sexual exploitation are difficult to remediate. In considering the relevant factors in paragraph

97 of the Sanctions Guidance the Tribunal also acknowledged that there is no evidence to indicate that Dr Marsden would be incapable of demonstrating remediation. There is no evidence of repetition since Dr Marsden’s conviction and sentence and he has demonstrated insight. However, none of the factors set out in paragraph 97 (e), (f) or (g) are capable of adequately addressing the Tribunal’s inevitable conclusion that any involvement in the sexual exploitation of children demonstrates a significant departure from the principles in Good Medical Practice (2013 edition) (‘GMP’) and is fundamentally incompatible with continued registration. Furthermore, the mitigating factors carry no weight in this context.

43. Taking all of those matters into consideration, the Tribunal determined that a period of suspension would not be sufficient to maintain public confidence in the profession and proper professional standards and conduct for members of the profession.

### Erasure

44. The Tribunal, having concluded that a suspension order would be insufficient to protect the wider public interest, determined that the appropriate and proportionate sanction is erasure. In reaching this conclusion the Tribunal took into account the following factors as set out in paragraph 109 of the Sanctions Guidance:

*“a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor*

...

*f Offences of a sexual nature, including involvement in child sex abuse materials.”*

22. The Tribunal was satisfied that the nature and seriousness of Dr Marsden’s conviction is fundamentally incompatible with continued registration. Downloading and viewing child sex abuse materials seriously undermines patients’ and the public’s trust and confidence in the medical profession and inevitably brings the profession as a whole into disrepute. In these circumstances, the Tribunal concluded that the only proportionate sanction is erasure.

23. The Tribunal has therefore directed that Dr Marsden’s name be erased from the Medical Register.

### Determination on Immediate Order - 04/02/2021

1. Having determined to erase Dr Marsden’s name from the Medical Register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Marsden’s registration should be subject to an immediate order.

### Submissions

2. On behalf of the GMC, Mr Breen submitted that an immediate order of suspension is necessary in order to protect public confidence in the profession.

The Tribunal's Determination

3. The Tribunal had regard to paragraphs 172 and 173 of the Sanctions Guidance (November 2020) ('SG') which state:

*"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."*

4. The Tribunal found that it had made a serious finding against Dr Marsden. The Tribunal concluded that it would be inappropriate for Dr Marsden to resume unrestricted practice. In these circumstances, it was satisfied that an immediate order is necessary and in the public interest to protect public confidence in the profession.

5. This means that Dr Marsden's registration will be suspended from when notification is deemed to have been served. The substantive direction, as already announced, will take effect 28 days from when written notice of this determination has been served upon Dr Marsden, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

6. The interim order currently imposed on Dr Marsden's registration will be revoked when the immediate order takes effect.

Confirmed

Date 04 February 2021

Ms Margaret Obi, Chair

**ANNEX A – 01/02/2021**

**Application to exclude the public from proceedings**

1. At the outset of the hearing, Dr Marsden made an application under Rule 41 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules') for the public to be excluded from the proceedings.
2. Dr Marsden initially made the application for the proceedings to be heard entirely in private in an email to the GMC, dated 5 January 2021. A preliminary hearing took place on 28 January 2021 to determine the issue. In reaching its conclusion, this Tribunal had sight of all of the documents considered by the preliminary hearing Tribunal and the reasons for its decisions in the preliminary determination, dated 28 January 2021.

**Submissions**

3. Dr Marsden submitted that after the outcome of his criminal trial eight months ago, the press published details of his convictions which elicited a hostile response from the public which included direct threats of harm to him. He submitted that the outcome of the criminal trial had a significant impact on XXX.
4. Dr Marsden drew the Tribunal's attention to a letter from XXX which outlined the impact that any media coverage of the hearing would have upon XXX. He submitted that it would therefore be a failing of the GMC to hold this hearing in public as it would be failing to protect XXX.
5. On behalf of the GMC, Mr Breen submitted that the issues raised by Dr Marsden had already been addressed at the preliminary hearing.
6. Mr Breen reminded the Tribunal that there was no new evidence submitted by Dr Marsden and therefore there was nothing to make this Tribunal come to a different conclusion than the Tribunal at the preliminary hearing on 28 January 2021.

**The Tribunal's Decision**

7. The Tribunal had regard to Rule 41(2) of the Rules, which reads as follows:

*‘(2) The Committee or Medical Practitioners Tribunal may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the particular circumstances of the case outweigh the public interest in holding the hearing in public.’*

8. The Tribunal noted that it was not appropriate for hearings to be held in private even though a public hearing was likely to have adverse effects on the individual and their family. It noted that it has a duty to hold hearings in public as a rule, except for matters regarding health, and that it is in the public interest to do so. The Tribunal also took into account that there was no new information that was not before the previous Tribunal.

9. The Tribunal concluded that Dr Marsden’s concerns were insufficient to outweigh the public interest in conducting the hearing in public. It had regard to Dr Marsden’s comments that he is an adult and with appropriate support he will ‘get over it’ and that his main priority is protecting XXX. The Tribunal also noted that the criminal proceedings were held in public and that, aside from matters relating to XXX, other matters should be a part of the public record. The Tribunal concluded that the nature of Dr Marsden’s criminal convictions did not justify a departure from the principle of open justice.

10. The Tribunal determined not to exclude the press and public from the entirety of this hearing. The Tribunal remained mindful, however, that some parts of this hearing will cover matters relating to XXX. In these instances, the Tribunal would consider these matters in private as required by the Rules.

## ANNEX B – 01/02/2021

### **Application to admit further evidence**

1. On behalf of the GMC, Mr Breen made an application for the Tribunal to admit further evidence in the form of the transcript from Dr Marsden’s interview with the police at Bournemouth Police Station on 8 January 2020.

2. Mr Breen submitted that the document should be admitted into evidence in these proceedings as it provided further information as to the reasons behind Dr Marsden’s convictions and what was in his mind at the time. He stated that the transcript would be relevant when the Tribunal considered matters such as Dr Marsden’s conduct, insight and

remediation. He submitted that it was also relevant for the Tribunal to understand what it was that led Dr Marsden to behave in the way that he did, and which ultimately led to his convictions.

3. Dr Marsden objected to the transcript of his police interview being admitted into evidence. He submitted that he had no issue with the Tribunal viewing the transcript but outlined his concerns regarding the contents of the document entering the public domain. He stated that if the details contained in the transcript are made available to the public and the press that this would be harmful to XXX. He reminded the Tribunal that he has never denied his criminal offence and that his guilt is now a matter of fact. Dr Marsden emphasised that he was deeply ashamed of the ‘appalling criminal offence’ he had committed and he reiterated his desire to be removed from the medical register having made two applications for voluntary removal which had been refused. He stated that he knew that erasure was inevitable and therefore submitted that it was unnecessary to admit the police transcript as evidence to the hearing.

### The Tribunal’s Decision

4. The Tribunal considered this application in accordance with Rule 34 of the Rules, which states:

*“The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.”*

The Tribunal had regard to the questions of fairness and relevance in accordance with Rule 34(1) of the Rules. It also considered the oral submissions provided by both parties.

5. Having carefully considered both parties’ submissions, the Tribunal was of the view that the transcript was relevant to its decision on impairment and/or sanction. The Tribunal concluded that the transcript was likely to provide helpful background information which would enable it to fully assess the nature, context and gravity of Dr Marsden’s convictions.

6. The Tribunal also concluded that it would be fair to admit the transcript of the interview into evidence. In reaching this conclusion, the Tribunal took into account the overarching objective which includes protecting the public and upholding confidence in the profession.

7. The Tribunal determined to grant Mr Breen’s application for the admission of the transcript evidence.