

PUBLIC RECORD

Dates: 03/05/2023 - 05/05/2023

Medical Practitioner's name: Dr Andrew MCGAUGHEY
GMC reference number: 7672312
Primary medical qualification: MB ChB 2019 University of Bristol

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	Mrs Tehniat Watson
Lay Tribunal Member:	Dr Matthew Fiander
Medical Tribunal Member:	Dr Prashanth Nandhabalan
Tribunal Clerk:	Ms Evelyn Kramer

Attendance and Representation:

Medical Practitioner:	Present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Hugh Barton, 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 and Impairment - 04/05/2023

1. This determination will be handed down in private. However, as this case concerns Dr McGaughey's conviction, a redacted version will be published after the conclusion of the hearing.

Background

2. Dr McGaughey qualified in 2019 from the University of Bristol.

3. The allegation that has led to Dr McGaughey's hearing can be summarised as follows: it is alleged that on 21 September 2022, Dr McGaughey was convicted at Poole Magistrates' Court of having made indecent images or movies of children of category A (47 images), B (26 images) and C (43 images), between 9 September 2017 and 14 February 2018. It is alleged that Dr McGaughey was also convicted of possessing eight extreme pornographic images/videos involving animals on 31 March 2022, which were grossly offensive, disgusting or otherwise of an obscene character.

4. It is further alleged that, on 12 October 2022, Dr McGaughey was sentenced to: a custodial sentence of 12 months suspended for 24 months, to a Rehabilitation Activity Requirement of up to a maximum of 25 days, to carry out 120 hours of unpaid work within 12 months, to a Sexual Harm Prevention Order for ten years, to register with the Police in accordance with Sexual Offences Act 2003 from 21 September 2022 for ten years and to forfeit all equipment seized by the Police under section 143 PCC(S) Act 2000 which would be destroyed.

5. Dr McGaughey admitted to possessing these images found on his devices in his second police interview on 1 April 2022. He subsequently pleaded guilty at his first appearance before the Magistrates' Court.

6. Dr McGaughey's case was referred to the GMC on 11 April 2022 following his arrest.

The Allegation and the Doctor's Response

7. The Allegation made against Dr McGaughey is as follows:

1. On 21 September 2022 at Dorset Magistrates' Court sitting at Poole Magistrates' Court you were convicted of:
 - a between 9 September 2017 and 14 February 2018 in Poole, Dorset, you made 47 Category A indecent images of a child contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978;
Admitted and found proved
 - b between 9 September 2017 and 14 February 2018 in Poole, Dorset, you made 26 Category B indecent images of a child contrary to sections 1(1)(a) and 6 of the Protection of Children Act 1978;
Admitted and found proved
 - c between 9 September 2017 and 14 February 2018 in Poole, Dorset, you made 43 Category C indecent images of a child contrary to Sections 1(1)(a) and 6 of the Protection of Children Act 1978;
Admitted and found proved
 - d on 31 March 2022, you possessed eight extreme pornographic images/videos which portrayed, in an explicit and realistic way, a person performing an act of intercourse with a live animal, which were grossly offensive, disgusting or otherwise of an obscene character and a reasonable person looking at the image would think that any such person or animal was real, contrary to sections 63(1), 7(d) and 67(3) of the Criminal Justice and Immigration Act 2008.
Admitted and found proved
2. On 12 October 2022 you were sentenced to:
 - a a custodial sentence of 12 months suspended for 24 months;
Admitted and found proved
 - b a Rehabilitation Activity Requirement: to comply with any instructions of the responsible officer to attend appointments (with the responsible officer or someone nominated by them), or to participate in any activity as required by the responsible officer up to a maximum of 25 days;
Admitted and found proved
 - c carry out 120 hours of unpaid work within 12 months;
Admitted and found proved
 - d a Sexual Harm Prevention Order for ten years;
Admitted and found proved

e register with the Police in accordance with Sexual Offences Act 2003 from 21 September 2022 for ten years;

Admitted and found proved

f forfeit all equipment seized by the Police under section 143 PCC(S) Act 2000 which will be destroyed.

Admitted and found proved

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

The Admitted Facts

8. At the outset of these proceedings, Dr McGaughey admitted the facts 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'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced the facts of the Allegation as admitted and found proved in full.

Determination on Impairment

9. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved, Dr McGaughey's fitness to practise is impaired by reason of a conviction for a criminal offence.

Further Background

10. On 4 November 2021, the National Crime Agency (NCA) sent a referral to Dorset Police that Dr McGaughey's home address had been used for accessing indecent images of children (IIOC) on 19 October 2021. The images had been accessed via an application.

11. On 31 March 2022, as result of the NCA information, Dorset Police attended Dr McGaughey's address. On the same day Dr McGaughey was arrested on suspicion of possessing indecent images of children by Dorset Police. He was cautioned and made no reply. The police seized several devices from his home including two mobile phones, a laptop, an external hard drive and his NHS Identity Card.

12. Dr McGaughey was interviewed on 31 March 2022 and provided '*no comment*' answers to all questions asked of him regarding Dorset Police's investigation.

13. On 1 April 2022, Dr McGaughey's solicitor contacted Dorset Police and advised that Dr McGaughey wished to be re-interviewed. During this interview, Dr McGaughey made '*a full and frank admission to accessing and possessing indecent images of children*'. He also stated that he had never taken indecent images of children at work or outside of work and had sourced all the images on his devices from the internet.

14. Dr McGaughey was asked if he had a sexual interest in children. He responded:

'I was not a very popular child and went to an all boys school. I did not have many friends and only got my first girlfriend when I was 27 years old. So I turned to porn and the internet. Then as time went by the mainstream porn I became a bit numb to it and looked for new things so searched for. "Teen" was just under age which is my interest/preference and what I wanted to see, but in those groups if you want to see things you have to provide images too XXX. If they had a younger interest I needed to give them the images of the IIOC with the younger children in them to get what I wanted. I have had ups and downs over the past few years and XXX I would go back to using and viewing IIOC.'

15. Dr McGaughey admitted to having indecent images of children as young as three or four years old in his possession. He said he had those images to share with others in order to be sent the images of 15 to 17 year olds that he said he was sexually interested in. He said he felt 'numb' when viewing images of younger children.

16. At the conclusion of his second police interview, Dr McGaughey said '*I hate that I have done this, XXX. I would never do anything in real life.'*

17. On 21 September 2022, Dr McGaughey attended at Dorset Magistrates' Court sitting at Poole Magistrates' Court. He pleaded guilty and was convicted, as detailed in the Allegation at paragraph 1.

18. On 12 October 2022, Dr McGaughey was sentenced, as detailed in the Allegation at paragraph 2.

The Evidence

19. The GMC relied on the documentary evidence before the Tribunal and did not call any witness evidence.

20. Dr McGaughey provided a statement of personal reflections that he confirmed he had drafted over a period of months and completed in April 2023.

21. Dr McGaughey gave oral evidence at the hearing. Dr McGaughey expressed further regret and remorse for his actions. He explained that it was during periods XXX when he had sought out indecent images of children and it was only during those times when he engaged in the exchange of indecent images in chat rooms. Dr McGaughey differentiated between his XXX and his decision to specifically seek out indecent images of children. He said he only sought out indecent images XXX, which he identified as being between 9 September 2017 and 14 February 2018, and then in the autumn of 2021. He told the Tribunal that images he accessed in the autumn of 2021 were found on the devices seized by the police on 31 March 2022.

22. Dr McGaughey explained what his Rehabilitation Activity Requirements are and how he is engaging constructively with a new probation officer after moving home. He stated that whilst he is XXX, he is seeking to reduce his use of it, which he has identified as a 'crutch'. He confirmed that he has now not felt compelled to search for any indecent images of children and avoids any pornography that implies it could involve anyone underage. Dr McGaughey explained that he has proactively identified a course from the Lucy Faithful Foundation that he believes will support him in better understanding his offending behaviour but has yet to secure funding for it but hopes to do so in the next six months. In respect of his fourth conviction, relating to the possession of extreme pornographic images/videos involving animals, Dr McGaughey said he did not know which images he had been convicted for possessing nor could he answer why he had possession of them.

23. Dr McGaughey acknowledged that he is only at the beginning of his rehabilitation and stated that there would always be a risk of reoffending. However, he further stated that he is resolved to never repeat his actions. Dr McGaughey reiterated his remorse and said that he would rather do harm to himself than reoffend.

Documentary Evidence

23. The Tribunal received documentary evidence which included but was not limited to:

- Dorset Police Report (MG5), which included a list of items seized from Dr McGaughey's home, reference to and categorisation of the indecent material identified and transcripts of Dr McGaughey's police interviews;
- Certificate of Conviction, dated 12 October 2022;
- Correspondence between the GMC and Dorset Police about Dr McGaughey's case of various dates between 16 May 2022 and 13 October 2022;
- Dr McGaughey's statement of personal reflections, completed in April 2023.

Submissions

On behalf of the GMC

24. On behalf of the GMC, Mr Barton submitted that Dr McGaughey's fitness to practise was impaired by reason of his conviction. He detailed the three convictions relating to IIOC under categories A - C. Mr Barton referred the Tribunal to the Sentencing Council's categorisation of indecent images. Category A covers children involved in penetrative sexual activity, sexual activity with an animal or sadism. Category B covers non-penetrative sexual activity and Category C covers all other indecent images not falling with categories A or B. Mr Barton reminded the Tribunal that the police investigation found that the images included children as young as 3 to 4 years old. Mr Barton also referred to the conviction of possession of eight extreme pornographic images/videos.

25. Mr Barton submitted that Dr McGaughey's criminal conviction represents a significant departure from Good Medical Practice (2013) (GMP), specifically paragraphs 1 and 65:

'1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.

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

26. Mr Barton referred the Tribunal to the test for impairment as set out in the case of *CHRE v NMC and Grant* [2011] EWHC 927 (Admin) (*'Grant'*), and submitted that the following limbs are engaged:

'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.'

27. Mr Barton submitted that a well-informed member of the public would find Dr McGaughey's actions to be abhorrent. He submitted that a finding of impairment was required to uphold the overarching objective, to maintain confidence in the profession and to uphold proper professional standards.

28. Mr Barton acknowledged that Dr McGaughey had admitted his offences at his first appearance at the Magistrates' Court. However, Mr Barton reminded the Tribunal that Dr McGaughey did not make admissions when originally interviewed by the Dorset Police on 31 March 2022. Mr Barton acknowledged that Dr McGaughey has provided a statement of personal reflections in which he expressed remorse and repeated this in his oral evidence.

29. Mr Barton submitted that Dr McGaughey had suggested in his written reflective piece that he ceased accessing the indecent images of children XXX. However, when questioned on this, Dr McGaughey had confirmed that XXX and had resumed accessing indecent images in October 2021 XXX. Mr Barton submitted that Dr McGaughey had not yet demonstrated full remorse and had provided little evidence of complete insight into his actions.

30. Mr Barton submitted that there was a significant period of time involved in Dr McGaughey's offences, between October 2017 and February 2018 and again in the autumn of 2021. He submitted that there was an element of sophistication to Dr McGaughey's offending behaviour, for example, using accounts with false name in an attempt to conceal his unlawful activity and his identity. Mr Barton submitted that Dr McGaughey's conviction was serious and violated such fundamental principles of the profession that a finding of

impairment of his fitness to practise was necessary to maintain standards of conduct and confidence in the profession.

Dr McGaughey

31. Dr McGaughey agreed with Mr Barton's summary and acknowledged that his actions had broken public trust. Dr McGaughey said he loved being a doctor and that it was the only thing he was good at. He said he hoped that he could remain in medicine in some capacity.

The Relevant Legal Principles

32. 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.

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

34. The Tribunal reminded itself of the statutory overarching objective which is 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.

The Tribunal's Determination on Impairment

35. The Tribunal went on to consider whether, as a result of Dr McGaughey's conviction, his fitness to practise is currently impaired.

36. In considering impairment, the Tribunal had regard to the detail of Dr McGaughey's conviction. Dr McGaughey was convicted of four serious offences, three of which related to indecent images of children, and one that related to images portraying bestiality. His convictions related to offending behaviour between 9 September 2017 and 14 February 2018 and on 31 March 2022. The Tribunal had regard to Dr McGaughey's evidence that he had accessed indecent images of children at the points in his life XXX, which he identified as between September 2017 and February 2018 and the autumn of 2021. When Dr McGaughey was searching for and accessing these indecent images, he was also sharing such images in chat rooms. The images he shared included images of significantly younger children, as young as three or four years old. Dr McGaughey said he derived no sexual gratification from those images relating to children as young as three and four years old, but had them in his possession in order to exchange them for other images of children that met his sexual preference, namely '15 to 18' year olds.

37. Dr McGaughey's offending behaviour was unlawful and clearly breached the standards expected of all medical practitioners as documented in GMP, including paragraphs 1 and 65, (as set out above). Dr McGaughey had failed to act within the law and his unlawful behaviour had breached the standards of the profession expected of him as a medical practitioner. In addition, the Tribunal considered that Dr McGaughey's behaviour was in breach of paragraph 27 of GMP:

'27 Whether or not you have vulnerable adults or children and young people as patients, you should consider their needs and welfare and offer them help if you think their rights have been abused or denied.'

38. The Tribunal considered the test of *Grant* (as set out above) and determined that Dr McGaughey's conviction and the offending behaviour that gave rise to it was deplorable and had brought the profession into disrepute. Further, in acting unlawfully, Dr McGaughey's actions had breached a fundamental tenet of the profession. Accordingly, the Tribunal determined that limbs *b* and *c* of the test in *Grant* were engaged.

39. The Tribunal had regard to Dr McGaughey's level of insight and remediation to assist in its consideration of the likelihood and risk of repetition. The Tribunal accepted that Dr McGaughey has expressed genuine remorse and regret for his actions. He pleaded guilty at the earliest opportunity and is engaging with the requirements of his sentence and these regulatory proceedings.

40. The Tribunal accepted that Dr McGaughey has set himself a clear resolution to address his offending behaviour and never repeat it. He has demonstrated insight into the gravity and seriousness of his offending behaviour. Dr McGaughey knows that he needs to make substantive changes and said that he has taken some steps to seek out that support, XXX. Dr McGaughey also acknowledged that he is 'near the beginning' in his rehabilitation and that there is much still to do. Dr McGaughey told the Tribunal that he was no longer attracted to those aged '15 to 18' years but was unable to explain how he had altered his sexual preference. The Tribunal accepted that Dr McGaughey has some insight into what drove him to seek out indecent images of children and how his use of pornography generally contributed to this. He said that he is now exploring coping strategies that do not involve pornography and is determined to ensure that there will be no reoffending.

41. The Tribunal was satisfied that, overall, Dr McGaughey has some insight into his offending behaviour, its seriousness and what that he needs to do to address its underlying causes. However, the Tribunal was concerned about the lack of evidence of remediation carried out by Dr McGaughey at this time. The Tribunal took into account that Dr McGaughey's devices are being monitored as part of the Sexual Harm Prevention Order. It acknowledged his ongoing sessions with his probation officer, some of which contribute to the Rehabilitation Activity requirement. Whilst Dr McGaughey sought to reassure the Tribunal that his risk of re-offending is low, the Tribunal was provided with no objective verification of this statement and no documentary evidence as to what steps Dr McGaughey had taken to carry out rehabilitative work and improve his support networks.

42. In Dr McGaughey's statement of personal reflections, he wrote:

'Through my conviction, I received a suspended sentence, unpaid work hours which I have completed, a rehabilitation activity requirement with probation which I engage fully with and a sexual harm prevention order. I have also voluntarily joined a course through the Lucy Faithfull foundation to help me understand the effects on child victims but also help me build positive future relations.'

43. Dr McGaughey had confirmed that he had completed the 120 hours of unpaid work as required by his sentence. He said he was *'fully engaged and trying to make amends for my behaviour'*. However, in oral evidence, Dr McGaughey stated that he has not yet completed his up to 25 days of rehabilitation activity requirements, he said that they are to be spread over the course of the 24 months of his suspended custodial sentence. Further, Dr McGaughey clarified in oral evidence that he had not yet booked to commence the course offered by the Lucy Faithfull Foundation because he did not have funding to do so. He confirmed that he is working with his probation officer and others to identify suitable courses. However, it was clear to the Tribunal that, at this stage, Dr McGaughey was at an early stage in his research and had yet to complete any relevant remediation beyond that offered by his probation officer that would help him explore and resolve the underlying factors which led to his offending behaviour. Taken together, the Tribunal determined that Dr McGaughey's remediation for his offending behaviour and conviction was at a very early stage.

44. In considering the risk of repetition, the Tribunal bore in mind its findings on insight and remediation, namely that Dr McGaughey has some insight into the seriousness of his conviction and offending behaviour but despite his resolve not to repeat his actions, has yet to remediate them. He has not yet addressed what led him to act unlawfully nor has he provided detailed evidence of the support system he says he has built to prevent him repeating his behaviour. In all the circumstances, the Tribunal considered that there remained a risk of repetition.

45. The Tribunal went on to consider whether a finding of impairment was required to uphold the overarching objective. The Tribunal noted that Dr McGaughey's offences took place in his private life and did not involve direct contact with patients or the public. However, it had regard to Dr McGaughey's actions in exchanging the indecent images of children, who were members of the public, for his own sexual gratification. Such behaviour is contrary to the need to protect and promote the health, safety and well-being of the public. Further, his conviction and offending behaviour, unless marked by a finding of impairment, would clearly undermine the need 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. Accordingly, the Tribunal determined that Dr McGaughey's conviction and offending behaviour engaged all three limbs of the overarching objective.

46. Taking all of the above into account, the Tribunal determined that Dr McGaughey's fitness to practise is currently impaired by reason of his conviction.

Determination on Sanction - 05/05/2023

1. This determination will be handed down in private. However, as this case concerns Dr McGaughey's conviction, a redacted version will be published after the conclusion of the hearing with confidential matters removed.
2. Having determined that Dr McGaughey's fitness to practise is impaired by reason of his conviction, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

The Evidence

3. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.
4. No further evidence was adduced at this stage of proceedings.

Submissions

5. On behalf of the GMC, Mr Barton referred to the Tribunal's findings on impairment and went on to identify the aggravating and mitigating features of the case. Mr Barton referred the Tribunal to relevant paragraphs of the Sanctions Guidance (2020) ('the SG'), including the specific paragraphs on sex offenders and child sex abuse materials (paragraphs 151 to 156). Mr Barton then took the Tribunal through the sanctions available to it, starting with the least restrictive. He submitted that, in a case such as this, it would be neither appropriate nor proportionate to conclude the case by taking no action or imposing an order of conditions. In respect of suspension, Mr Barton submitted that whilst some factors as set out in paragraph 97 of the SG were met, Dr McGaughey had candidly stated, and the Tribunal had already found, that it could not safely conclude that there was no risk of reoffending.
6. Mr Barton submitted that any sanction less than erasure would be wholly inconsistent with the overarching objective. He submitted that it would also go against the SG to allow Dr McGaughey to practise without restriction given the ongoing requirements of his sentence to register with the Police in accordance with Sexual Offences Act 2003 for ten years and to comply with the Sexual Harm Prevent Order in place. Accordingly, Mr Barton submitted that the only appropriate and proportionate sanction in the circumstances of this case was erasure.
7. Dr McGaughey accepted, in full, the aggravating and mitigating factors identified by Mr Barton on behalf of the GMC. He stated that he had no further submissions to make and made an apology.

The Tribunal's Determination on Sanction

8. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken the SG into account and borne in mind the overarching objective.

9. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish or discipline doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr McGaughey's interests with the public interest.

Aggravating and Mitigating Factors

10. The Tribunal has already set out its decision on facts and impairment which it took into account during its deliberations on sanction. Before considering what action, if any, to take in respect of Dr McGaughey's registration, the Tribunal considered and balanced the aggravating and mitigating factors in this case.

11. The Tribunal identified the following aggravating factors:

- Dr McGaughey was convicted of possessing a large number of indecent images of children, as well as eight extreme pornographic images/videos involving animals. Notably, 47 of the images/videos were Category A images (the most serious category);
- Dr McGaughey was found to have indecent images of children as young as 3 to 4 years old in his possession;
- Dr McGaughey admitted to exchanging indecent images of children with others;
- Dr McGaughey's offending behaviour involved a significant period of time;
- Dr McGaughey's behaviour had a degree of sophistication in his efforts to conceal his identity and offending.

12. The Tribunal identified the mitigating factors to be:

- Dr McGaughey made full and frank admissions to Dorset Police in his second interview, which was a day after his arrest and he pleaded guilty at the first available opportunity at the Magistrates' Court;
- Dr McGaughey has, from an early stage, expressed genuine regret and remorse and has apologised;
- Dr McGaughey has engaged fully with the police, the court, the probation service, his regulator and with these fitness to practise proceedings;
- Dr McGaughey has no previous convictions or regulatory findings;

- There is no evidence that Dr McGaughey’s offending ever took place in a clinical setting;
- XXX;
- Whilst the Tribunal had not been provided with a complete copy of Dr McGaughey’s ePortfolio and ‘team assessment of behaviour’, it accepted the quotes from his colleagues included in his statement of personal reflections that he was a good, caring and compassionate doctor whose colleagues thought highly of him.

13. The Tribunal bore in mind that of the offences for which Dr McGaughey was convicted on 21 September 2022, those relating to between 9 September 2017 and 14 February 2018 occurred whilst he was a medical student. The Tribunal balanced the aggravating and mitigating factors identified in this case and determined that given the seriousness of Dr McGaughey’s conviction, the aggravating factors were of significantly more weight.

14. The Tribunal considered each sanction in ascending order of severity, starting with the least restrictive.

No action

15. The Tribunal first considered whether to conclude the case by taking no action. It accepted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that there were no exceptional circumstances in this case.

16. The Tribunal had regard to paragraph 154 of the SG which states:

‘154 The tribunal should be aware that any conviction relating to child sex abuse materials will lead to registration as a sex offender and possible inclusion on the Children’s Barred List by the Disclosure and Barring Service under the Safeguarding Vulnerable Groups Act 2006 (as amended). The Council of the GMC has made it clear that no doctor registered as a sex offender should have unrestricted registration....’

17. The Tribunal further determined that given the seriousness of Dr McGaughey’s offending behaviour and conviction, to take no action would be inappropriate and would not sufficiently protect the public.

Conditions

18. The Tribunal next considered whether to impose conditions on Dr McGaughey’s registration. Conditions can be appropriate and workable in certain circumstances, usually where specific shortcomings have been identified in a doctor’s practice or support is required for their health. However, as this case related solely to Dr McGaughey’s conviction and did not relate to his clinical practice, the Tribunal concluded that conditions would be neither

appropriate, proportionate nor workable. The Tribunal was also of the view that to impose conditions on Dr McGaughey's registration would not uphold the overarching objective and would not appropriately mark the seriousness of his conviction.

Suspension

19. The Tribunal went on to consider whether to impose a period of suspension on Dr McGaughey's registration. The Tribunal accepted that suspension does have a deterrent effect and could be used to send a signal to Dr McGaughey, the profession, and the public about what is regarded as behaviour unbecoming a registered doctor. The Tribunal acknowledged that the SG provides that suspension may be appropriate where there is an acknowledgement of fault, where it is satisfied the conduct will not be repeated and where that conduct is not fundamentally incompatible with continued registration.

20. The Tribunal took into account paragraphs 91-106 of the SG. In particular it considered paragraph 97a of the SG:

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

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.'

21. The Tribunal was of the view that it needed to determine whether Dr McGaughey's actions which led to his conviction amounted to being fundamentally incompatible with continued registration.

22. The Tribunal had regard to paragraphs 151-156 of the SG. In particular it bore in mind paragraphs 152 and 153:

'152 Taking, making, sharing and possessing an indecent image or pseudo-photograph of a child is illegal and regarded in UK society as morally unacceptable. For these reasons, where there is any involvement in child sex abuse materials by a registered doctor the tribunal should consider whether the public interest demands that their registration be affected.

153 While the courts distinguish between degrees of seriousness, any conviction for child sex abuse materials against a registered doctor is a matter of grave concern because it involves such a fundamental breach of the public's trust in doctors and inevitably brings the profession into disrepute. It is therefore highly likely that, in these cases, the only proportionate sanction will be erasure. However, the tribunal should

bear in mind paragraphs 20–23 and 61–111 of this guidance, which deal with the options available to it, and the issue of proportionality. If the tribunal decides to impose a sanction other than erasure, it is important that it fully explains the reasons and the thinking that has led it to impose this lesser sanction so that it is clear to those who have not heard the evidence in the case.’

23. The Tribunal concluded that in light of the gravity of Dr McGaughey’s conviction, and given the aggravating factors identified, deviation from the SG would not be proportionate.

24. Accordingly, the Tribunal determined that to suspend Dr McGaughey’s registration would not be appropriate, nor would it sufficiently protect the public.

Erasure

25. In considering erasure, the Tribunal reminded itself of the aggravating factors it had identified, including the terms of Dr McGaughey’s sentence. It identified the following paragraphs of the SG as particularly relevant to its deliberations:

‘107 The tribunal may erase a doctor from the medical register in any case – except one that relates solely to the doctor’s health and/or knowledge of English – where this is the only means of protecting the public.

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 fundamentally incompatible with being a doctor.

b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.

[...]

e Violation of a patient’s rights/exploiting vulnerable people (see Good medical practice, paragraph 27 on children and young people, paragraph 54 regarding expressing personal beliefs and paragraph 70 regarding information about services).

f Offences of a sexual nature, including involvement in child sex abuse materials (see further guidance below at paragraphs 151 - 159).

[...]

26. The Tribunal concluded that Dr McGaughey’s conviction, which amounted to a serious breach of GMP, was fundamentally incompatible with continued registration. Dr

McGaughey's offending behaviour is morally unacceptable and seriously undermines patients' and the public's trust and confidence in the medical profession.

27. The Tribunal acknowledged the sincere regret and remorse expressed by Dr McGaughey throughout these proceedings. Nonetheless, given the nature and severity of the offences concerned, it determined that erasure was the only appropriate and proportionate sanction that would uphold the 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 that profession.

28. The Tribunal therefore determined to erase Dr McGaughey's name from the Medical Register.

Determination on Immediate Order - 05/05/2023

1. Having determined to erase Dr McGaughey's name from the medical register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Mr Barton submitted that an immediate order was required to protect public confidence in the profession given the serious nature of Dr McGaughey's conviction and the aggravating factors identified. Mr Barton confirmed that Dr McGaughey's registration is currently subject to an interim order of suspension.

3. Dr McGaughey made no further submissions.

The Tribunal's Determination

4. The Tribunal had regard to paragraphs 172 to 178 of the SG. It took account of the guidance, the submissions of both parties and the specific basis upon which the Tribunal reached its determination on sanction. In particular, it had regard to the following paragraphs:

'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...

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.'

5. The Tribunal bore in mind the seriousness of Dr McGaughey's conviction, the ongoing risk of repetition it had identified and the sanction it has imposed. The Tribunal therefore determined that it was necessary to suspend Dr McGaughey's registration with immediate effect to protect the public interest and uphold public confidence in the profession.

6. This means that Dr McGaughey's registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, 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.

7. The interim order of suspension currently in place is hereby revoked.

8. That concludes the case.